

# HEARING ROSTER OF ATTENDANCE

IN THE MATTER OF LICENSE NO. 37-7460 )  
IN THE NAME OF FRANK & JOSEPHINE )  
ASTORQUIA )  
\_\_\_\_\_ )

Beginning at 1:00 p.m.  
**March 13, 2012**  
Hearing Officer: Shelley W. Keen

**NAME**

**ADDRESS**

**REPRESENTING**

*Frank Astorqui*

*Justin Astorqui*

*1654 E 1850 S Gooding*

*King L. Foster*

*1301 N 22<sup>nd</sup> Boise*

*Jo Berman*

*409 W. Jefferson Boise*

*Frank Astorqui*

*Jan Hershey*

*IDWR*

## HEARING EXHIBIT LIST

IN THE MATTER OF LICENSE )  
NO. 37-7460 IN THE NAME OF FRANK & )  
JOSEPHINE ASTORQUIA )  
 )  
 )  
 )

Beginning at 1:00 p.m.

**March 13, 2012**

Hearing Officer: Shelley W. Keen

[illegible]



| Tab | Date     | Description                                                                                                                   | Filed by                    |
|-----|----------|-------------------------------------------------------------------------------------------------------------------------------|-----------------------------|
| 1   | 10/23/02 | Petition for Review of Final Order in the Matter of Lapsed Permit No. 37-7460 in the Name of Frank and/or Josephine Astorquia | Astorquia                   |
| 2   | 11/1/02  | Order Governing Judicial Review                                                                                               | Court                       |
| 3   | 11/5/02  | Notice of Appearance                                                                                                          | Rassier                     |
| 4   | 11/6/02  | Petitioner's Statement of Issues                                                                                              |                             |
| 5   | 12/3/02  | Motion for Extension of Time to File Agency's Record<br>Notice of Lodging Agency's Record                                     | State of Idaho              |
| 6   | 12/11/02 | Joint Stipulation for Remand to Agency                                                                                        | Beeman                      |
| 7   | 12/17/02 | Order Granting Motion for Extension of Time to File Agency's Record<br>Order Granting Joint Stipulation for Remand to Agency  | District Court              |
| 8   | 8/19/03  | Notice of Intent to Dismiss                                                                                                   | Court                       |
| 9   | 9/2/03   | Joint Response to Notice of Intent to Dismiss                                                                                 | Astorquia & IDWR            |
| 10  | 9/19/03  | ORDER on Joint Response to Notice of Intent to Dismiss                                                                        | District Court              |
| 11  | 2/12/04  | ORDER on letter to Judge McKee: continued to August 2004                                                                      | District Court              |
| 12  | 8/13/04  | Joint Stipulation to Stay Proceeding                                                                                          | Astorquia & IDWR            |
| 13  | 8/23/04  | Order Approving Stipulation to Stay Proceedings                                                                               | District Court              |
| 14  | 9/12/05  | Notice of Status Conference                                                                                                   | Deputy Clerk of District Ct |
| 15  | 1/12/06  | Order Dismissing Appeal                                                                                                       | Judge McKee                 |

SRBA Subcase No. 37-07469 and 37-07460

2007 - current

| File 3.1 |          |                                                          |            |
|----------|----------|----------------------------------------------------------|------------|
| 1        | 11/14/07 | Standard Form 1 Objection                                | B&A        |
| 2        | 2/2/09   | Notice Setting Subcase for Initial Hearing by Telephone  | SRBA Clerk |
| 3        | 2/26/09  | Notice Setting Status Conference                         | SRBA Clerk |
| 4        | 8/12/09  | Notice Setting Status Conference                         | SRBA Clerk |
| 5        | 2/8/10   | Order Setting Trial Date and Scheduling Conf.            | SRBA       |
| 6        | 6/9/10   | Notice Setting Hearing                                   | SRBA       |
| 7        | 2/17/11  | Order Setting Status Conference and Resetting Trial Date | SRBA       |
| 8        | 6/23/11  | Notice Setting Status Conference                         | SRBA       |
| 9        | 7/22/11  | Order Vacating Trial Date and Setting Status Conferences | SRBA       |
| 10       | 8/25/11  | Notice of Completed Proceeding                           | IDWR       |
| 11       | 10/5/11  | Notice Setting Hearing                                   | SRBA       |
| 12       | 1/25/12  | Notice Setting Hearing                                   | SRBA       |
|          |          |                                                          |            |

IDWR PROCEEDINGS

2011 - current

FILE 3.2

|   |         |                                  |           |
|---|---------|----------------------------------|-----------|
| 1 | 7/6/11  | IDWR Issuance of License 37-7460 | IDWR      |
| 2 | 7/21/11 | Request for Hearing              | Astorquia |
| 3 | 1/25/12 | Notice of Hearing                | IDWR      |
| 4 | 2/23/12 | Notice of Rescheduled Hearing    | IDWR      |

## IDWR Documents and Filings by Givens Pursley:

Water Right 37-7460

| Tab # | Date      | Description                                                                                                  | Filed by       |
|-------|-----------|--------------------------------------------------------------------------------------------------------------|----------------|
| 1     | 1975-1984 | Water right documents from IDWR's file                                                                       |                |
| 2     | 7/3/02    | Petition to Reinstate Permit and Original Priority Date<br>Affidavit of Frank Astorquia<br>Aerial Photograph | Givens Pursley |
| 3     | 7/11/02   | Proof of Acknowledgment Letter<br>Preliminary Order Reinstating Permit                                       | IDWR           |
| 4     | 7/16/02   | Request for Extension of Time to File Adjudication Claim<br>Notice of Claim to a Water Right                 | Givens Pursley |
| 5     | 7/18/02   | Letter from IDWR enclosing IDWR's data entered Notice of Claim (to be filed with the SRBA)                   | IDWR           |
| 6     | 7/25/02   | Exception to Preliminary Order                                                                               | Givens Pursley |
| 7     | 7/25/02   | Order Granting Extension to File Brief                                                                       | IDWR           |
| 8     | 8/23/02   | Frank Astorquia's Memorandum in Support of Exception to Preliminary Order                                    | Givens Pursley |
| 9     | 9/24/02   | Final Order                                                                                                  | IDWR           |
| 10    | 11/21/05  | Beneficial Use Field Report                                                                                  | IDWR           |
| 11    | 1/15/06   | Application for Amendment 37-7460                                                                            | Astorquia      |

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**137 P.3d 438 (Idaho 2006)**

**143 Idaho 51**

**Tarek L. HAW, M.D.,  
Petitioner-Appellant-Respondent on Appeal,**

**v.**

**IDAHO STATE BOARD OF MEDICINE,  
Respondent-Appellant on Appeal.**

**No. 31862.**

**Supreme Court of Idaho, Boise.**

**May 30, 2006**

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Uranga & Uranga, Boise, for appellant. Jean R. Uranga argued.

Hawley, Troxell, Ennis & Hawley, LLP, Boise, for respondent. Joseph D. McCollum Jr. argued.

TROUT, Justice.

This is an appeal from an order of the district court reversing the decision of the appellant Idaho State Board of Medicine (Board) ordering respondent Dr. Haw to pay the Board's costs and attorney fees in the amount of \$115,755 relating to a disciplinary action brought by the Board against Haw. While we agree with the district court the Board erred in its fee award analysis, we remand the matter to the Board to reconsider the issue consistent with the guidelines set forth in this opinion.

## **I.**

### **FACTUAL AND PROCEDURAL BACKGROUND**

In 2000, the Board filed a fifty-seven page amended complaint containing twenty-three counts against Haw. Twenty-one of those counts included multiple allegations relating to the standard of care Haw provided his patients. All of those counts included some variation on the following allegations: (1) using stereotypical and incomplete charting and record keeping; (2) illegible handwriting; (3) ordering lab work that did not support the diagnosis; (4) diagnosing patients in a manner inconsistent with the findings or lack of findings; (5) treating patients in a manner inconsistent with the diagnosis, including utilizing excessive doses of intramuscular estrogen; and (6) inappropriately using, or

failing to use, consultants. After listing these allegations, each count included a paragraph in which the Board asserted, "The acts and practices of [Haw], as alleged ... above, constitute violations of the Idaho Medical Practice Act in that [Haw] has provided health care which fails to meet the standard of health care provided by other qualified physicians in the same or similar communities." A hearing officer found little or no evidence to support many of the allegations, but did conclude Haw violated the community standard of care concerning estrogen injections. The Board adopted all of the hearing officer's findings and conclusions, sanctioned Haw by prohibiting him from giving estrogen injections in the future, and awarded itself over \$115,000 in costs and attorney fees.

In Haw's first appeal, this Court affirmed the restriction on Haw's practice, but determined the fee award violated Haw's due process rights because he had not been given an opportunity to be heard on the matter. *See Haw v. Idaho State Bd. of Medicine (Haw I)*, 140 Idaho 152, 90 P.3d 902 (2004). On remand, the Board held a hearing on the issue and concluded that assessing costs and attorney fees is one of the disciplinary measures the Board has discretion to impose as a sanction pursuant to I.C. § 54-1806A(9). With respect to determining the amount of fees and costs to impose, the Board noted

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Haw's argument the fees should be apportioned because much of what had been alleged was not found to be the basis for discipline. Despite that argument, the Board found "no reasonable basis for reducing the amount of costs and attorney fees on the rationale that [Haw] is entitled to apportionment of such costs and attorney fees." Once sufficient grounds for discipline were found to exist, the Board reasoned, it had discretion as to what sanctions to impose. Thus, the Board declined to apportion at all, deciding that because it had disciplined Haw, it was appropriate to impose as a sanction all of the fees incurred. Haw again appealed.

While acknowledging the numerical count of claims won or lost was not dispositive, the district court concluded the record clearly showed the Board prevailed in part and lost in part. As the Board engaged in no analysis as to the relative significance of the claims won or lost, the district court concluded the Board failed to establish its entitlement to costs and attorney fees. The district court reversed the Board's order of costs and attorney fees in its entirety and the Board timely appealed.

## **II.**

### **STANDARD OF REVIEW**

On appeal from the district court's decision on

judicial review in a proceeding governed by the Administrative Procedure Act (APA), this Court reviews the agency record independently of the district court's decision. *Haw I*, 140 Idaho at 157, 90 P.3d at 907. Pursuant to the APA, an agency's disciplinary decisions may only be overturned on appeal where the decisions violate a substantial right of the party and where the agency's findings, inferences, conclusions, or decisions (a) violate statutory or constitutional provisions; (b) exceed the agency's statutory authority; (c) are made upon unlawful procedure; (d) are not supported by substantial evidence in the record; or (e) are arbitrary, capricious, or an abuse of discretion. *Staff of Idaho Real Estate Com'n v. Nordling*, 135 Idaho 630, 633, 22 P.3d 105, 108 (2001); I.C. § 67-5279(3), (4).

### III.

#### DISCUSSION

The main issues on this appeal are whether the Board's award of attorney fees should be apportioned and, if so, the appropriate remedy given the statute governing judicial review of Board decisions.

##### A. The award

Idaho Code section 54-1806A(9) governs disciplinary proceedings before the Board as follows:

Adjudication of Discipline or Exoneration. The board shall make a determination of the merits of all proceedings, studies and investigations and, if grounds therefor are found to exist, may issue its order:

- (a) Revoking the respondent physician's license to practice medicine;
- (b) Suspending or restricting the respondent physician's license to practice medicine;
- (c) Imposing conditions or probation upon the respondent physician and requiring rehabilitation planning, commitment and conditions upon such respondent physician's licensure;
- (d) Imposing an administrative fine not to exceed ten thousand dollars (\$10,000) for each count or offense; and/or
- (e) *Assessing costs and attorney's fees against the respondent physician for any investigation and/or administrative proceeding.*

If grounds for any of the foregoing are not found to exist, the board shall enter its order so stating and dismissing the proceedings and shall provide the respondent and, if there be one, the complainant or petitioner in the proceedings a true copy thereof.

(emphasis added). We agree with the Board that this statute clearly gives the Board authority to assess

attorney fees as a sanction if grounds for discipline are found to exist after the merits of all proceedings have been considered. We also agree that the Idaho Rules of Civil Procedure do not apply to Board proceedings, so the Board is not constrained to follow exactly the prevailing party

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analysis set forth in I.R.C.P. 54. *See Nordling*, 135 Idaho at 635, 22 P.3d at 110 (noting the Idaho Rules of Civil Procedure, by their own definition, are not applicable to administrative proceedings). Nevertheless, we disagree with the Board that the imposition of a sanction is entirely within its discretion and it need not demonstrate how the award relates to the discipline imposed.

The Board's assertion that finding any grounds for discipline empowers the Board to impose whatever sanctions it wishes is not persuasive, especially where the discipline simply consisted of prohibiting Haw from using a specific treatment therapy in the future, which is not a particularly serious form of discipline (compared with suspending or revoking a license to practice medicine or a significant fine, for example). Under the Board's reasoning, even if it had only prevailed on the illegible handwriting claim--which the Board asserted would establish a violation of the Idaho Medical Practice Act--the Board would be entitled to recover all of its attorney fees. Such a result is not supported by the language of the statute vesting discretion in the Board to weigh the merits of the proceedings, studies and investigations and render an appropriate form of discipline.

Even more importantly, an award of attorney fees is a sanction, which, like any other penalty, must somehow be tied to the sanctioned conduct. By awarding itself all of the attorney fees incurred, the Board has effectively sanctioned Haw for conduct the hearing officer found "unsanctionable," such as his illegible handwriting and failure to use consultants. Such an award is clearly an abuse of discretion.

While this Court has often been confronted with the question of whether a certain agency action constitutes an abuse of discretion, we have not expressly articulated the standard to be applied when making that determination. We now clarify that an appellate court reviewing agency actions under the APA must determine whether the agency perceived the issue in question as discretionary, acted within the outer limits of its discretion and consistently with the legal standards applicable to the available choices, and reached its own decision through an exercise of reason. *See Rockefeller v. Grabow*, 136 Idaho 637, 643, 39 P.3d 577, 583 (2001).

Here, the statute clearly gives the Board the discretion to impose sanctions. The award is not consistent with applicable legal standards, however,

because it is so disproportionate to the discipline imposed that the Board could not have considered the merits of all proceedings as required by I.C. § 54-1806A(9) when making the award. Also, determining all fees and costs may be recovered simply because one of many possible grounds for discipline existed is not a decision based on the exercise of reason. On these facts, the Board abused its discretion in concluding there was "no reasonable basis" for apportioning its award of costs and fees. Consequently, the Board's award of fees and costs is vacated.

#### **B. The remedy**

Idaho Code section 67-5279(3) directs, "[I]f the agency action is not affirmed, it shall be set aside, in whole or in part, and remanded for further proceedings as necessary." Because we have vacated the fees and costs award, we remand the matter to the Board for further proceedings. We offer the following direction to enable the Board to conduct further proceedings consistent with this opinion.

The guiding principle is that the sanction must be related to the discipline; I.C. § 54-1806A(9) does not authorize an open-ended sanction simply because some form of discipline has been imposed. The Board must engage in a meaningful analysis of the charges made in relation to the charges upon which the Board was successful. While the Board need not add up the allegations and calculate with mathematical precision who won the most claims, there should be some analysis of precisely how much time and effort went into proving the misconduct that resulted in discipline. Here, the Board used what the hearing officer described as a "shotgun approach" in making its allegations against Haw, who therefore felt it necessary to present a full defense to every allegation. While the Board is entitled to list as many violations as it thinks appropriate and supported by its investigation, it must be mindful

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the doctor will, as a result, be forced to defend against every one of the claims charged.

