

MEMORANDUM

TO: Transfer No. 74253
FROM: CPalmer
DATE: October 25, 2011
RE: Evaluation of Sufficiency of Information Submitted

One of the purposes of this transfer was to change the nature of use of irrigation rights to mitigation for the now licensed right 72-16625. That change was accomplished outside of this transfer and is no longer needed. In addition, this transfer proposes to create a PPU with the existing irrigation rights.

Disposition of Rights

Rights	Overlapped Acres	Non-Overlapped Acres	Total Acres	Irrigation Rate (cfs)
72-106J	11.5	0	11.5	0.45
72-109J	11.5	0	11.5	0.45
72-4174C	4.9	2.6	7.5	0.33
72-10486C	11.5	0	11.5	0.22
Total	11.5	2.6	14.1	1.45
72-4174D	0.8	0	0.8	0.03
72-16730	0.8	0	0.8	0.03
72-16732	0.8	0	0.8	0.03
72-16734	0.8	0	0.8	0.02
Total	0.8	0	0.8	0.11
72-106C	0	2	2	0.03
72-106H	0	3.3	3.3	0.04
Total	0	5.3	5.3	0.07
Grand Total			20.2	1.63

The property is known as Living Water Ranch near Challis, Idaho and is within Garden Creek water district 72A.

Contact person for the applicant is Norm Young of ERO. Per Norm his role is as a “friend” that is helping out the applicant. Accordingly, Norm should not be carried as a contact, but just a contact for this transfer only.

Summary of Information Submitted

Authority to File: Christopher James, a trustee of First Fruits Foundation, signed the application for transfer in 2007. All the rights, except 72-106C, associated with this right are in the name of First Fruit Foundation. I pulled up the ownership change form that updated ownership for 72-106C and found that FirstFruit should be listed as current owner not James Christopher. I have attached the pertinent documentation to this memo. The ownership will be corrected during the transfer process.

Water Right Validity: The possibility of partial forfeiture was found during the transfer review in the amount of 4.8 acres. However, credit was given to the applicant because different acres were being irrigated other than their authorized POU in the amount of 4.8 acres. The different acres are on adjacent land owned by the right holder and are under the same system. Essentially the right holder has already accomplished the proposed changes in this transfer.

The guidance that I found on this topic is within a memo from Ann Yribar to Phil Rassier, both of which are former department legal staff. The memo dated 7/10/08 concludes that in *McCray v Rosenkrance*, "it is clearly the law in Idaho that a water right cannot be resumed when the facts clearly establish that water was not applied to the land of which it was appurtenant." Ann Yribar continues on to say that it is unlikely that an Idaho court would find water right forfeiture because of an unauthorized change in point of diversion, place of use, or period of use. It would be more likely for the department to issue a notice of violation and/or work towards getting the water user legal. Since there seems to be two different conclusions on this matter, I will analyze forfeiture for this transfer further.

Forfeiture Analysis

Timeline

2000: all rights associated with this transfer were decreed

2004: NAIP imagery shows a total of 4.8 acres of buildings and roadways at the authorized place of use for rights 72-106H and 72-4174C. Also the imagery indicates the irrigation of 4.8 acres in the SW¼NW¼ of Sec. 2 that is not covered by a water right.

2006: No imagery available at the pertinent lands

2007: Application for Transfer No. 74253 was filed with the Department

2009: NAIP imagery still indicates the presence of irrigation in the SW¼NW¼ of Sec. 2 and obviously all the buildings and roadways are still in place at the authorized POU.

2011: Same finding as in 2009 imagery.

My imagery evaluation indicates that acres have been dried up; the absence of irrigated land within the authorized POU for water rights 72-106H and 72-4174C in the 2004, 2009, and 2011 imagery is convincing because the presence of roadways, driveways, and buildings appear instead of irrigated lands (see attached map). It is clear that 4.8 acres have not been irrigated since 2004. During my review I identified 4.8 acres in the SW¼NW¼ of Sec. 2 that have been irrigated, but is not authorized by any water right.