Though the Board sought and received a restriction on Haw's use of injectable hormones, it also sought discipline based on allegations of Haw's poor handwriting, his use of lab testing, his stereotypical and incomplete charting and record keeping, and his dealings with consultants. In light of the multiple allegations made, the Board cannot claim it was fully successful in what it was seeking to achieve and, therefore, is entitled to all its fees and costs. In actuality, the Board was successful on a fairly small part of the allegations made and the Board should have taken that into account in assessing any sanction relating to fees and costs. The Board should consider how many of the claims the doctor prevailed on, the overall success in supporting the

Board's allegations and the amount of time and effort devoted to proving the claimed misconduct for which discipline was imposed, as opposed to the total time spent in pursuing all of the allegations.

In sum, an award of fees and costs based on the previous considerations will likely ensure the sanction bears a reasonable relationship to the conduct warranting discipline in a manner that is not an abuse of discretion.

#### **C. Fees on appeal**

Haw requests attorney fees on appeal under I.C. § 12-117, which allows a court to award fees against a state agency that has acted without a reasonable basis in fact or law. Here, while we disagree with the Board's result, we cannot say it acted without a reasonable basis in law, given the lack of clarity or standards in the discipline statute. We, therefore, deny the request for fees.

#### **IV.**

#### **CONCLUSION**

The order of the Board of Medicine awarding fees and costs is vacated. The matter is remanded to the Board pursuant to I.C. § 67-5279(3) for further proceedings consistent with the guidelines set forth in this opinion. We award costs on appeal to Haw.

Justices EISMANN and BURDICK and Justice Pro Tem. KIDWELL concur.

JONES, J., specially concurring:

I write to pass on to the Board, using the words of my high school English teacher, Mrs. Murphy, a word to the wise. A tribunal that is too close to an issue, or which has a financial stake in the outcome, may find its impartiality impaired. While neither party has directly raised the issue of impartiality in this proceeding, some troublesome factors do appear in the record.

In the initial proceeding, which led to the first appeal, the hearing officer did a good job of winnowing through the large number of charges made against Haw to determine which were supported by the evidence and which were not. The Board upheld the hearing officer's findings but then went on to impose an award of costs and attorney fees in the sum of \$116,067.05 against Haw, without giving him an opportunity to be heard. The award of costs and fees was vacated on due process grounds and the case was remanded for further consideration of the issue.

On remand, the Board held a hearing on the issue of costs and fees, without the assistance of a hearing officer. Despite the fact that Haw prevailed on the majority of the charges against him, the Board again imposed a sizable award against Haw, this time in the sum of \$115,755. In its order the Board recited that it had "considered the fact

that costs and attorney fees incurred in investigating and prosecuting complaints against a physician are paid by licensing fees and concluded the Board has a responsibility to recoup such expenses, if appropriate." It appears that the Board might have been somewhat too mindful of recouping all of the license fees and a little less mindful than it should have been in determining a "reasonable" award.

In order to assure impartiality on the second remand, the Board would be well advised to employ the services of the hearing officer in determining an appropriate award of costs

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and fees. The hearing officer did a good job of separating the wheat from the chaff with regard to the substantive issues in the first go-around and would more than likely perform a similar service on the issue of costs and fees. The use of a hearing officer would provide some separation between the Board's responsibility to fashion a reasonable award and its interest in recouping the licensing fees paid by its membership. At the very least, employment of a hearing officer would avoid the appearance of partiality.

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**175 P.3d 776 (Idaho 2007)**

**LANE RANCH PARTNERSHIP, an Idaho general partnership, Plaintiff-Respondent,**

**v.**

**CITY OF SUN VALLEY, a political subdivision of the State of Idaho, Defendant-Appellant.**

**No. 33423.**

**Supreme Court of Idaho, Boise.**

**December 27, 2007**

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Robertson & Slette, Twin Falls, for respondent.  
Gary Slette argued.

Hawley, Troxell, Ennis & Hawley, LLP, Ketchum,  
for appellant. Rand Peebles argued.

W. JONES, Justice.

This is an appeal arising from an application for a private road by Lane Ranch Partnership in the City of Sun Valley. Sun Valley's Community Development Director, the City Council and the Sun Valley Planning and Zoning Commission all found the application to be incomplete under the Sun Valley Municipal Code (the Code). Lane Ranch appealed to the district court. The district court reversed the Zoning Commission. The City appeals to this Court.

Lane Ranch owns property north of Elkhorn Road (the Property). The Property is zoned OR-1, which is defined as "open recreation." In January 2002, Lane Ranch submitted an application requesting permits to

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construct a private road on the Property. The Community Development Director responded to the application as incomplete and requested that Lane Ranch supplement the application with an application for design review (Title 9 of the Code) or an application for subdivision approval (Title 10 of the Code).

Lane Ranch filed an appeal to the Zoning Commission, contending that design review and subdivision approval are unnecessary under Title 7 of the Code. The Zoning Commission denied the appeal and Lane Ranch appealed to the City Council. The City Council affirmed the Zoning Commission. Lane Ranch

filed an appeal in district court. The district court reversed the prior decisions finding that Title 7 governs the application for a private road, and Title 7 does not reference Title 9 or Title 10 of the Code. The action was remanded for the application to be reviewed under Title 7 of the Code. The City appeals that decision to this Court.

The following issues are presented on appeal:

1. Whether Sun Valley reasonably interpreted its ordinances in determining that Lane Ranch had failed to submit the necessary application for consideration of its request to construct a private road.

2. Whether the district court correctly determined that Sun Valley's action was without a reasonable basis in fact or law entitling Lane Ranch to an award of attorneys' fees under Idaho Code § 12-117.

3. Whether Lane Ranch is entitled to attorney's fees on appeal pursuant to I.C. § 12-117 on the basis that the City acted without a reasonable basis in either fact or law in reaching its decision.

The Idaho Administrative Procedures Act governs judicial review of local zoning decisions. *Price v. Payette*, 131 Idaho 426, 429, 958 P.2d 583, 586 (1998) (citing *Comer v. County of Twin Falls*, 130 Idaho 433, 437, 942 P.2d 557, 561 (1997)). This Court reviews the zoning decision independent of the decision of the district court. *Payette*, 131 Idaho at 429, 958 P.2d at 586 (citing *Comer*, 130 Idaho at 437, 942 P.2d at 561). This Court will not substitute its judgment as to the weight of the evidence on questions of fact. I.C. § 67-5279(1). Interpretation of an ordinance or statute is a question of law over which this Court exercises free review. *Friends of Farm to Market v. Valley County*, 137 Idaho 192, 196, 46 P.3d 9, 13 (2002) citing *State v. Nelson*, 119 Idaho 444, 446, 807 P.2d 1282, 1284 (Ct. App. 1991). Analysis of a statute or ordinance begins with the literal language of the enactment. *Friends of Farm to Market*, 137 Idaho at 197, 46 P.3d at 14 (citations omitted). "Where the language is unambiguous, the clearly expressed intent of the legislative body must be given effect, and there is no occasion for a court to construe the language." *Friends of Farm to Market*, 137 Idaho at 197, 46 P.3d at 14 (citing *Lawless v. Davis*, 98 Idaho 175, 560 P.2d 497 (1977)). When zoning boards interpret their own zoning ordinances there is a strong presumption that the interpretation is valid. *Id.* at 197, 46 P.3d at 14 (citing *South Fork Coalition v. Bd. Of Comm'rs*, 117 Idaho 857, 860, 792 P.2d 882, 885 (1990)).

The party challenging the zoning board's decision must first show the zoning board's error under I.C. § 67-5279(3), and secondly, that such error has prejudiced a substantial right of the party. *Payette*, 131 Idaho at 429,

958 P.2d at 586 (citations omitted).

The court shall affirm the agency action unless the court finds that the agency's findings, inferences, conclusions, or decisions are: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) not supported by substantial evidence on the record as a whole; or (e) arbitrary, capricious, or an abuse of discretion. If the agency action is not affirmed, it shall be set aside, in whole or in part, and remanded for further proceedings as necessary.

I.C. § 67-5279(3). Regardless, if an error occurred, the decision will be upheld unless the party can show that the action affects a substantial right. *Lamar Corp. v. City of Twin Falls*, 133 Idaho 36, 39, 981 P.2d 1146, 1149 (1999)

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(citing I.C. § 67-5279(4)).

1. Sun Valley unreasonably interpreted its ordinances when it determined that Lane Ranch failed to submit the necessary application for consideration of its request to construct a private road.

Title 7 of the Code governs public ways, public property and private streets. Title 9 of the Code governs planning and zoning. Title 10 governs subdivisions. Title 7 of the Code was adopted five years before Title 9 or Title 10 of the code.

Title 7 of the Sun Valley Municipal Code is a comprehensive ordinance that expressly governs private streets. Under Title 7, in order to build or modify a street, a party must "apply for and obtain either plat approval, construction plan approval and/or a construction permit." S.V.M.C. § 7-1-4. Title 7 also gives a detailed list of standards that the City will evaluate when reviewing an application for road construction. S.V.M.C. § 7-1-2. Additionally, the standards specifically apply to all new construction of public or private roads. S.V.M.C. § 7-1-3. There are no references to any other Code sections under which an application will be evaluated. It was unreasonable for the City to impose additional requirements on Lane Ranch prior to reviewing the private road application. Sun Valley also argues that Title 7 gives the Commission and Director broad authority to grant or deny private road approval. "Private streets shall be permitted within the City subject to review and approval by the Planning and Zoning Commission and the City Council." S.V.M.C. § 7-4-2. However, such review and approval does not grant the ability to arbitrarily apply irrelevant ordinance sections. Had the City intended to require Title 9 (design review) or Title 10 (subdivision approval) to apply to the construction of private streets, Title 7 could have incorporated those provisions, but it does not.

The City argues that an application for design review or subdivision approval is required under § 7-5-6(A). "Consistent with the applicable sections of the development regulations, street and road alignment shall follow natural terrain contours so as to result in safe streets, usable lots and minimum cuts and fills." S.V.M.C. § 7-5-6(A) (emphasis added).

This Court applies the same principles in construing municipal ordinances as it would in construing statutes. *Friends of Farm to Market*, 137 Idaho at 197, 46 P.3d at 14 (citing *Cunningham v. City of Twin Falls*, 125 Idaho 776, 779, 874 P.2d 587, 590 (Ct. App. 1994)). "Any such analysis begins with the literal language of the enactment." *Ada County v. Gibson*, 126 Idaho 854, 856, 893 P.2d 801, 803 (Ct. App. 1995) (citations omitted). If the language is unambiguous, then the clear and express intent of the legislative body governs. Specific language is not viewed in isolation, the entire statute and applicable sections must be construed together to determine the overall legislative intent. *Friends of Farm to Market*, 137 Idaho at 197, 46 P.3d at 14 (citing *Lockhart v. Dept. of Fish and Game*, 121 Idaho 894, 897, 828 P.2d 1299, 1302 (1992)).

Here, § 7-5-6(A) falls under the chapter entitled "Design Criteria," and the section entitled "Street Alignment." This section of the Code does not impose any additional requirements on a party in order to gain a construction permit for a private road. Section 7-1-6 does impose requirements for construction plan approval. It simply references that it is "consistent with the applicable section of the development regulations ." That section does not impose those regulations on applications for private roads. It goes on to state that "[b]efore commencing any excavation or construction on public or private streets, roads or walkways the contractor, developer or owner shall submit plans to the City for approval. The plans shall have been prepared by a professional engineer registered in the State and shall include the following information ...." S.V.M.C. § 7-1-6. The ordinance then continues by listing the requirements for approval. None of the requirements for approval reference Title 9 or Title 10 or any additional applications which would need to be made under the Code. If the City had intended to include any additional requirements

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to gaining City approval, it could have referenced or listed them in the ordinance.

A city's actions are considered arbitrary and capricious if made without a rational basis, or in disregard of the facts and circumstances, or without adequate determining principles. *Enterprise, Inc. v. Nampa City*, 96 Idaho 734, 739, 536 P.2d 729, 734 (1975). This Court will not substitute its judgment for that of a city when it acts within the bounds of its discretion. *Id.* A city's actions are considered an abuse of

discretion when the actions are arbitrary, capricious or unreasonable. *Enterprise*, at 739, 536 P.2d at 734. Here, the City viewed Lane Ranch's application as incomplete based on previous attempts by Lane Ranch to subdivide the property. The City automatically assumed that the private road application was another attempt to build a subdivision, rather than a legitimate attempt to gain access to the property under the current applicable zoning standards. The City's interpretation of their code is unreasonable and therefore an abuse of discretion under I.C. § 67-5279(3)(e).

2. The City's interpretation of its ordinances violates a substantial right of Lane Ranch.

Lane Ranch has a substantial right to have its application evaluated properly under Title 7 of the Code. Their ability to access their property has been impeded and they are unable to develop their property for admittedly permissible uses under the applicable OR-1 zoning. The Property consists of 166-acres which presently is only accessible by foot.

3. Whether the district court correctly determined that Sun Valley's action was without a reasonable basis in fact or law entitling Lane Ranch to an award of attorney's fees under I.C. § 12-117.

In any administrative or civil judicial proceeding involving as adverse parties a state agency, a city . . . and a person, the court shall award the prevailing party reasonable attorney's fees . . . if the court finds that the party against whom the judgment is rendered acted without a reasonable basis in fact or law.

I.C. § 12-117(1). The district court found an award of attorney's fees proper. This Court finds that the City abused its discretion in its interpretation of its ordinances, and acted without a reasonable basis in fact or law. We hold that the award of attorney's fees by the district court was not in error.

4. Whether Lane Ranch is entitled to attorney's fees on appeal pursuant to I.C. § 12-117 on the basis that the City acted without a reasonable basis in either fact or law.

A party is not entitled to attorney's fees if the issue is one of first impression in Idaho. *SE/Z Const., L.L.C. v. Idaho State University*, 140 Idaho 8, 14, 89 P.3d 848, 854 (2004). Attorney's fees are also inappropriate if the City presented a legitimate question for this Court to address. *IHC Hospitals, Inc. v. Teton County*, 139 Idaho 188, 191-92, 75 P.3d 1198, 1201-02 (2003). This Court finds that the City acted on appeal without a reasonable basis in fact or law. Lane Ranch is entitled to costs and attorney's fees on appeal.

For the foregoing reasons the decision of the district court is affirmed and the case is remanded for evaluation under the standards articulated in Title 7 of the Code.

Chief Justice EISMANN, Justices BURDICK, J. JONES and HORTON concur.

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207 P.3d 169 (Idaho 2009)

147 Idaho 193

Ed TERRAZAS and Jackie Weseloh,  
Petitioners-Appellants,

v.

BLAINE COUNTY, Idaho, by and through its duly  
elected BOARD OF COMMISSIONERS, Respondent.

No. 34106.

Supreme Court of Idaho.

April 15, 2009

Rehearing Denied May 5, 2009.

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Robertson & Slette, PLLC, Twin Falls, for  
appellants. Gary Slette argued.

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Blaine County Prosecutor's Office, Hailey, for  
respondent. Timothy Graves argued.

HORTON, Justice.

This appeal arises from a petition for judicial review concerning a county board's denial of a subdivision application. Appellants Ed Terrazas and Jackie Weseloh (Applicants) appeal the district court's order affirming Respondent Blaine County Board of County Commissioners' (Board) decision denying Applicants' subdivision application. We affirm the decision of the district court.

## **I. FACTUAL AND PROCEDURAL BACKGROUND**

Applicants are co-owners of approximately 115 acres of real property on East Fork Road, 1.5 miles east of State Highway 75 in Blaine County, Idaho. In May of 2004, Applicants submitted an application to subdivide the subject property into the NoKaOi subdivision.

Because the proposed subdivision involved no more than four lots, the application was initially processed

under the short plat subdivision procedures found in section 10-4-6 of the Blaine County Code (B.C.C.). The short plat procedures are a streamlined version of the standard subdivision application procedures. One of the unique features of the short plat procedure is that it allows an application to proceed directly to the Board for a final plat review without requiring a preliminary plat review by the Planning and Zoning Commission (Commission).

As part of the initial review of the NoKaOi application, Planning and Zoning Senior Planner Tom Bergin prepared a staff report for the Board's consideration. One of the issues addressed in Bergin's report was whether the areas of disturbance in the proposed subdivision fell within the Mountain Overlay District (MOD). Stated broadly, the intent of the MOD is to direct development away from the County's hillsides and mountains. B.C.C. § 9-21-1(A); 9-21-1(B). Bergin's first staff report concluded that the proposed areas of disturbance did not conflict with the MOD ordinance because they were located on a "bench slope" rather than a "hillside slope." Bergin's report also observed that his conclusion regarding MOD compliance was "of course subject to further examination by the Board." Applicants also claim that Planning and Zoning Administrator Linda Haavik advised them that she also believed that the planned building sites were not within the MOD because they were situated on a bench. Applicants maintain that they proceeded with their application-spending more than \$50,000 in the process-in reliance on these opinions that the NoKaOi development plans did not violate the MOD ordinance.

On December 20, 2004, the Board conducted a public hearing on the proposed subdivision. Concerns as to whether the subdivision violated the MOD ordinance were raised. At the hearing, Bergin and Haavik reiterated their opinions that the areas of disturbance were not located within the MOD. Commissioner Wright commented that he had personally visited the site and found application of the MOD ordinance difficult. The hearing concluded with the Board's determination that, although the short-plat application process does not ordinarily require so, a thorough review by the Commission was appropriate to "further consider" the application.

The Commission considered the application and conducted public hearings on March 24, 2005, and April 14, 2005. At these hearings, the Commission considered Bergin's opinion regarding whether the MOD applied to the NoKaOi subdivision. As part of its review, the Commission conducted a scheduled site visit to view the property. At the Commission's request, Applicants staked and marked certain points on the property with storey poles. Following the site visit, the Commission rejected Bergin's interpretation and application of the MOD

ordinance. The Commission found that the areas of disturbance on two of the four lots in the proposed subdivision impermissibly encroached upon the MOD and also violated the county ordinance restricting development on hillsides visible from Scenic Corridor 1(SC1) (i.e., visible from State Highway 75). Specifically, the Commission concluded that the proposed areas of disturbance were located on a "ridge of a hillside slope" and not a "bench slope."

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The Commission recommended that the Board deny the subdivision application.

The Board revisited the application in public hearings on June 28, 2005, and July 26, 2005. At the latter hearing, the Board voted to deny the application. The Board adopted the Findings of Fact, Conclusions of Law, and Recommendation of the Commission and, on August 18, 2005, the Board issued its own Findings of Fact, Conclusions of Law, and Decision denying Applicants' subdivision application. In its written decision, the Board specifically rejected the proposition that the MOD contained a "bench exception." The Board's written decision contained a lengthy explanation why its interpretation of the MOD ordinance, as applied to the NoKaOi subdivision application, was consistent with the Board's previous decisions involving other applications potentially involving application of the MOD ordinance.

Pursuant to the Local Land Use Planning Act (LLUPA) and the Idaho Administrative Procedures Act (APA), Applicants petitioned the district court for judicial review of the Board's denial of their subdivision application. The district court affirmed the decision of the Board. Applicants then timely appealed to this Court.

## II. STANDARD OF REVIEW

A county board of commissioners is not a state agency for purposes of the application of the APA in its totality. *Petersen v. Franklin County*, 130 Idaho 176, 182, 938 P.2d 1214, 1220 (1997) (citing I.C. § 67-5201(2)). In order to obtain judicial review under LLUPA, I.C. § 67-6501 *et seq.*, there must be a statute granting the right of judicial review. *Highlands Dev. Corp. v. City of Boise*, 145 Idaho 958, 960-61, 188 P.3d 900, 902-03 (2008) (citing *Gibson v. Ada County Sheriff's Dept.*, 139 Idaho 5, 8, 72 P.3d 845, 848 (2003)). Idaho Code § 67-6519(4) provides that "[a]n applicant denied a permit or aggrieved by a decision" may seek judicial review after exhausting all remedies available under county ordinances. The decision regarding a subdivision application is a decision granting a permit, I.C. § 67-6513, and is therefore subject to judicial review. *Johnson v. Blaine County*, 146 Idaho 916, 920-21, 204 P.3d 1127, 1131-32 (2009).

When an appeal is taken from the decision of the

district court sitting in its appellate capacity under the APA, this Court reviews the Board's decision independently of the decision of the district court. *Evans v. Bd. of Comm'rs of Cassia County*, 137 Idaho 428, 430-31, 50 P.3d 443, 445-46 (2002); *Price v. Payette County Bd. of County Comm'rs*, 131 Idaho 426, 429, 958 P.2d 583, 586 (1998).

This Court does not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. I.C. § 67-5279(1). Rather, this Court defers to the agency's findings of fact unless they are clearly erroneous. *Castaneda v. Brighton Corp.*, 130 Idaho 923, 926, 950 P.2d 1262, 1265 (1998) (citing *South Fork Coal. v. Bd. of Comm'rs of Bonneville County*, 117 Idaho 857, 860, 792 P.2d 882, 885 (1990)). "In other words, the agency's factual determinations are binding on the reviewing court, even where there is conflicting evidence before the agency, so long as the determinations are supported by substantial competent evidence in the record." *Price*, 131 Idaho at 429, 958 P.2d at 586. Although interpretation of an ordinance is a question of law over which this Court exercises free review, *Lane Ranch P'ship v. City of Sun Valley*, 145 Idaho 87, 89, 175 P.3d 776, 778 (2007), "there is a strong presumption of favoring the validity of the actions of zoning boards, which includes the application and interpretation of their own zoning ordinances." *Payette River Prop. Owners Ass'n v. Bd. of Comm'rs of Valley County*, 132 Idaho 551, 554, 976 P.2d 477, 480 (1999) (citing *Howard v. Canyon County Bd. of Comm'rs*, 128 Idaho 479, 480, 915 P.2d 709, 710 (1996)).

## III. ANALYSIS

This Court will only overturn the Board's decision if we find that the Board's decision: (a) violated statutory or constitutional provisions; (b) exceeded the Board's statutory authority; (c) was made upon unlawful procedure; (d) was not supported by substantial evidence in the record; or (e) was

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arbitrary, capricious, or an abuse of discretion. I.C. § 67-5279(3); *Price*, 131 Idaho at 429, 958 P.2d at 586. Additionally, the Applicants must show that the decision prejudiced a substantial right. I.C. § 67-5279(4); *Price*, 131 Idaho at 429, 958 P.2d at 586. As the right to develop one's property is a substantial right, *Lane Ranch P'ship*, 145 Idaho at 91, 175 P.3d at 780, our focus will be on Applicants' claims of error.

Before the district court, Applicants argued: (1) the Administrator had final authority to make MOD boundary determinations; (2) because of Applicants' reliance on the Planning and Zoning staff's opinions, the Board is estopped from applying the MOD ordinance; (3) Applicants' due process rights were violated by reason of Commissioner Wright's personal visit to the site; (4) the

MOD ordinance is unconstitutionally vague; (5) the Board's determination was arbitrary, capricious, and without a reasonable basis in law or fact and violated Applicants' equal protection rights; and (6) Applicants were entitled to attorney fees. The district court was not persuaded by Applicants' arguments and affirmed the Board's decision to deny the application.

On appeal, Applicants have presented the same arguments for this Court's consideration. We conclude that Applicants have failed to demonstrate a substantial error upon which this Court should overturn the decision of the Board. Thus, we affirm the decision of the district court.

**A. Applicants have failed to establish that the Board's decision violated statutory or constitutional provisions or exceeded its statutory authority.**

Applicants argue that the Board exceeded its authority by reaching a decision on MOD compliance different than that of the Planning and Zoning Administrator. Further, Applicants assert that the Board should be estopped from denying their application on the basis of the MOD, given their reliance on the opinions of Bergin and Haavik that the location of their proposed building sites was not within the MOD. We disagree.

*1. The Board had the sole authority to make final decisions on subdivision applications.*

The Board was empowered to enact ordinances regulating the procedure and standards for subdivision applications. I.C. § 67-6513. Under Idaho law, county boards are vested with the exclusive, non-delegable, authority to finally approve subdivision applications. I.C. § 67-6504; *Cowan v. Bd. of Comm'rs of Fremont County*, 143 Idaho 501, 511-12, 148 P.3d 1247, 1257-58 (2006). Under I.C. § 67-6511, the Board had the power to establish zoning ordinances providing standards to regulate the construction and location of buildings and the preservation of open space. This Court has recognized that aesthetic concerns, including the preservation of open space and the maintenance of the rural character of Blaine County, are valid rationales for the County to enact zoning restrictions under its police power. *Dawson Enter., Inc., v. Blaine County*, 98 Idaho 506, 518, 567 P.2d 1257, 1269 (1977). The purpose of the MOD, as set forth in B.C.C. § 9-21-1(B), falls squarely within the recognized powers of the County:

1. To preserve the natural character and aesthetic value of hillsides and mountains in the County by regulating development thereon;
2. To maintain slope and soil stability;
3. To prevent scarring of hillsides and mountains made by cuts and fills and/or by access roads to hillside and mountainous areas;

4. To ensure accessibility by emergency vehicles on hillside roads;

5. To prevent unsafe conditions for access, circulation, and road maintenance and unwarranted problems associated therewith in hillside and mountainous areas;

6. To help ensure water quality and prevent deterioration due to sedimentation or inadequately performing septic systems;

7. To regulate site alteration and structural development in the Mountain Overlay District to assure that site alteration and development occurs in the Mountain Overlay District only when

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no sufficient development exists outside of the District and all other criteria under this Chapter have been met, and to assure that any site alteration and structural development within the District occurs in a manner that minimizes hillside visibility;

8. To carry out the provisions contained in the County Comprehensive Plan; and

9. To protect agricultural lands for productive agriculture while providing for necessary residential and other structural use within the context of productive agriculture.

Applicants contend that Haavik was vested with final authority to determine whether the proposed building sites fell within the boundaries of the MOD. In support of this contention, Applicants rely on B.C.C. § 9-4-4, which provides:

**INTERPRETATION OF BOUNDARIES:** The Administrator, in consultation with the County Engineer or his/her designated representative, shall have the authority to interpret zoning and overlay district boundaries in accordance with this Title. Interpretation by the Administrator may be appealed to the Board according to the procedures and time requirements of Section 9-32-3 of this Title.

We initially observe that the right to appeal the Administrator's interpretation indicates that the Board has reserved the final decision-making authority in this area. More importantly, although Applicants are correct that Title 9 of the Blaine County Code vests the administrator with authority to make a final decision on MOD compliance, subject to review on appeal by the Board, this authority extends only to single-lot applications. Approval of Applicants' subdivision application is not controlled by Title 9; rather, their application is governed by Title 10 of the B.C.C., which regulates subdivision applications.

The B.C.C. provides that " [n]o preliminary plat

application shall be considered by the Board or Commission until the Administrator makes a *recommendation* with regard to" whether the subdivision proposal complies with "[a]ny chapter of Title 9." B.C.C. § § 10-5-1; 10-5-1(A)(e) (emphasis added). The non-binding nature of the Administrator's recommendation is reflected in B.C.C. § 10-5-2:

**THRESHOLD STANDARDS:** No preliminary plat application shall be approved *unless the Board determines* that the application complies with each of the following standards:

A. Administrative Standards: The Administrator's *recommendations* on the standards set out in Section 10-5-1 of this Chapter are acceptable or need modification.

(emphasis added). Further, B.C.C. § 10-5-3 provides that "[n]o preliminary plat application shall be approved *unless the board determines* that the application complies with each of the following standards." (emphasis added). The listed standards include "hillside standards" and specifically provide that "no structure or building envelope shall be located within the Mountain Overlay District except as permitted by Title 9, Chapter 21 of this Code." B.C.C. § 10-5-3(L)(4).

The Board expressly considered and rejected Applicants' claim that Haavik possessed the final decision-making authority, stating:

The authority delegated to the Administrator is clearly not exclusive. Furthermore, Idaho Code § 67-6504 provides only the Board the authority to approve land subdivisions. For that reason, § 10-5-2(A) was added into the county's code to ensure that the Board retained the final authority to accept or modify any administrator's decision on any Administrative Standard including § 10-5-1(E)1 [1] relating to the location of uses in any zoning regulations.

We agree with the Board. The structure of the B.C.C. is such that the Board clearly retained the final decision-making authority to determine whether the proposed areas of

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disturbance fell within the MOD in cases of subdivision applications. Title 10 of the B.C.C. is consistent with the requirement of I.C. § 67-6504 that the Board shall have final authority to approve or deny subdivision applications.

2. *Application of principles of estoppel to the Board's decision is not warranted.*

Although the Board is empowered to make the final decision as to whether to approve a subdivision, Applicants nonetheless assert that the Board is estopped

from taking a position inconsistent with Planning and Zoning staff members' opinions. In support of this argument, Applicants point to the significant sums of money they expended on engineering, avalanche, soils, hydrology and other studies before the Board made its decision. They assert that they would not have incurred these expenses without having first appealed an adverse decision from the Planning and Zoning Administrator. In support of this argument, Applicants direct this Court to our decision in *Boise City v. Blaser*, 98 Idaho 789, 572 P.2d 892 (1977).

In *Blaser*, this Court affirmed the district court's injunction prohibiting the city from interfering with completion of an apartment complex where the landowner had "made substantial expenditures in good faith reliance" on a county zoning permit, which was the equivalent of the city's unconditional permit to build, prior to annexation of the property by the city. *Id.* at 791, 572 P.2d at 894. In reaching this decision, this Court did not apply principles of estoppel; rather, this Court simply applied "the well-known rule" that when a city annexes land and applies a new zoning ordinance, "it must respect existing non-conforming uses." *Id.* at 791-92, 572 P.2d at 894-95.

Applicants have not identified the theory of estoppel upon which they rely, although presumably they rely on principles of either equitable estoppel [2] or quasi-estoppel [3] in support of their claim. Although this Court has yet to categorically refuse to apply the doctrine of estoppel in cases involving application of zoning ordinances, our decisions reflect a reluctance to do so.

In *Intermountain Const., Inc. v. City of Ammon*, 122 Idaho 931, 841 P.2d 1082 (1992), this Court stated:

[T]his Court held, in *Harrell v. The City of Lewiston*, 95 Idaho 243, 506 P.2d 470 (1973), that a municipality may not be estopped when exercising a legislative and governmental function. In the *Harrell* case it was the enactment of a zoning ordinance. In this case it is the issuance of a building permit pursuant to such an ordinance. Neither the claim of estoppel nor quasi-estoppel constitutes legal grounds for imposing liability on the City of Ammon. I.C. § 6-904(3); *Harrell v. The City of Lewiston*, *supra*.