While 4.8 acres definitely have not been irrigated, forfeiture may not apply at all when the acres that are being irrigated are at a different, unauthorized POU, as described in the timeline.

I couldn't find a clear policy in the Department regarding this scenario but, per Ann Yribar's findings, I reviewed *McCray v Rosenkrance* for clarification. Note that in that case, forfeiture was found even though *McCray* claimed that water use was resumed on different lands than authorized by a water right. The *McCrays* tried to claim the resumption of water because 5 years past since water was used under their water rights. The distinction between *McCrays* and *FirstFruits* lies in the timeline in which water had been applied to the land; water was never forfeited by *FirstFruit*, it was simply used on different land than authorized dating back to 2004 at the latest.

Furthermore, Idaho Code §42-351 allows for the legalization of an unauthorized POU under the notice of violation (NOV) sanction. *FirstFruit* is irrigating land that is not covered by a water right and would be subject to an NOV except they have filed the transfer to get the unauthorized use legal before the

Department can issue the violation. For the reasons outlined above, no acres will be found as being forfeited through this transfer.

Injury to Other Water Rights: No injury is expected.

Enlargement of Use: The rights are all within a common system; creating a PPU under the system will not cause enlargement. In addition, no enlargement will occur as a result of legalizing the 4.8 acres. Even though 4.8 acres have been dried-up and water hasn't been delivered in connection with those acres, the water was being delivered to the 4.8 acres instead in the SWNW of Sec. 2.

Local Public Interest: Re-arranging the POU for the rights involved with this right should not cause any adverse affect to area water users.

Beneficial Use/Conservation of Water Resources: The application proposes beneficial use(s) consistent with conservation of water resources in Idaho.

Review of the application finds there is no clear inconsistency with criteria of I. C. § 42-222 preventing processing of the application.

Additional Information &/or Analysis

Watermaster comments: There was no comment.

Legal Notice: Since there are no substantial changes and this transfer will legalize a practice that they already engage in, no advertisement in the paper is necessary. Southern region concurred with the non-advertising of this application. In addition, no hydrologic affect is expected by the re-arranging of acres.

Discussion

POU and ownership explanation:

The Firstfruit Foundation is not registered with the IDSOS. However, this foundation is considered a non-profit organization and is operated by co-trustees James and Debra Christopher as documented in the attached deed/ownership document. In addition, the acres in the SWNW of Sec 2 and the very most northeastern point of the ranch are owned by James Christopher, not the foundation. Because Mr. Christopher is a trustee of the foundation, no further explanation or permission is needed to add the acres to the PPU under Firstfruits rights.

Lastly, the stockwater POU under 72-4174C and 72-106C occupies land that is not owned by FirstFruits or the Christophers according to taxlot data. Right 72-4174C was decreed in the NENW and the NWNE of Sec 2 and right 72-106C was decreed on the SWSE of Sec. 35. The transfer is proposing to put both rights on each other's POU in addition to their own POU. Since the rights were decreed in these QQ and no new use is being added, no further permissions, etc. is needed.