*Id.* at 933, 841 P.2d at 1084. This characterization of *Harrell* was an overstatement. Although this Court rejected a claim of entitlement to a building permit based upon estoppel, we did not go so far as to entirely reject the potential application of estoppel. Our holding in *Harrell* was more accurately summarized in *Sprenger, Grubb & Associates, Inc. v. City of Hailey*, 127 Idaho 576, 903 P.2d 741 (1995):

In *Harrell*, we held that "[i]n the exercise of its police power, which includes the enactment and enforcement of zoning regulations, a municipality acts in a governmental

capacity." [95 Idaho] at 248, 506 P.2d at 475. We further stated that "[a]lthough a municipality may be estopped in limited circumstances, the enactment of zoning regulations is a governmental function which is not usually subject to estoppel." *Id.* at 247, 506 P.2d at 474. We determined in *Harrell* that no exigent reasons existed in that case for the application of estoppel without deciding what extraordinary circumstances may merit the application of the doctrine of estoppel in future cases. As in *Harrell*, we again determine that no exigent circumstances exist in this case to apply estoppel against the City in the exercise of its police power.

*Id.* at 583, 903 P.2d at 748.

As in *Harrell* and *Sprenger, Grubb*, we conclude that Applicants have failed to demonstrate the "exigent circumstances" that would warrant application of estoppel in the instant case. Considering first the underlying principles of estoppel, we note that it cannot be said that the Board took an inconsistent position by denying the application, as the determination that the proposed sites of disturbance fell within the MOD was the Board's one and only official position. Applicants have not asserted that actions of the Board induced them to change positions. Rather, Applicants rely on the opinions of staff members. Turning to the equities of the situation, we question the reasonableness of Applicants' reliance on the staff members' opinions, given that Bergin's first staff report cautioned that his determination regarding the MOD was "of course subject to further examination by the Board."

Most importantly, we are mindful of the precedential effect of the decision that we are asked to make. Applicants would have this Court conclude that opinions rendered by staff members effectively bind a board of county commissioners if money is expended in reliance on those opinions. If this Court were to apply the doctrine of estoppel in the instant case, then all future boards of commissioners in similar circumstances would be estopped from disagreeing with the opinions of staff members simply because a landowner expended money in reliance on those opinions. The effect would be to strip the boards of their sole statutory authority to approve or deny subdivision applications, as provided by I.C. § 67-6504. Accordingly, although we do not reject the proposition that estoppel may be applied in appropriate circumstances, we do not find this to be an appropriate circumstance.

**B. Applicants have failed to establish that the Board's decision was made upon unlawful procedure.**

Applicants have not asserted that the Board failed to follow proper notice, comment, and hearing procedures before issuing its final written decision on the application. However, Applicants do complain that their

right to due process was violated by Commissioner Wright's site visit. In *Comer v. County of Twin Falls*, 130 Idaho 433, 942 P.2d 557 (1997), we held that "before a local zoning body, whether it be the Commission or the Board, views a parcel of property in question, it must provide notice and the opportunity to be present to the parties." *Id.* at 439, 942 P.2d at 563. Therefore, standing alone, Commissioner Wright's action has due process implications.

However, as instructed by the legislature, when conducting judicial review under LLUPA we cannot consider Commissioner Wright's site visit in isolation:

[T]he courts of the state are directed to consider proceedings as a whole and to evaluate the adequacy of procedures and resultant decisions in light of practical considerations with an emphasis on fundamental fairness and the essentials of reasoned decision-making. *Only those whose challenge to a decision demonstrates actual harm or a violation of fundamental rights, not the mere possibility thereof, shall be entitled to a remedy or reversal of a decision.*

I.C. § 67-6535(c) (emphasis added).

In *Evans v. Bd. of Comm'rs of Cassia County*, 137 Idaho 428, 50 P.3d 443 (2002) this Court applied this statutory provision when evaluating a claim of due process violation based upon a site visit without notice to or the presence of interested parties. This Court held that, when viewed in context of the whole proceedings, the board's site visit

to the subject property without notice did not prejudice a substantial right since substantial evidence upon which the board could have independently based its decision was presented at the hearing and contained in the record. *Id.* at 433, 50 P.3d at 448.

Commissioner Wright's visit occurred prior to the first hearing before the Board on December 20, 2004. After the Board referred the application to the Commission for review, the Commission organized a site visit. Applicants were on notice of the full Commission's visit and were provided an opportunity to be present at that viewing. Applicants have not presented any evidence that Commissioner Wright's visit resulted in the discovery of information not contained in the record or that the visit somehow resulted in bias on his part. Applicants have not presented evidence that Wright's earlier visit affected the Commission's unanimous recommendation, tainted the Commission's subsequent site visit, or prejudiced the Board's subsequent unanimous decision. In short, Applicants have not demonstrated that Commissioner Wright's visit to the site months before the decision of the Board resulted in actual harm; rather, Applicants allege the mere possibility thereof.

Applicants have not pointed out any meaningful flaws in the remainder of the procedure followed. A substantial notice and comment period was provided. Numerous public hearings were held at which Applicants were provided the opportunity to present their case. Applicants were accompanied and represented by legal counsel at some of these public hearings. Moreover, it is evident that the Board gave serious consideration to the application by requiring the extra step of Commission review, a step that is not normally required for short plat applications. In compliance with I.C. § 67-6535(b), the Board issued a detailed written opinion explaining their rationale for the denial and the applicability of the facts to the relevant criteria and standards.

Applicants were entitled to a fair administrative decision-making process, not a perfect one. I.C. § 67-6535(c). As we did in *Evans*, we conclude that the Applicants have not demonstrated that the Board's decision was reached upon unlawful procedure that affected substantial rights.

**C. Applicants have failed to show that the Board's action was not based upon substantial and competent evidence or that it was arbitrary, capricious, or an abuse of discretion.**

Applicants assert that the decision of the Board should be overturned because it was arbitrary and capricious. This assertion rests on the contention that the Board has interpreted and applied the MOD ordinance inconsistently with regard to projects with allegedly similar topography as the NoKaOi subdivision. Asserting that the Board has applied the ordinance inconsistently and directing our attention to the differing interpretations and comments made in the Board's proceedings, Applicants argue that the ordinance is therefore void for vagueness and incapable of being applied in any manner that is not arbitrary and capricious.

1. *The MOD ordinance is not void for vagueness and substantial competent evidence supports the Board's determination that the proposed areas of disturbance for Lots 1 and 2 fell within the MOD.*

A statute is void for vagueness if persons of ordinary intelligence must guess at its meaning. *Cowan*, 143 Idaho at 514, 148 P.3d at 1260. Our analysis of the ordinance begins with the literal language of the enactment. *Lane Ranch P'ship*, 145 Idaho at 89, 175 P.3d at 778. Where the language is unambiguous, the clearly expressed intent must be given effect, and there is no occasion for this Court to construe the language. *Id.*

The ordinance regarding MOD demarcation is found in B.C.C. § 9-21-2(D), which provides:

The regulations of this Overlay District, which will not be designated on the Official Zoning Map, shall apply to areas of land within the County where:

1. The hillside slope exceeds twenty five percent (25%), including all areas that are higher than the lowest hillside

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slopes which exceed twenty five percent (25%); or

2. In the Scenic Corridor 1(SC1) where the hillside slope exceeds fifteen percent (15%), including all areas that are higher than the lowest hillside which exceed fifteen percent (15%).

B.C.C. § 9-21-2(F) further provides:

" Areas higher than the lowest hillside slopes" under subsections D1 and D2 of this Section shall include all areas and geographic features (regardless of grade of slope), including, without limitation, all ridges, saddles, knolls, and pockets or islands of land, between and including the summit of the hillside and the lowest hillside slopes exceeding twenty five percent (25%) for subsection D1 of this Section or fifteen percent (15%) for subsection D2 of this Section.

Interpretation of a county zoning ordinance or statute is a question of law over which this Court exercises free review. *Lane Ranch P'ship*, 145 Idaho at 89, 175 P.3d at 778. However, "[t]here is a strong presumption that the actions of the Board of Commissioners, where it has interpreted and applied its own zoning ordinances, are valid." *Evans v. Teton County*, 139 Idaho 71, 74, 73 P.3d 84, 87 (2003) (citing *Evans*, 137 Idaho at 431, 50 P.3d at 446); *see also Lane Ranch P'ship*, 145 Idaho at 89, 175 P.3d at 778; *Cowan*, 143 Idaho at 515, 148 P.3d at 1261; *Sanders Orchard v. Gem County ex rel. Bd. of County Comm'rs*, 137 Idaho 695, 698, 52 P.3d 840, 843 (2002). Furthermore, greater tolerance is permitted when addressing a civil statute as opposed to a criminal statute under the void for vagueness doctrine. *Cowan*, 143 Idaho at 513-14, 148 P.3d at 1259-60 (citing *Olsen v. J.A. Freeman Co.*, 117 Idaho 706, 716, 791 P.2d 1285, 1295 (1990)).

Bergin outlined three potential approaches to determining the MOD boundaries in his second staff report. The first approach, and the one adopted by Bergin in his first staff report, excluded from the MOD areas of the hillside considered a " bench" as defined in the Blaine County Code.[4] The second option applied the MOD to any point on the subject property " between the summit and the foot" of the lowest hillside slope exceeding 15 or 25% but excluded those portions of property above the lowest hillside slope that did not also exceed 15 to 25%. The third approach considered all areas on the subject property higher in elevation than the lowest hillside slope exceeding 15 or 25% to be within the MOD. The Commission adopted the third approach, which was also the approach accepted by the Board.

Despite the fact that Bergin and Haavik believed that NoKaOi subdivision did not fall within the MOD

because it was on a flat bench area above the first slope, the Board found that the MOD ordinances did not provide such an exception. The Board stated: " The applicant's argument concerning a " bench" -even if the Board were to accept it-would not change the finding as to the MOD because even benches between the summit and the lowest hillside slopes exceeding fifteen percent (15%)(SC1) or twenty five percent (25%) would be within the MOD." We agree with the Board's conclusion.

We first observe that the term " bench," although defined in B.C.C. § 9-2-1, does not appear in the MOD ordinance, much less as an exception to the general definition of the MOD. To the contrary, the Board's interpretation is supported by the statement of intended

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scope of the ordinance, found in B.C.C. § 9-21-1(A), which states:

All areas of land, regardless of geographic or geological features, between and including the summit of the hillside and lowest hillside slopes exceeding fifteen percent (15%) or twenty five percent (25%) for these respective areas are included within the Mountain Overlay District. The District is not intended to create a patchwork that excludes saddles, ridges, knolls, summits, or pockets or islands of flatter land between and including the applicable lowest hillside slopes and the summit of the hillside, but rather is intended to include those areas.

Although Applicants couch their challenge in " void for vagueness" terms, Applicants' argument does not address the language of the MOD. Rather, Applicants direct this Court to comments by Commission and Board members discussing their difficulty in interpreting and applying the ordinance. Considering only the language of the ordinance, we find that the language is not vague. Rather, the ordinance unambiguously provides that areas located above the lowest 25% slope fall within the MOD as do all areas that are higher than the lowest hillside slopes exceeding 15% in SC1.

This leads us to consider the evidence supporting the Board's determination that the NoKaOi subdivision fell within the MOD. The Commission determined that the elevation of the lowest hillside slope exceeding 25% was 5,740 feet. A contour line was then drawn across the topographic map of the subject property at 5,740 feet, above which the Commission determined any " areas of disturbance" were within the MOD. In reaching its decision, the Commission also requested that Applicants stake the site in preparation for the Commission's site visit. The Commission found that proposed lots 1 and 2 of the NoKaOi subdivision had " areas of disturbance" entirely within the MOD. Additionally, Applicants were asked to place storey poles in the centroids of the areas of disturbance. The Commission found that the storey poles placed in lots 1 and 2 were visible from State Highway

75 and thus in violation of the ordinance regulating development within SC1 on areas higher than the lowest hillside slopes exceeding 15% percent. Because the Commission found that Lots 1 and 2 were not in compliance under both alternatives of the MOD ordinance, it recommended that the Board deny the application. After holding two additional public hearings on the matter, the Board adopted the Commission's recommendation and denied the application.

As noted in our discussion of the governing standard of review, we defer to the Board's findings of fact unless they are clearly erroneous. So long as the Board's " findings, conclusions and decision are sufficiently detailed to demonstrate that it considered applicable standards and reached a reasoned decision, we [will] find that the decision was not arbitrary and capricious and was based on substantial evidence in the record." *Brett v. Eleventh St. Dockowner's Ass'n, Inc.*, 141 Idaho 517, 523, 112 P.3d 805, 811 (2005); *see also* I.C. § 67-6535(a-b). Applicants have not established that it was clear error for the Board to find that the areas of disturbance in lots one and two sat above a 25% slope or that the 5,740-foot contour line demarcated the top of that first slope. This Court has independently reviewed the record as considered by the Board and we conclude that the Board's findings of fact are supported by substantial and competent evidence.

2. *The Board's decision to apply the MOD was not arbitrary or capricious nor did the decision violate Applicants' equal protection rights.*

Applicants argue that the Board's determination was arbitrary and capricious, and violated their equal protection rights, asserting that the Board approved development of other properties with similar topography to NoKaOi.

At the outset, we note the difficulty of addressing Applicants' equal protection argument, as Applicants did not favor us with citation to legal authority relating to their equal protection claim, although their opening brief provided argument on this subject. However, we have previously determined

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that argument alone is sufficient for us to address an issue advanced on appeal. *Blaine County Title Associates v. One Hundred Bldg. Corp., Inc.*, 138 Idaho 517, 520, 66 P.3d 221, 224 (2002). Applicants do not suggest that the MOD ordinance is invalid; rather, their complaint is that the ordinance has not been applied in a consistent fashion.

Applicants have not asserted that the Board's action was " a deliberate and intentional plan of discrimination against [them], based on some unjustifiable or arbitrary classification, such as race, sex, or religion." *State v. Larsen*, 135 Idaho 754, 758, 24 P.3d 702, 706 (2001)

(citing *State v. Edmonson*, 113 Idaho 230, 235, 743 P.2d 459, 464 (1987)). Rather, to the extent that Applicants have asserted an equal protection claim, it appears that they assert that they are a "class of one." As such, Applicants need only allege and prove that they have intentionally been singled out and treated differently based on a distinction that fails the rational basis test. See e.g. *City of Coeur d'Alene v. Simpson*, 142 Idaho 839, 853, 136 P.3d 310, 324 (2006) (citing *Village of Willowbrook v. Olech*, 528 U.S. 562, 564-65, 120 S.Ct. 1073, 1074-75, 145 L.Ed.2d 1060, 1063-64 (2000); *Anderson v. Spalding*, 137 Idaho 509, 514, 50 P.3d 1004, 1009 (2002)). This leads us to consider Applicants' claim that the Board's decision was arbitrary and capricious, based upon different treatment of others.

The Board's written decision explained at length how the instant decision was consistent with its previous MOD determinations for other properties and subdivisions including: the Rollins property in the East Fork subdivision (which sits immediately south of the proposed NoKaOi subdivision), the Bluegrouse Ridge subdivision, the Timberview Terrace subdivision, the Griffin Ranch subdivision, the Golden Eagle subdivision, the Dip Creek subdivision, the Lee's Gulch subdivision, the Dilley parcel, and a remodel of property on Eagle Creek Road. We are unable to conclude that the Board's decision on the NoKaOi subdivision application was arbitrary and capricious or an abuse of discretion. The administrative record clearly indicated that the Board carefully considered their application and issued a thorough, detailed discussion of why it declined to find that lots 1 and 2 were outside the MOD. Applicants have failed to persuade us that the Board erred in a fashion governed by I.C. § 67-5279(3).