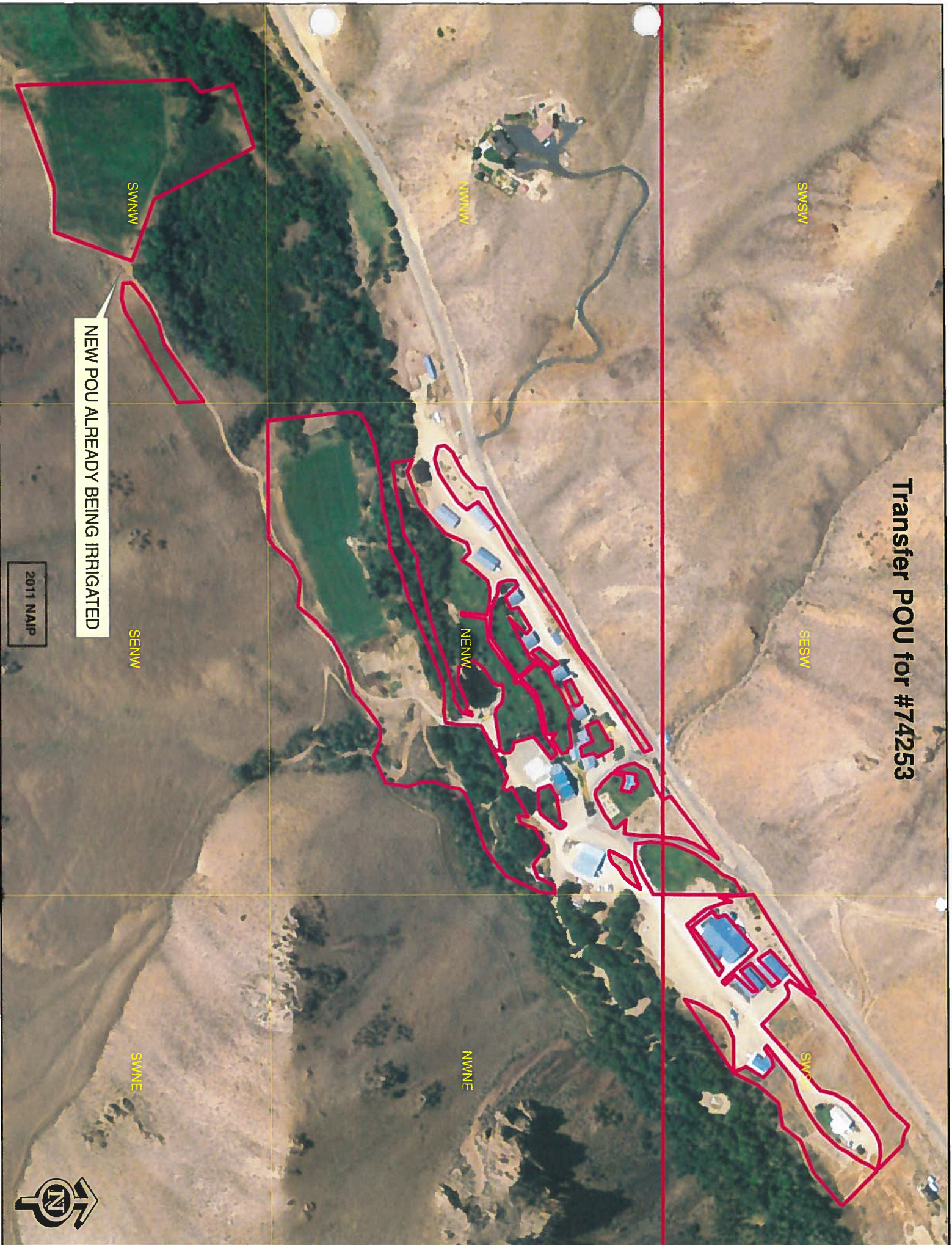
Data entry affected the correct record: yes, correct right ids will be updated.

SRBA status: all rights decreed in 2000.

Summary

Assuming protests are not filed and/or other information does not contradict the above analysis, the application can be approved as reflected by the draft approval.

Transfer POU for #74253



2011 NAIP

NEW POU ALREADY BEING IRRIGATED



Black outline represents the 4.8 acres that have been dried up and prematurely transferred to the SWNW.

White outline represents 1.7 acres that are designated for mitigation. Note that the shape was modified from the original shape to reflect acres that have actually been dried up.

Note that both the black and white areas were drawn based on the latest map received from the applicant.





Original mitigation shape--notice that the shape ~~is~~ not provide a good representation of the acres that have been dried up for mitigation.

Mitigation acres = 1.7 acres total

Updated mitigation shape. Note that I made sure that the acres that are dedicated to mitigation were all part of the ~~resubmitted~~ POU of mitigated rights 72-106J, 72-709J, 72-4174C, 72-10486C.