**D. Neither party is entitled to attorney fees or costs.**

Both parties have requested attorney fees on appeal pursuant to I.C. § 12-117. Applicants are not entitled to attorney fees under this provision because they are neither the prevailing party on appeal nor below. *Rincover v. State, Dep't of Fin., Sec. Bureau*, 132 Idaho 547, 550-51, 976 P.2d 473, 476-77 (1999). The district court declined to award attorney fees to the County because it did not find that Applicants' petition for judicial review was brought without a reasonable basis in fact or law. Although we have not accepted the positions advanced by Applicants on appeal, we hold that this appeal was not pursued frivolously or unreasonably. Thus, we decline to award attorney fees to the County on appeal. See e.g. *Ada County Highway Dist. v. Total Success Inv., LLC*, 145 Idaho 360, 372-73, 179 P.3d 323, 335-36 (2008).

**IV. CONCLUSION**

We conclude that the Board had exclusive authority to determine whether the proposed subdivision fell within

the MOD and that it would be inappropriate to estop the Board from enforcing the MOD ordinance. We find that Applicants' due process rights were not violated by reason of Commissioner Wright's site visit. We find that the MOD ordinance is not unconstitutionally vague and that substantial competent evidence supported the Board's determination that the subdivision would violate the MOD ordinance. We find that the Board's decision was not arbitrary and capricious and did not violate Applicants' equal protection rights. We therefore affirm the decision of the district court. Costs to Respondent.

Chief Justice EISMANN and Justices BURDICK, J. JONES and W. JONES concur.

Notes:

[1] This section provides: " Lot sizes, uses and the location of uses shall satisfy any zoning regulations and other applicable sections of this Code."

[2] The elements of equitable estoppel are: (1) a false representation or concealment of a material fact with actual or constructive knowledge of the truth; (2) that the party asserting estoppel did not know or could not discover the truth; (3) that the false representation or concealment was made with the intent that it be relied upon; and (4) that the person to whom the representation was made, or from whom the facts were concealed, relied and acted upon the representation or concealment to his prejudice. *Williams v. Blakley*, 114 Idaho 323, 325, 757 P.2d 186, 188 (1987).

[3] The doctrine of quasi-estoppel applies when: (1) the offending party took a different position than his or her original position, and (2) either (a) the offending party gained an advantage or caused a disadvantage to the other party; (b) the other party was induced to change positions; or (c) it would be unconscionable to permit the offending party to maintain an inconsistent position from one he or she has already derived a benefit or acquiesced in. *Allen v. Reynolds*, 145 Idaho 807, 812, 186 P.3d 663, 668 (2008) (citations omitted).

[4] The following applicable definitions are found in B.C.C. § 9-2-1:

**BENCH:** A level step created by the former flood deposits of a river.

**HILLSIDE:** A part of a hill between and including the summit and the foot and includes, but is not limited to, such landforms as ridges, saddles, and knolls.

**Knoll:** A small round hill or mound.

**Ridge:** A sharp, elongated crest or linear series of crests.

**Saddle:** A ridge connecting two (2) higher elevations.



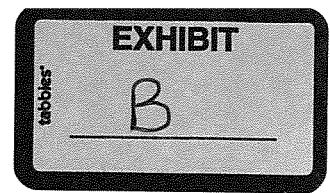
**Summit:** The highest part, top or peak of a hillside.

**Foot:** The lowest part of a hillside where the grade of slope increases from horizontal or near horizontal; the bottom or base of a hillside.

**SLOPE:** An inclined ground surface, the inclination of which is expressed as a ratio of horizontal distance to vertical distance. Percent slope is calculated by multiplying this ration (rise/run) by one hundred (100). Slope is measured from the base of the hill.

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Swan Falls affected WR's w/ license  
issued after Feb 1984 (EE: request for  
extension of beneficial use)



| Line in Excel | Water right Basin 37 | Use        | Claimant          | Request for Extension to file Proof               | Partial decree | Back file checked ? | Proof Submitted       |
|---------------|----------------------|------------|-------------------|---------------------------------------------------|----------------|---------------------|-----------------------|
| 2767          | 7598                 |            | Parent right      | none                                              |                | yes                 | Aug 25, 1978          |
|               | 7598B                |            | Foley             |                                                   | Disallowed     |                     |                       |
|               | 7598C                |            | Fery              |                                                   | Sept 2010      |                     |                       |
|               | 7598D                |            | Aubry Ranch       |                                                   | Sept 2010      |                     |                       |
|               | 7637                 |            | City of Bellevue  | none                                              | Sept 2010      | yes                 | Aug 1982              |
|               | 7989                 |            | White Water Power | none                                              |                | Yes                 | Sept 1990             |
|               | 8025                 |            | USA               | none                                              |                | Yes                 | March 1983            |
|               | 7662                 |            | City of Shoshone  | Filed Mar 1987, wants to 4/90<br>-Granted to 4/90 |                | Yes                 | Sept 1982<br>Jan 1990 |
|               | 7749                 | Domestic   | Daech             |                                                   |                | Yes                 | Aug 1980              |
|               | 7111                 |            | Parent right      | none                                              |                | yes                 |                       |
|               | 7111A                |            | Y3 Ranch          |                                                   | June 2011      |                     |                       |
|               | 7111B                |            | Y3 Ranch          |                                                   | Sept 2010      |                     |                       |
|               | 7600                 |            | Picabo Lvstck     |                                                   |                | yes                 | June 1982             |
|               | 8026                 | SW         | USA               |                                                   |                | Yes                 | Feb 1983              |
|               | 8027                 | SW         | USA               |                                                   |                | Yes                 | Feb 1983              |
|               | 8028                 | SW         | USA               |                                                   |                | Yes                 | Feb 1983              |
|               | 8029                 | SW         | USA               |                                                   |                | Yes                 | Feb 1983              |
|               | 8030                 | SW         | USA               |                                                   |                | Yes                 | Feb 1983              |
|               | 8166                 | Power      | Big Wood Can      |                                                   |                |                     | May 1985              |
|               | 7958                 | irrigation | Stevenson         | none                                              | June 2010      | yes                 |                       |
|               | 7215                 |            | Parent right      | none                                              |                | yes                 | Jan 4 1984            |
|               | 7215A                | irrigation | Campagna          |                                                   |                | none                |                       |
|               | 7215B                | Irrigation | Campagna          |                                                   |                | None                |                       |
|               | 7215C                | Fish       | Nevins            |                                                   | Sept 2010      | None                |                       |
|               | 7215E                | Irrigation | Sullivan          |                                                   | June 2009      | None                |                       |
|               | 7215F                | Irrigation | Lachewitz         |                                                   | Dec 2010       | None                |                       |
|               | 7215H                | Irrigation | Nevins            |                                                   | Dec 2010       | None                |                       |
| 2791          | 7215J                | Irrigation | Dibble            |                                                   | May 2009       | None                |                       |
|               | 8048                 | stockwtr   |                   |                                                   |                |                     |                       |
|               | 8164                 | storage    |                   |                                                   |                |                     |                       |
| 2794          | 8043                 | stockwtr   |                   |                                                   |                |                     |                       |
|               | 8050                 | stockwtr   |                   |                                                   |                |                     |                       |
|               | 8155                 | stockwtr   |                   |                                                   |                |                     |                       |
| 2797          | 8015                 | Irrigation | Walker            | none                                              | Sept 2010      | yes                 | Ap 27 1983            |
|               | 8051                 | stockwtr   |                   |                                                   |                |                     |                       |
|               | 7670                 |            | PARENT            | NONE                                              |                | YES                 |                       |
|               | 20848                | Irrigation | Weber             |                                                   | Apr 7 2009     | parent              |                       |

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|---------------|----------------------|------------|----------------------------|-------------------------------------------------------|----------------|---------------------|-----------------|
|               | 20849                | irrigation | USA                        |                                                       | Apr 7 2009     | parent              |                 |
|               | <b>7877</b>          |            | <b>PARENT</b>              | NONE                                                  |                | Yes                 | Sept 1985       |
|               | 7877A                | irrigation | Taber                      |                                                       | Dec 2002       | Parent              | Sept 1985       |
|               | 7877B                | Irrigation | Urrutia                    |                                                       | Sept 2006      | parent              | Sept 1985       |
|               | 7792                 | Irrigation | Collins                    | Reqtd - Oct 84<br>To = unknown<br>Grantd 9/85         | Nov 2009       | yes                 | April 1985      |
| 2804          | 7912                 | Irrigation | Dehlmar                    | NONE                                                  | disallow       | yes                 | Oct 1985        |
|               | 8254                 | aesthetic  |                            |                                                       |                |                     |                 |
|               | 8033                 | Irrigation | Rodriguez                  | NONE                                                  |                | yes                 | Nov 1983        |
|               | 8161                 | stockwtr   |                            |                                                       |                |                     |                 |
|               | 7852                 | Irrigtn +  | Bain                       | NONE                                                  | Sept 2006      | yes                 | Sep 1985        |
|               | <b>8007</b>          |            | PARENT                     |                                                       | Dec 2002       | NONE                |                 |
|               | 20395                | Irrigation | Boot Jack Dair             |                                                       |                |                     |                 |
|               | 20396                | stockwtr   | Boot Jack Dair             |                                                       |                |                     |                 |
|               | 7406                 | Irrigatn + | Jensen                     | NONE                                                  | Sept 2010      | yes                 | July 1979       |
| 2812          | 7804                 | Irrigation | Leguineche                 |                                                       |                | yes                 | June 1985       |
|               | 7804                 |            | PARENT                     | NONE                                                  |                | yes                 |                 |
|               | 20727                | Irrigation | Leguineche                 |                                                       | Sept 2010      |                     |                 |
|               | 20728                | irrigation | Bolte                      |                                                       | Sept 2010      |                     |                 |
|               | 8044                 | Stockwtr   | USA                        |                                                       |                |                     |                 |
|               | 8045                 | Stockwtr   | USA                        |                                                       |                |                     |                 |
|               | 8041                 | Stockwtr   | USA                        |                                                       |                |                     |                 |
|               | 8042                 | Stockwtr   | USA                        |                                                       |                |                     |                 |
|               | 8300                 | Stockwtr   | USA                        |                                                       |                |                     |                 |
|               | 7952                 | Irrigation | Patterson                  | NONE                                                  |                | Yes                 | Feb 1983        |
|               | 7955                 | Irrigation | Reese                      | NONE                                                  | Sept 2010      | yes                 | Jan 1987        |
|               | 7310                 | Irrigation | Briggs                     | NONE                                                  | Aug 2010       | yes                 | June 1982       |
| 2823          | 7438                 | Irrigation | Strickland/<br>Bettencourt | Req - Jun 3 1980<br>TO: June 1 1985<br>Grantd to 6/85 | Dec 2002       | yes                 | May 1985        |
|               | 8248                 | recretn    |                            |                                                       |                |                     |                 |
|               | 8203                 | Irrigation | Flowers Mill               | NONE                                                  | Sept 2010      | yes                 | Oct 1988        |
|               | 8053                 | stockwtr   |                            |                                                       |                |                     |                 |
| 2827          | 8162                 | stockwtr   |                            |                                                       |                |                     |                 |
|               | 8163                 | Stockwtr   |                            |                                                       |                |                     |                 |
|               | 8186                 | stockwtr   |                            |                                                       |                |                     |                 |
|               | 8185                 | stockwtr   |                            |                                                       |                |                     |                 |
|               | 8237                 | Stockwtr   |                            |                                                       |                |                     |                 |
|               | 8244                 | stockwtr   |                            |                                                       |                |                     |                 |
|               | 8199                 | recreat    |                            |                                                       |                |                     |                 |
|               | 8010                 | Irrigatn   | Oppio                      | NONE                                                  | Dec 2002       | yes                 |                 |

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|---------------|----------------------|------------|---------------------|----------------------------------------------------------------------------------------------------------------------------|--------------------|---------------------|-----------------|
|               | 8040                 | stockwtr   |                     |                                                                                                                            |                    |                     |                 |
|               | 8236                 | stockwtr   |                     |                                                                                                                            |                    |                     |                 |
|               | 8250                 | Irrigatn   | Village Condo       | NONE                                                                                                                       | Sept 2010          | yes                 | Jan 1986        |
| 2838          | 7672                 | irrigatn   | PARENT<br>Jim Poppy | Req dtd 11/82<br>TO Jan 1 1985<br>GRANTED to<br>Jan 1 1988                                                                 | ★                  | yes                 | April 1985      |
|               | 7672A                | Irrigatn   | Mid Valley          | NONE                                                                                                                       | Sept 2010          | "                   |                 |
|               | 7672B                | Irrigation | Crain               | NONE                                                                                                                       | Sept 2010          | "                   |                 |
|               | 7751                 | Irrigation | Martin              | NONE                                                                                                                       | Sept 2010          | yes                 | Dec 1983        |
|               | 7657                 | domestic   |                     |                                                                                                                            |                    |                     |                 |
|               | 7710                 | Irrigatin  | Farr                | Req dtd 7/83<br>TO Aug 1 1984<br>GRANTED to<br>Aug 1 1984<br><br>Req dtd 7/84<br>TO Aug 1 1985<br>GRANTED to<br>Aug 1 1985 | Sept 2010<br><br>★ | Yes                 | June 1985       |
|               | 7764                 | Irrigtn    | Trager              | NONE                                                                                                                       | July 2009          | yes                 | June 1983       |
|               | 7261                 | Irrigtn    | Barber              | Req dtd _____<br>TO Sept 1983<br>GRANTED to<br>Sept 1983                                                                   | Sept 2010          |                     | July 1983       |
| 2846          | 8289                 | Comerc     | Gooding Urbn        | NONE                                                                                                                       | Dec 2002           | yes                 | March 1988      |
|               | 7658B                | Irrigatn   | Stevenson           | NONE                                                                                                                       | June 2010          | yes                 |                 |
|               | 7718                 | Irrigatn   | Cimino              | NONE                                                                                                                       | Sept 2010          | yes                 | June 1983       |
|               | 8054                 | Irrigatin  | Big Sky Dairy       | NONE                                                                                                                       | Dec 2002           | yes                 | Dec 1983        |
|               | 7575                 | Irrigatin  | 4 Bros Dairy        | Rqt dtd 3/82 TO<br>May 1 1987<br>GRANTED to<br>May 1 1987<br>SF memo 8/1/89                                                | Mar 2003           | yes                 | April 1987      |
|               | 7944                 | Irrigation | Dalton              | SF memo 10/89                                                                                                              | Apr 2008           | yes                 | June 1987       |
|               | 8003                 | Irrigation | Stevenson           | SF memo 7/89                                                                                                               | June 2010          | yes                 | June 1987       |
|               | 8322                 | Irrigation | Gordon              | NONE                                                                                                                       | June 2010          | yes                 | Oct 1988        |
| 2854          | 22337                |            | NO RECORDS          |                                                                                                                            |                    |                     |                 |
|               | 22338                |            | NO RECORDS          |                                                                                                                            |                    |                     |                 |
|               | 8370                 | Irrigation | Jefferson           | NONE                                                                                                                       |                    | yes                 | March 1989      |
|               | 8011                 |            | PARENT              | NONE                                                                                                                       |                    | Yes                 | July 1987       |
|               | 8011A                | Irrigation | Bordenkircher       |                                                                                                                            | Sept 2010          |                     |                 |

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|---------------|-------------------|------------|-----------------|---------------------------------------------------------------------------------------------------|----------------|---------------------|------------------------|
|               | 8011B             | Irrigation | Trask           |                                                                                                   | Sept 2010      |                     |                        |
| 2859          | 7779              | Irrigatn   | Hidden Paradise | NONE                                                                                              | Sept 2010      | yes                 | Aug 1984               |
|               | 8249              | storage    |                 |                                                                                                   |                |                     |                        |
|               | 8690              |            | PARENT          | SF memo 5/89                                                                                      |                | Yes                 | Dec 1986               |
|               | 20816             | Irrigation | Notch Butte     |                                                                                                   | Feb 2004       | "                   |                        |
|               | 20817             | Irrigation | Notch Butte     |                                                                                                   | Feb 2004       | "                   |                        |
|               | 8214              | Comercl    | Sluder          |                                                                                                   |                |                     |                        |
|               | 7465              |            | PARENT          | NONE                                                                                              |                | yes                 |                        |
|               | 7465A             | Irrigation | Taber           | Req dtd 11/85<br>To 1/91<br>Grantd to 6/90<br><br>Reg dtd 12/80<br>Want to 1/86<br>Grantd to 1/86 |                | "                   | Apr 1988               |
|               | 7754              | Irrigation | DeMoss          | NONE                                                                                              | June 2010      | yes                 | Jan 1984               |
|               | 7798              | Irrigation | Tews            | disallowed                                                                                        |                |                     |                        |
|               | 8068              | Irrigation | Molyneux        | NONE                                                                                              |                | yes                 | May 1985<br>March 1990 |
|               | 8377              | Irrigation | Olson           | NONE                                                                                              |                | yes                 | Feb 1990               |
| 2869          | 8400              | Irrigation | Gulch Trust     | NONE                                                                                              |                | yes                 | Feb 1990               |
|               | 8146              | Irrigation | Lazy P Farms    | NONE                                                                                              |                | yes                 | Jan 1990               |
|               | 8147              | Irrigation | Lazy P Farms    | NONE                                                                                              |                | Yes                 | Jan 1990               |
|               | 8366              | Irrigation | Bickett         | NONE                                                                                              |                | yes                 | Jan 1990               |
| 2875          | 7997              | Power      |                 |                                                                                                   |                |                     |                        |
| 2876          | 8143              | Irrigation | Idaho Ranch     | SF memo 11/89                                                                                     |                | yes                 | May 1990               |
|               |                   |            |                 | Req dtd 2/83<br>wantd to 3/88<br>Granted 3/88<br><br>SF memo 1/89                                 | ★              | yes                 | Feb 1988               |
| 2880          | 8063              | Irrigation | Whittaker       |                                                                                                   |                | yes                 | May 1989               |
| 2895          | 7268              | Irrigation | Huyser Trust    |                                                                                                   |                | yes                 | July 1988              |
| 2896          | 8081              | Irrigation | Martindale      |                                                                                                   |                | yes                 |                        |
| 2901          | 8211              | stockwtr   |                 |                                                                                                   |                |                     |                        |
| 2904          | 21468             | recretn    |                 |                                                                                                   |                |                     |                        |
| 2906          | 7880              | power      |                 |                                                                                                   |                |                     |                        |
| 2907          | 7889              | power      |                 |                                                                                                   |                |                     |                        |
| 2909          | 7916              | power      |                 |                                                                                                   |                |                     |                        |
|               | 8001              |            | PARENT          | Req dtd 2/87<br>wantd to 10/88<br>Grantd to 4/89                                                  |                | Yes                 | March 1989             |

| Line in Excel | Water right Basin 37 | Use        | Claimant                           | Request for Extension to file Proof                                                                                                                              | Partial decree | Back file checked ? | Proof Submitted |
|---------------|----------------------|------------|------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|---------------------|-----------------|
| 2921          | 8001C                | Irrigation | McMahan                            |                                                                                                                                                                  |                | "                   |                 |
| 2922          | 8001D                | Irrigation | Smith E                            |                                                                                                                                                                  |                | "                   |                 |
| 2924          | 8058                 | Irrigation | Idaho Ranch                        |                                                                                                                                                                  |                | yes                 | Oct 1989        |
|               | 7465                 |            | PARENT                             | Req dtd 11/85<br>Wantd to Jan 91<br>Grantd to 6/90<br><br>Req dtd 11/80<br>Wantd to 1/86<br>Grantd to 1/86                                                       | ★              |                     |                 |
| 2928          | 7465B                | Irrigation | Bowman                             |                                                                                                                                                                  |                | "                   | Mar 1990        |
|               | 7775                 | Irrigation | PARENT                             |                                                                                                                                                                  |                | Yes                 | Aug 1988        |
| 2929          | 7775B                | "          | O'Brien                            |                                                                                                                                                                  | Sept 2010      | "                   |                 |
| 2930          | 7775C                | "          | Carnes                             |                                                                                                                                                                  | May 2009       | "                   |                 |
| 2931          | 7775D                | "          | Garner                             |                                                                                                                                                                  | Sept 2010      | "                   |                 |
| 2932          | 7775E                | "          | Reed                               |                                                                                                                                                                  | Sept 2010      | "                   |                 |
| 2934          | 7775G                | "          | Dilworth                           |                                                                                                                                                                  | Sept 2010      | "                   |                 |
| 2940          | 7812                 | Irrigation | Springs<br><br>SF memo<br>May 1989 | Req dtd 2/90<br>wantd to 1/91<br>grantd to 1/91<br><br>Req dtd 12/84<br>wantd to 1/90<br>Grantd to 1/90                                                          | Sept 2010      | Yes                 | Nov 1990        |
| 2941          | 8116                 | Irrigation | O'Gara                             | SF memo 11/89                                                                                                                                                    |                | yes                 | Nov 1991        |
| 2942          | 8137                 | Irrigation | Worthington                        | SF memo 3/90                                                                                                                                                     | Sept 2010      | yes                 | May 1992        |
| 2948          | 7771                 | Irrigation | Bar B Bar<br><br>SF memo<br>4/89   | Req dtd 9/91<br>wantd to 10/92<br>Grantd to 10/92<br><br>Req dtd 5/89<br>wantd to 6/92<br>Grantd to 10/91<br><br>Req dtd 8/84<br>wantd to 6/89<br>grantd to 6/89 | ★              | yes                 | Sept 1992       |
| 2952          | 8117                 | Irrigation | Stevenson                          | SF memo 12/89                                                                                                                                                    |                | yes                 | Sept 1990       |
| 2953          | 8196                 | Irrigation | Stevenson                          | SF memo 5/90                                                                                                                                                     |                | yes                 | Sept 1990       |

| Line in Excel | Water right Basin 37 | Use          | Claimant                         | Request for Extension to file Proof                                                                                                                                                                                                                                          | Partial decree | Back file checked ? | Proof Submitted |
|---------------|----------------------|--------------|----------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|---------------------|-----------------|
| 2955          | 7811                 | Irrigation   | Three Creeks<br><br>SF memo 4/89 | Req dtd 9/90<br>Wantd to 10/91<br>Grantd to 10/91<br><br>Req dtd 10/89<br>Wantd to 10/90<br>Grantd to 10/90<br><br>Req dtd 12/84<br>Wantd to 12/89<br>Grantd to 1/90                                                                                                         |                | yes                 | July 1991       |
|               | 7893                 | SF memo 5/89 | PARENT                           | Req dtd 8/92<br>wantd to 4/94<br>Grantd to 4/94<br><br>Req dtd 4/91<br>wantd to 9/92<br>Grantd to 9/92<br><br>Req dtd 4/89<br>wantd to 1/90<br>Grantd to 10/91<br><br>Req dtd 6/86<br>Wantd to 6/91<br>Grantd to 6/89<br><br>Req dtd 11/96<br>Wantd to 9/98<br>Grantd to ??? |                | YES                 |                 |
| 2958          | 7893A                | irrigation   | Puchner                          |                                                                                                                                                                                                                                                                              |                | "                   | Mar 1994        |
|               | 7621                 |              | PARENT                           |                                                                                                                                                                                                                                                                              |                | Yes                 | April 1979      |
| 2959          | 7621B                | Irrigation   | Olsen                            |                                                                                                                                                                                                                                                                              |                | "                   |                 |
| 2960          | 7621D                | Irrigation   | Castle                           |                                                                                                                                                                                                                                                                              | Dec 2002       | "                   |                 |
| 2961          | 8006                 | Irrigation   | Gorman<br><br>SF memo 9/85       | Req dtd 4/87<br>wantd to 10/90<br>Grantd to 2/91                                                                                                                                                                                                                             |                | yes                 | Jan 1991        |
| 2962          | 8168                 | Irrigation   | Heneghan                         |                                                                                                                                                                                                                                                                              |                | yes                 | June 1990       |
| 2965          | 7770                 | Irrigation   | SCI Prop                         |                                                                                                                                                                                                                                                                              |                | yes                 | March 1984      |
| 2966          | 21942                | Irrigation   | SCI Prop                         |                                                                                                                                                                                                                                                                              | Nov 2009       | "                   | "               |
| 2969          | 8078                 | Irrigation   | Taber                            |                                                                                                                                                                                                                                                                              |                | yes                 | July 1990       |

| Line in Excel | Water right Basin 37 | Use        | Claimant                      | Request for Extension to file Proof                                                                       | Partial decree | Back file checked ? | Proof Submitted |
|---------------|----------------------|------------|-------------------------------|-----------------------------------------------------------------------------------------------------------|----------------|---------------------|-----------------|
| 2971          | 8091                 | Irrigation | Rogers<br>SF memo 10/89       | Req dtd 4/93<br>Wantd to 4/94<br>Grantd to 4/94                                                           | Jan 2009       | Yes                 | March 1994      |
| 2976          | 8079                 | Irrigation | Weaver                        | SF memo 12/89                                                                                             | Sept 2010      | Yes                 | Feb 1991        |
| 2982          | 8102                 | CDFI       | Thomas                        | SF memo 11/89                                                                                             |                | yes                 | Feb 1991        |
|               | 7407                 |            | PARENT                        | Req dtd 12/80<br>Wantd to 1/85<br>Grantd to 1/85                                                          | ★              | YES                 | Dec 1984        |
| 2983          | 20804                | irrigation | Wagner                        | "                                                                                                         |                | "                   |                 |
| 2984          | 20805                | Irrigation | Marks                         | "                                                                                                         |                | "                   |                 |
| 2995          | 7838A                | Irrigation | Y3 Ranch<br>SF memo June 1989 | Req dtd 7/88<br>Wantd to 9/90<br>Grantd to 10/91<br><br>Req dtd 8/83<br>Wantd to 9/88<br>Grantd to 9/88   | ★              | Yes                 | Sept 1991       |
| 2996          | 7838B                | Irrigation | Y3 Ranch                      | "                                                                                                         |                | "                   | "               |
| 2997          | 8090                 | Irrigation | Trager<br>SF memo 11/89       | Req dtd 2/92<br>Wantd to 4/95<br>Grantd to 4/95                                                           |                | Yes                 | Oct 1994        |
| 2999          | 7808                 | Irrigation | Faulkner<br>SF memo 5/89      | Req dtd 12/89<br>Wantd to 1/92<br>Grantd to 1/92<br><br>Req dtd 10/84<br>Wantd to ____?<br>Grantd to 1/90 |                | Yes                 | March 1991      |
|               | 7603                 |            | PARENT                        |                                                                                                           |                | Yes                 | Oct 1988        |
| 3039          | 20452                | Irrigation | Sullivan                      |                                                                                                           |                | "                   |                 |
| 3040          | 20622                | Irrigation | Thomas                        |                                                                                                           |                | "                   |                 |
| 3041          | 20623                | Irrigation | Thomas                        |                                                                                                           |                | "                   |                 |
| 3042          | 7842                 | recharge   |                               |                                                                                                           |                |                     |                 |
| 3044          | 7620                 | Irrigation | Kevicki<br>SF memo 2/89       | Req dtd 9/87<br>Wantd to 2/92<br>Grantd to 2/93<br><br>Req dtd _?1982?<br>Wantd to 9/87<br>Grantd to 9/87 | ★              | Yes                 | Jan 1993        |
| 3051          | 8085                 | Irrigation | Mizer                         | SF memo 10/89                                                                                             |                | yes                 | Jan 1990        |
| 3056          | 7707                 | storage    |                               |                                                                                                           |                |                     |                 |

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| 3058          | 7854                 | Power      |                                   |                                                                                                                                                                                                                                       |                |                     |                 |
| 3060          | 7682                 | fish       |                                   |                                                                                                                                                                                                                                       |                |                     |                 |
| 3061          | 7893B                | Irrigation | Conger                            | <p>Req dtd 8/92<br/>Wantd to 4/94<br/>Grantd to 4/94</p> <p>Req dtd 4/91<br/>Wantd to 9/92<br/>granted to 9/92</p> <p>Req dtd 4/89<br/>Wantd to 1/91<br/>Grantd to 10/91</p> <p>Req dtd 6/86<br/>Wantd to 6/91<br/>Grantd to 6/89</p> | June 2009      | yes                 | Nov 1994        |
| 3069          | 8136A                | Industrl   |                                   |                                                                                                                                                                                                                                       |                |                     |                 |
| 3070          | 8136B                | Industrl   |                                   |                                                                                                                                                                                                                                       |                |                     |                 |
| 3072          | 7857                 | power      |                                   |                                                                                                                                                                                                                                       |                |                     |                 |
| 3073          | 7865                 | power      |                                   |                                                                                                                                                                                                                                       |                |                     |                 |
| 3074          | 7922                 | power      |                                   |                                                                                                                                                                                                                                       |                |                     |                 |
|               | 7621                 |            | PARENT                            |                                                                                                                                                                                                                                       |                | Yes                 | Apr 1979        |
| 3117          | 7621E                | Irrigation | Young                             |                                                                                                                                                                                                                                       |                |                     |                 |
| 3118          | 7621F                | Irrigation | Hansen                            |                                                                                                                                                                                                                                       |                |                     |                 |
| 3119          | 7621G                | Irrigation | Green                             |                                                                                                                                                                                                                                       |                |                     |                 |
| 3127          | 7719                 | power      |                                   |                                                                                                                                                                                                                                       |                |                     |                 |
|               | 7773                 |            | <p>PARENT</p> <p>SF memo 4/89</p> | <p>Req dtd 9/89<br/>Wantd to 9/90<br/>Grantd to 10/92</p> <p>Req dtd 7/84<br/>Wantd to 8/89<br/>Grantd to 8/89</p> <p>Req dtd 8/92<br/>Wantd to 10/93<br/>DENIED</p>                                                                  |                | YES                 | Dec 1992        |
| 3128          | 7773A                | Irrigation | Johnson                           | PERMIT VOIDED                                                                                                                                                                                                                         |                |                     | Dec 1992        |
| 3131          | 7843                 | Irrigation | McBride                           | DISALLOWED                                                                                                                                                                                                                            |                |                     |                 |

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| 3132          | 11550 (7060 and 7568) | Irrigation | Goitiandia                        |                                                                                                                                                                  | Sept 2010      |                     | June <b>1975</b> |
| 3133          | 7807                  | Irrigation | Squier                            | Req dtd 11/84<br>Wantd to 1/90<br>Grantd to 1/90                                                                                                                 |                |                     | Aug <b>1990</b>  |
| 3134          | 7810                  | Irrigation | Aubrey Spring<br><br>SF memo 5/89 | Red dtd 9/91<br>Wantd to 10/93<br>Grantd to 10/93<br><br>Req dtd 8/89<br>Wantd to 11/91<br>Granted 10/91<br><br>Req dtd 12/84<br>Wantd to 1/90<br>Grantd to 1/90 |                |                     | Sept <b>1993</b> |
| 3135          | 10493                 | comm       |                                   |                                                                                                                                                                  |                |                     |                  |
|               | 10078                 |            | PARENT                            | No records                                                                                                                                                       |                |                     |                  |
| 3136          | 21328                 | Irrigation | Kime                              |                                                                                                                                                                  | Sept 2006      |                     |                  |
| 3137          | 7826                  | power      |                                   |                                                                                                                                                                  |                |                     |                  |
| 3138          | 7848                  | power      |                                   |                                                                                                                                                                  |                |                     |                  |
| 3139          | 11832                 | Irrigation | Flying Heart                      | <b>DISALLOWED</b>                                                                                                                                                |                |                     |                  |
| 3140          | 11772                 | Irrigation | Gardner                           | <b>DISALLOWED</b>                                                                                                                                                |                |                     |                  |
| 3142          | 10393                 | Irrigation | Sorensen                          | <b>DISALLOWED</b>                                                                                                                                                | Sept 2006      |                     |                  |
| 3144          | 11891                 | Irrigation | Green                             | <b>DISALLOWED</b>                                                                                                                                                | Dec 2002       |                     |                  |
| 3147          | 11524                 | Irrigation | Hay                               | <b>DISALLOWED</b>                                                                                                                                                | Oct 2010       |                     |                  |
| 3156          | 10719                 | Irrigation | Strand                            | <b>DISALLOWED</b>                                                                                                                                                | Oct 2010       |                     |                  |
| 3160          | 8072                  | storage    |                                   |                                                                                                                                                                  |                |                     |                  |
| 3161          | 12018                 | Irrigation | Rinker                            |                                                                                                                                                                  | Sept 2006      |                     |                  |
| 3162          | 8089                  | Irrigation | Palacio                           | SF memo 2/90                                                                                                                                                     |                |                     | Oct <b>1990</b>  |
| 3163          | 8212                  | comm       |                                   |                                                                                                                                                                  |                |                     |                  |
| 3164          | 8106                  | Irrigation | Jones                             | SF memo 10/89                                                                                                                                                    |                |                     | Jan <b>1991</b>  |
| 3165          | 8113                  | power      |                                   |                                                                                                                                                                  |                |                     |                  |
| 3166          | 8140                  | Mining     |                                   | <b>VOIDED</b>                                                                                                                                                    |                |                     |                  |
| 3167          | 8157                  | Irrigation | Comm School                       | SF memo 2/90                                                                                                                                                     |                |                     | May <b>1991</b>  |
| 3168          | 8165                  | DFHIR      | Erkins<br><br>SF memo 2/90        | Req dtd 4/91<br>Wntd to 5/92<br>Granted 6/92                                                                                                                     |                |                     | June <b>1992</b> |
| 3169          | 8158                  | Irrigation | Dumke                             | SF memo 2/90                                                                                                                                                     |                |                     | June <b>1994</b> |
| 3170          | 8814                  | comm       |                                   |                                                                                                                                                                  |                |                     |                  |

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| 3171          | 8813                 | comm       |                        |                                     |                |                     |                 |
| 3172          | 8118                 | Irrigation | Hailey                 |                                     |                |                     | May 1991        |
| 3187          | 21135                | Irrigation | Newell                 |                                     | Mar 2007       |                     |                 |
|               |                      |            |                        |                                     |                |                     |                 |
| 3387          | 7372                 | Irrigation | State, Lands Carey Act |                                     |                |                     |                 |
|               |                      |            |                        |                                     |                |                     |                 |
|               |                      |            |                        |                                     |                |                     |                 |
|               |                      |            |                        |                                     |                |                     |                 |
|               |                      |            |                        |                                     |                |                     |                 |

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|      |             |                   |               |                                                                                                        |           |            |                         |
|------|-------------|-------------------|---------------|--------------------------------------------------------------------------------------------------------|-----------|------------|-------------------------|
| 1893 | 16508       | stockwtr          |               |                                                                                                        |           |            |                         |
|      | <b>8069</b> |                   | <b>PARENT</b> | <b>none</b>                                                                                            |           | <b>Yes</b> | <b>July 1982</b>        |
| 1894 | 8069N       | Irrigtn           | Western Mtg   |                                                                                                        | July 2003 | none       |                         |
| 1895 | 8069P       | Irrigtn           | Western Mtg   |                                                                                                        | July 2003 | none       |                         |
| 1896 | 8069Q       | Irrigtn           | Western Mtg   |                                                                                                        | July 2003 | none       |                         |
| 1897 | 7306        | Irrigtn           | Triple J      | <b>none</b>                                                                                            | Dec 1997  |            | <b>Mar 1978</b>         |
|      | <b>8110</b> |                   | <b>PARENT</b> | <b>None</b>                                                                                            |           | <b>Yes</b> | <b>Jan 1983</b>         |
|      | 8110A       | irrigatn          | Jones         |                                                                                                        | Mar 1998  | None       |                         |
|      | 8110B       | irrigatn          | USA           |                                                                                                        | Mar 1998  | none       |                         |
|      | <b>8068</b> |                   | <b>PARENT</b> | <b>None</b>                                                                                            |           | <b>Yes</b> | <b>July 1982</b>        |
| 1900 | 8068E       | Irrigation        | Western Mtg   |                                                                                                        |           |            | <b>May 2003</b>         |
|      | 8068F       | Irrigatn          | Western Mtg   |                                                                                                        |           |            | <b>May 2003</b>         |
|      | <b>7492</b> |                   | <b>PARENT</b> | <b>Req 10/84<br/>To 12/89<br/>Granted 12/89</b><br><br><b>Req 10/79<br/>To 12/84<br/>Granted 12/84</b> |           | <b>Yes</b> | <b>7492A<br/>Dec 89</b> |
|      | 7492B       | Irrigation        | Western Dairy | <b>SF memo 4/89</b>                                                                                    | Dec 1997  |            | <b>June 1985</b>        |
|      | <b>7529</b> | <b>Irrigation</b> | <b>PARENT</b> | <b>Reqst 3/80<br/>To 5/85<br/>Granted 5/85</b>                                                         | ★         | <b>Yes</b> | <b>July 1985</b>        |
|      | 7529A       | "                 | Neibaur       |                                                                                                        | Sept 1997 |            |                         |

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| 1904          | 7529B                | "          | Neibaur        |                                     | Sept 1997      |                     |                 |
|               | 7529C                | "          | Stevenson      |                                     | June 1997      |                     |                 |
|               | 7529E                | "          | Hartley        |                                     | June 1997      |                     |                 |
|               | 7529F                | "          | Northside Dair |                                     | June 1997      |                     |                 |
|               | 7529G                | "          | Stevenson      |                                     | Dec 1997       |                     |                 |
|               | 7529H                | "          | Neibaur        |                                     | Jan 1998       |                     |                 |
| 1910          | 7529Q                | "          | Stevenson      |                                     | Dec 1997       |                     |                 |
|               | 7218                 | Fish       | Clear Springs  |                                     |                |                     |                 |
|               | 7199                 | Minimm     | State          |                                     |                |                     |                 |
|               | 7201                 | Fish       | Clear Springs  |                                     |                |                     |                 |
|               | 8048                 | Irrigatn   | Rangen         | none                                | Dec 1997       | Yes                 | Feb 1983        |
|               | 7269                 |            | PARENT         | Req 10/77 To 12/82 Granted 12/82    |                | Yes                 | Nov 1982        |
|               | 7269A                | Irrigation | Country Club   |                                     | Dec 1997       |                     |                 |
|               | 7269B                | Irrigation | Coats          |                                     | Jan 2009       |                     |                 |
|               | 8127                 |            | PARENT         | None                                |                | Yes                 | Sept 1985       |
|               | 8127A                | Irrigation | Country Club   |                                     | Dec 1997       |                     |                 |
|               | 8127B                | Irrigation | Country Club   |                                     | Dec 1997       |                     |                 |
|               | 7270                 | Irrigation | Freeman        | None                                | Dec 1997       | Yes                 | Aug 1984        |
| 1920          | 7345B                | Irrigation | Bettencourt    | None                                | Jan 1998       | Yes                 |                 |
|               | 7345A                |            | PARENT         | None                                |                | Yes                 |                 |
|               | 16007                | Irrigation | Hurtado        | "                                   |                | Yes                 |                 |
|               | 7931                 |            | PARENT         | None                                |                | Yes                 | May 1983        |
|               | 7931A                | Irrigation | Roth Investm   |                                     | Dec 2000       |                     |                 |
|               | 7931B                | "          | "              |                                     | "              |                     |                 |
|               | 7931C                | "          | "              |                                     | "              |                     |                 |
|               | 8240                 | Domestic   |                |                                     |                |                     |                 |
|               | 8051                 | Irrigation | Giltner        | None                                | Oct 1997       | Yes                 | April 1983      |
|               | 7508A                | Irrigation | Ruby           |                                     | Jan 1998       | None                |                 |
|               | 7508B                | Irrigation | Hurtado        |                                     | Dec 1997       | None                |                 |
|               | 7641                 | Irrigation | Durfee         | None                                | June 2009      | Yes                 | May 1983        |
| 1930          | 8247                 | stockwtr   |                |                                     |                |                     |                 |
|               | 7456A                | Irrigation | McKay          |                                     | Dec 1997       |                     |                 |
|               | 7456B                | Irrigatin  | McKay          | SF memo 6/2011                      | Dec 2001       | None                |                 |
|               | 7960                 |            | PARENT         | None                                |                | Yes                 | April 1982      |
|               | 7960A                | Irrigation | Harper         |                                     | June 1997      |                     |                 |
|               | 7960B                | Irrigation | Harper         |                                     | Dec 1997       |                     |                 |
|               | 8260                 | stockwtr   |                |                                     |                |                     |                 |

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|               | <b>7737</b>          |            | <b>PARENT</b> | <b>None</b>                          |                | <b>Yes</b>          | <b>Oct 1985</b>           |
|               | 7737A                | Irrigation | Shepard       |                                      | Dec 1997       |                     |                           |
|               | 7737B                | Irrigation | Shepard       |                                      | Dec 1997       |                     |                           |
|               | 7864                 | Irrigation | DeFilippis    |                                      | Jan 1998       | None                |                           |
|               | 8111                 | Irrigation | Brown         | <b>None</b>                          | Jan 2002       | Yes                 | <b>Sept 1983</b>          |
|               | <b>7784</b>          |            | <b>PARENT</b> | <b>Exempt from SF</b>                |                | <b>Yes</b>          | <b>Aug 1982</b>           |
| 1940          | 7784A                | Irrigation | VanTassell    |                                      | Jan 1998       |                     |                           |
|               | 7784B                | Irrigation | VanTassell    |                                      | Jan 1998       |                     |                           |
|               | 8095                 | Irrigation | Black         | <b>None</b>                          | Jan 2002       | Yes                 | <b>Sept 1983</b>          |
|               | <b>7779</b>          |            | <b>PARENT</b> | <b>Ref 36-2087 None</b>              |                | <b>Yes</b>          | <b>Feb 1983</b>           |
|               | 7779B                | Irrigation | South View D  |                                      | Aug 2002       | "                   |                           |
|               | 16278                | Irrigation | Box Canyon L  | <b>See 36-7779</b>                   |                | "                   |                           |
|               | 16279                | Irrigation | Box Canyon L  |                                      |                |                     |                           |
|               | 7793                 | Irrigation | Hirai         | <b>None</b>                          | Dec 1997       | Yes                 | <b>None</b>               |
|               | 7927                 | Irrigation | Cook          |                                      | Jan 1998       | None                | <b>June 1985</b>          |
|               | 8328                 | stockwtr   |               |                                      |                |                     |                           |
| 1950          | 8097                 | power      |               |                                      |                |                     |                           |
|               | <b>7833</b>          |            | <b>PARENT</b> |                                      |                | <b>None</b>         |                           |
|               | 15563                | Irrigation | Aardema       |                                      | Jan 1998       |                     |                           |
|               | 8050                 | Irrigation | U-U Ranch     | <b>None</b>                          | Dec 1997       | Yes                 | <b>June 1985</b>          |
|               | 8649                 | Irrigation | V&L Dairy     | <b>None</b>                          | Nov 1996       | Yes                 | <b>Mar 1983</b>           |
|               | 8124                 | Irrigation | Nesbit        | <b>SF memo 8/89</b>                  | Dec 1997       | Yes                 | <b>Sept 1987</b>          |
|               | <b>7295</b>          |            | <b>PARENT</b> | <b>Req 2/78 To 3/83 Granted 3/83</b> |                | <b>Yes</b>          | <b>Feb 1983</b>           |
|               | 7295A                | Irrigation | Southfield    |                                      | Jan 2002       | "                   |                           |
|               | 7295B                | Irrigation | Southfield    |                                      | Jan 2002       | "                   |                           |
|               | 7295C                | Stockwtr   |               |                                      |                |                     |                           |
|               | <b>7267</b>          |            | <b>PARENT</b> | <b>None</b>                          |                | <b>Yes</b>          | <b>April 1989</b>         |
|               | 16548                | Irrigation | Grant         |                                      |                | "                   |                           |
|               | 7446                 | Irrigation | Gillette      | <b>None</b>                          |                | Yes                 | <b>Mar 1989</b>           |
| 1960          | 8232                 | CDI        | Anderson      | <b>None</b>                          | Dec 1997       | Yes                 | <b>Mar 1986</b>           |
|               | <b>7714</b>          |            | <b>PARENT</b> |                                      |                | <b>Yes</b>          |                           |
|               | 7714A                | Irrigation | DeWit         |                                      | Dec 1997       | "                   |                           |
|               | 7714B                | Irrigation | DeWit         | <b>None</b>                          | Jan 1998       | "                   | <b>Feb 1983</b>           |
|               | 8341                 | commer     |               |                                      |                |                     |                           |
|               | 8140                 | commer     |               |                                      |                |                     |                           |
|               | 8249                 | Irrigtn    | Kunsman       | <b>None</b>                          |                | Yes                 | <b>Feb 1989</b>           |
|               | 8375                 | Irrigtn    | Crocker       | <b>None</b>                          |                | Yes                 | <b>Dec 1989</b>           |
|               | 8239                 | Irrigatn   | Farmland Res  | <b>SF memo 6/86</b>                  | Jan 1998       | Yes                 | <b>May 1985 June 1989</b> |

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|               | <b>7788</b>          |            | <b>PARENT</b>  | <b>None</b>                         |                      | <b>Yes</b>          | <b>June 1983</b>     |
|               | 7788A                | Irrigation | Verbree Land   | "                                   | Dec 1997             | "                   |                      |
|               | 7788B                | Irrigation | Verbree Land   | "                                   | Dec 1997             | "                   |                      |
| 1970          | 8147                 | Irrigation | Lenore Heutt   | SF memo 11/89                       |                      | Yes                 | April 1990           |
|               | 8231                 | recreatin  |                |                                     |                      |                     |                      |
|               | <b>7939</b>          |            | <b>PARENT</b>  | <b>None</b>                         |                      | <b>Yes</b>          | <b>Dec 1985</b>      |
|               | 7939A                | Irrigation |                |                                     | Dec 1997             |                     | "                    |
|               | 7939B                | CDIS       |                |                                     | Jan 1998             |                     | "                    |
|               | 8081                 | Irrigation | Bettencourt    | <b>None</b>                         | Jan 2002             | Yes                 | June 1983            |
|               | 8099                 | Power      |                |                                     |                      |                     |                      |
|               | 7336                 | Irrigation | Meeks          | <b>None</b>                         | Dec 1997             | Yes                 | July 1983            |
|               | 8011B                | stockwtr   |                |                                     |                      |                     |                      |
|               | <b>2624</b>          |            | <b>PARENT</b>  |                                     |                      | <b>Yes</b>          | <b>Nov 1966</b>      |
|               | 7690A                | Irrigation | Robertson      |                                     | Jan 1997<br>Dec 2002 | Yes                 |                      |
|               | 7690B                | Irrigation | Gillette       |                                     | Dec 1997<br>Oct 2002 | Yes                 |                      |
| 1984          | 3818                 | NO RECO    | RDS            |                                     |                      |                     |                      |
|               | 7732B                | stockwtr   |                |                                     |                      |                     |                      |
|               | 7882B                | Irrigation | Triple T Farms | <b>None</b>                         | Dec 1997             | Yes                 | Dec 1984             |
|               | 8189                 | Irrigation | Telford        | <b>None</b>                         |                      | Yes                 | May 1985<br>Mar 1990 |
| 1989          | 8191                 | Irrigation | Telford        | <b>None</b>                         |                      | Yes                 | May 1985<br>Mar 1990 |
| 1990          | 8484                 | Commer     |                |                                     |                      |                     |                      |
|               | 8019                 | Power      |                |                                     |                      |                     |                      |
|               | 8269                 | Power      |                |                                     |                      |                     |                      |
|               | 8367                 | Commer     |                |                                     |                      |                     |                      |
|               | 8022A                | Stockwtr   |                |                                     |                      |                     |                      |
| 1995          | 8022B                | Comer      |                |                                     |                      |                     |                      |
| 2000          | 7325A                | Irrigation | Southfield Pro |                                     | Dec 1997             | None                |                      |
| 2014          | 8080                 | Power      |                |                                     |                      |                     |                      |
| 2019          | 8219                 | Irrigation | Ciocca         |                                     |                      | Yes                 | July 1990            |
| 2021          | 7653                 | Fish       |                |                                     |                      |                     |                      |

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|               | 7291                 |            | PARENT        | Req dtd 1/78<br>Wanted to 2/79<br>Granted to 2/79                                                                                                                     |                | Yes                 | Feb 1978        |
| 2022          | 7291A                | Irrigation | Northside Frm | Req dtd 1/79<br>Wantd to 2/83<br>Granted to 2/83<br><br>Lapsed but reinstated<br><br>Req dtd 3/85<br>Wanted to 2/89<br>Granted to 2/89<br><br>SF memo 3/89            |                | "                   | Sept 1988       |
| 2023          | 7471                 | Irrigation | Kennedy       | Req dtd 5/79<br>Wanted to 6/84<br>Granted to 6/84<br><br>Req dtd 5/84<br>Wanted to 6/89<br>Granted to 6/89<br><br>Req dtd 5/89<br>Wanted to 10/90<br>Granted to 10/90 |                |                     | Sept 1990       |
|               | 7732                 |            | PARENT        | Req dtd 11/82<br>Wanted to 10/87<br>Granted to 8/87<br><br>Req dtd 6/87<br>Wanted to 1/89<br>Granted to 8/90<br><br>SF memo 2/89                                      | ★              | Yes                 | Sept 1990       |
| 2024          | 7732C                | Irrigation | B4Dairy       |                                                                                                                                                                       |                | "                   |                 |
| 2025          | 7732D                | Stockwtr   |               |                                                                                                                                                                       |                |                     |                 |
| 2030          | 8493                 | Irrigatin  | Minidoka Lum  | None                                                                                                                                                                  |                | Yes                 | June 1990       |

| Line in Excel | Water right Basin 36 | Use        | Claimant      | Request for Extension to file Proof                        | Partial decree       | Back file checked ? | Proof Submitted   |
|---------------|----------------------|------------|---------------|------------------------------------------------------------|----------------------|---------------------|-------------------|
|               | <b>7377</b>          |            | <b>PARENT</b> | <b>None</b>                                                |                      | <b>Yes</b>          |                   |
| 2031          | 7337B                | Irrigation | Haagsma       |                                                            | Dec 1997             |                     |                   |
| 2032          | 7337F                | Commer     |               |                                                            |                      |                     |                   |
| 2033          | 7337H                | Stockwtr   |               |                                                            |                      |                     |                   |
| 2034          | 7337K                | Stockwtr   |               |                                                            |                      |                     |                   |
|               | <b>8047</b>          |            | <b>PARENT</b> |                                                            | <b>DISALWD 12/00</b> |                     |                   |
|               | <b>2247C</b>         |            |               |                                                            |                      |                     |                   |
| 2035          | 8047B                | stockwtr   |               |                                                            |                      |                     |                   |
| 2036          | 8047D                | stockwtr   |               |                                                            |                      |                     |                   |
| 2037          | 8047E                | Irrigation | Double V      | <b>None</b>                                                |                      | <b>Yes</b>          |                   |
| 2038          | 8047F                | stockwtr   |               |                                                            |                      |                     |                   |
| 2039          | 7538                 | fish       |               |                                                            |                      |                     |                   |
| 2041          | 8469                 | Irrigation | JR Simplot    | <b>Req dtd 1/94<br/>Wanted to 2/97<br/>Granted to 2/96</b> |                      | <b>Yes</b>          | <b>Jan 1995</b>   |
| 2043          | 8563                 | Irrigation | Culley        | <b>None</b>                                                |                      | <b>Yes</b>          | <b>Nov 1991</b>   |
| 2044          | 8144                 | Irrigation | BHB Farms     | <b>SF memo 10/89</b>                                       |                      | <b>Yes</b>          | <b>Jan 1991</b>   |
| 2055          | 8200                 | Irrigation | Kearley       | <b>SF memo 11/89</b>                                       |                      | <b>Yes</b>          | <b>Apr 1991</b>   |
| 2059          | 8492                 | commerc    |               |                                                            |                      |                     |                   |
|               | <b>8621</b>          |            | <b>PARENT</b> | <b>None</b>                                                |                      | <b>Yes</b>          | <b>July 1992</b>  |
| 2061          | 16404                | Irrigation | French III    |                                                            |                      | <b>"</b>            |                   |
| 2062          | 16405                | Irrigation | French Jr     |                                                            |                      | <b>"</b>            |                   |
| 2064          | 8609                 | Irrigation | Royce         | <b>None</b>                                                |                      | <b>Yes</b>          | <b>April 1992</b> |
| 2068          | 8149                 | Irrigation | Ramsey        | <b>SF memo 3/90</b>                                        |                      | <b>Yes</b>          | <b>Oct 1990</b>   |
| 2070          | 7854                 | Irrigation | Meyers        | <b>None</b>                                                |                      | <b>Yes</b>          | <b>Feb 1990</b>   |
| 2077          | 8213                 | Irrigation | WG Farms      |                                                            |                      | <b>Yes</b>          | <b>Oct 1989</b>   |
| 2078          | 8464B                | Irrigation | Trau          |                                                            |                      | <b>Yes</b>          | <b>April 1992</b> |
| 2079          | 8205                 | Irrigation | Kearl         | <b>SF memo 3/90</b>                                        |                      | <b>Yes</b>          | <b>July 1990</b>  |
| 2082          | 7934                 | Irrigation | R J LLC       | <b>SF memo 3/90</b>                                        |                      | <b>Yes</b>          | <b>June 1990</b>  |
| 2084          | 8401                 | Irrigation | Horizon Orga  | <b>SF memo 1/91</b>                                        |                      | <b>Yes</b>          | <b>April 1991</b> |
| 2085          | 8212                 | Irrigation | WG Farms      | <b>SF memo 3/91</b>                                        |                      | <b>Yes</b>          | <b>Oct 1989</b>   |
| 2087          | 8579                 | Irrigation | McCaughy      | <b>None</b>                                                |                      | <b>Yes</b>          | <b>Feb 1992</b>   |
| 2088          | 8489                 | Commerc    |               |                                                            |                      |                     |                   |
| 2091          | 8488                 | Commerc    |               |                                                            |                      |                     |                   |
| 2100          | 7620                 | Irrigation | Poleline Calf | <b>SF memo 12/89</b>                                       |                      | <b>Yes</b>          | <b>Jan 1993</b>   |
| 2102          | 8263                 | Irrigation | Scarrow       | <b>None</b>                                                |                      | <b>Yes</b>          | <b>Dec 1991</b>   |
| 2103          | 8302                 | Irrigation | Bettencourt   | <b>SF memo 11/90</b>                                       |                      | <b>Yes</b>          | <b>Oct 1991</b>   |
| 2110          | 8681                 | Irrigation | Dickinson     | <b>None</b>                                                |                      | <b>Yes</b>          | <b>April 1994</b> |

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|---------------|----------------------|------------|-------------|------------------------------------------------------------------------------------------------------------|----------------|---------------------|-----------------|
|               | 7894                 |            | PARENT      | Req dtd 2/85<br>Wanted to 8/95<br>Granted to 4/90<br><br>Req dtd 2/90<br>Wanted to 4/95<br>Granted to 5/92 | ★              | Yes                 | Feb 1992        |
| 2114          | 16640                | Irrigation | Roth Invest |                                                                                                            |                | "                   | "               |
| 2119          | 8317                 | Storage    |             |                                                                                                            |                |                     |                 |
| 2121          | 8607                 | DFStock    |             |                                                                                                            |                |                     |                 |
| 2123          | 8601                 | Irrigation | Wheeler     | None                                                                                                       |                | Yes                 | May 1993        |
| 2124          | 8474                 | Commer     |             |                                                                                                            |                |                     |                 |
| 2126          | 8615                 | Irrigation | Thompson    | None                                                                                                       |                | Yes                 | Mar 1993        |
| 2128          | 8161                 | Irrigation | Stevenson   | None                                                                                                       | July 2002      | Yes                 | Sept 1990       |
| 2132          | 8612                 |            |             |                                                                                                            |                |                     |                 |
| 2135          | 7512                 |            |             |                                                                                                            |                |                     |                 |
| 2136          | 8569                 |            |             |                                                                                                            |                |                     |                 |
| 2137          | 16185                |            |             |                                                                                                            |                |                     |                 |
| 2143          | 8201                 |            |             |                                                                                                            |                |                     |                 |
| 2155          | 8575                 |            |             |                                                                                                            |                |                     |                 |
| 2157          | 8496                 |            |             |                                                                                                            |                |                     |                 |
| 2159          | 8620                 |            |             |                                                                                                            |                |                     |                 |
| 2160          | 8246                 |            |             |                                                                                                            |                |                     |                 |
| 2165          | 8225A                |            |             |                                                                                                            |                |                     |                 |
| 2166          | 8225B                |            |             |                                                                                                            |                |                     |                 |
| 2168          | 8241                 |            |             |                                                                                                            |                |                     |                 |
| 2169          | 8624                 |            |             |                                                                                                            |                |                     |                 |
| 2174          | 7416C                |            |             |                                                                                                            |                |                     |                 |
| 2175          | 7416D                |            |             |                                                                                                            |                |                     |                 |
| 2176          | 7958                 |            |             |                                                                                                            |                |                     |                 |
| 2179          | 7604                 |            |             |                                                                                                            |                |                     |                 |
| 2182          | 7839                 |            |             |                                                                                                            |                |                     |                 |
| 2184          | 8063A                |            |             |                                                                                                            |                |                     |                 |
| 2189          | 7964A                |            |             |                                                                                                            |                |                     |                 |
| 2196          | 8089                 |            |             |                                                                                                            |                |                     |                 |
| 2197          | 8619A                |            |             |                                                                                                            |                |                     |                 |
| 2198          | 8619B                |            |             |                                                                                                            |                |                     |                 |
| 2200          | 15677                |            |             |                                                                                                            |                |                     |                 |
| 2203          | 8227                 |            |             |                                                                                                            |                |                     |                 |
| 2204          | 8469                 |            |             |                                                                                                            |                |                     |                 |
| 2205          | 8226                 |            |             |                                                                                                            |                |                     |                 |
| 2208          | 8046                 |            |             |                                                                                                            |                |                     |                 |

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|------|--------|--|--|--|--|--|--|
| 2209 | 8054   |  |  |  |  |  |  |
| 2210 | 8628   |  |  |  |  |  |  |
| 2212 | 8462   |  |  |  |  |  |  |
| 2218 | 7802B  |  |  |  |  |  |  |
| 2232 | 8198   |  |  |  |  |  |  |
| 2236 | 15992  |  |  |  |  |  |  |
| 2237 | 15993  |  |  |  |  |  |  |
| 2240 | 15984  |  |  |  |  |  |  |
| 2241 | 15985  |  |  |  |  |  |  |
| 2242 | 8063C  |  |  |  |  |  |  |
| 2244 | 8058   |  |  |  |  |  |  |
| 2257 | 8187   |  |  |  |  |  |  |
| 2261 | 7750A  |  |  |  |  |  |  |
| 2262 | 7750B  |  |  |  |  |  |  |
| 2263 | 16335  |  |  |  |  |  |  |
| 2273 | 7159   |  |  |  |  |  |  |
| 2274 | 7160   |  |  |  |  |  |  |
| 2275 | 15396  |  |  |  |  |  |  |
| 2276 | 11060  |  |  |  |  |  |  |
| 2277 | 7163   |  |  |  |  |  |  |
| 2278 | 7162   |  |  |  |  |  |  |
| 2279 | 2889   |  |  |  |  |  |  |
| 2286 | 7189   |  |  |  |  |  |  |
| 2287 | 7193   |  |  |  |  |  |  |
| 2291 | 16159  |  |  |  |  |  |  |
| 2292 | 16160  |  |  |  |  |  |  |
| 2295 | 7237   |  |  |  |  |  |  |
| 2298 | 16063  |  |  |  |  |  |  |
| 2299 | 16064  |  |  |  |  |  |  |
| 2300 | 16083  |  |  |  |  |  |  |
| 2303 | 15228  |  |  |  |  |  |  |
| 2304 | 7319   |  |  |  |  |  |  |
| 2305 | 7323   |  |  |  |  |  |  |
| 2307 | 16008  |  |  |  |  |  |  |
| 2309 | 7334   |  |  |  |  |  |  |
| 2310 | 16053  |  |  |  |  |  |  |
| 2311 | 16054  |  |  |  |  |  |  |
| 2312 | 16510  |  |  |  |  |  |  |
| 2324 | 4264   |  |  |  |  |  |  |
| 2337 | 16161  |  |  |  |  |  |  |
| 2338 | 16162  |  |  |  |  |  |  |
| 2339 | 16163  |  |  |  |  |  |  |
| 2346 | 14035B |  |  |  |  |  |  |
| 2349 | 7628   |  |  |  |  |  |  |
| 2350 | 7650A  |  |  |  |  |  |  |
| 2351 | 7650B  |  |  |  |  |  |  |

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|----------------------|--------|--|--|--|--|--|--|
| 2360                 | 16136  |  |  |  |  |  |  |
| 2361                 | 16144  |  |  |  |  |  |  |
| 2362                 | 16146  |  |  |  |  |  |  |
| 2363                 | 16178  |  |  |  |  |  |  |
| 2368                 | 15195B |  |  |  |  |  |  |
| 2376                 | 7858   |  |  |  |  |  |  |
| 2377                 | 7860   |  |  |  |  |  |  |
| 2378                 | 7865   |  |  |  |  |  |  |
| 2380                 | 7882A  |  |  |  |  |  |  |
| 2386                 | 10656  |  |  |  |  |  |  |
| 2388                 | 13065A |  |  |  |  |  |  |
| 2389                 | 13065B |  |  |  |  |  |  |
| 2397                 | 8063D  |  |  |  |  |  |  |
| 2400                 | 8094   |  |  |  |  |  |  |
| 2401                 | 8133   |  |  |  |  |  |  |
| 2404                 | 8641   |  |  |  |  |  |  |
| 2405                 | 16420  |  |  |  |  |  |  |
| 2406                 | 16421  |  |  |  |  |  |  |
| 2408                 | 8234   |  |  |  |  |  |  |
| END<br>BAS-<br>IN 36 |        |  |  |  |  |  |  |
|                      |        |  |  |  |  |  |  |
|                      |        |  |  |  |  |  |  |