Christopher and Debbie James built Living Waters Ranch as a labor of love to God, and consider it a place of rest and restoration for the body and soul. They believe "God gave His very best by giving us His Son and we, too, should give our very best." Living Waters Ranch is a first class conference and retreat center, but more importantly they believe the presence of the Holy Spirit will renew your spirit and give you new strength.

Living Waters Ranch is a fulfillment of the purpose of Firstfruits Foundation. Firstfruits Foundation had its conception in 1986. Its prime purpose is to promote the Gospel of Jesus Christ by assisting, encouraging, and empowering various faithful ministries. Part of its call is to provide a meeting and refreshment station for His ministries. Today that vision is being fulfilled in Living Waters Ranch.

Living Waters Ranch is located on 142 acres near Challis, Idaho. It runs 3/4 of a mile along Garden Creek surrounded by a beautiful mountain view. The ranch accommodates guests in a variety of sleeping and meeting facilities. Food service is available for groups of 25 or more. Smaller groups staying in Chalets or Hosanna House can do their own cooking in fully equipped kitchens.

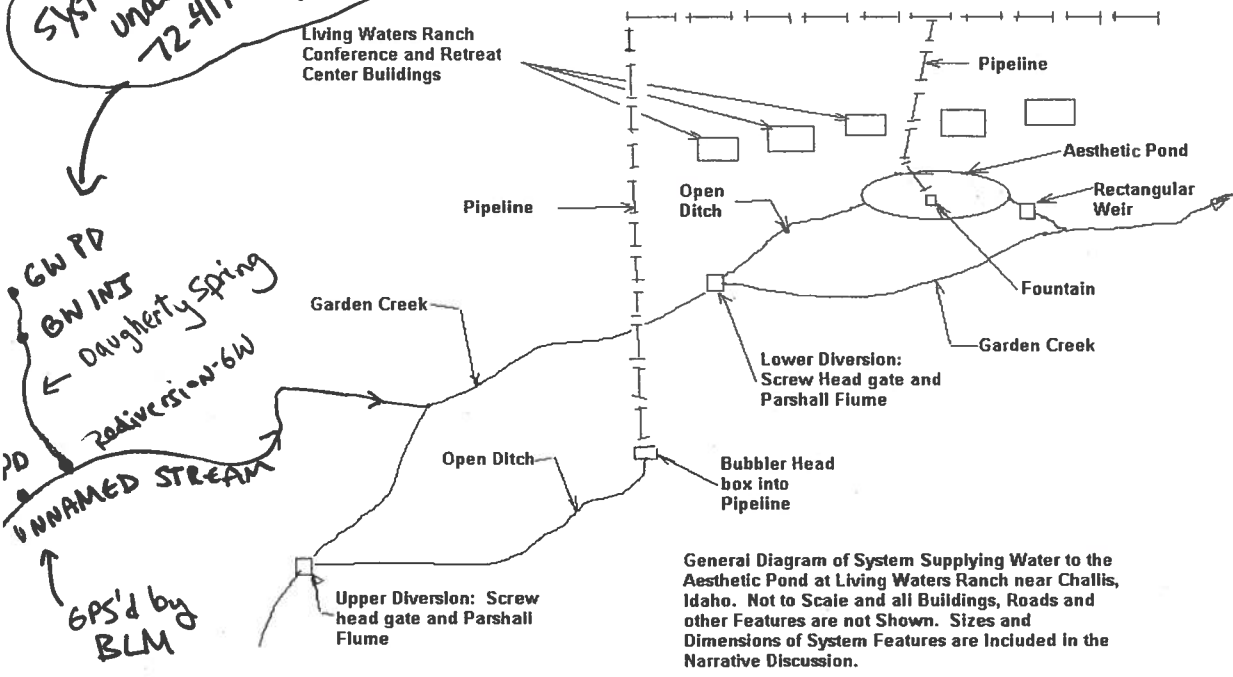
The staff at Living Waters Ranch looks forward to ministering to as you "come apart" from your daily activities to better seek the Lord. Ministers and lay people alike will find opportunities for relaxation, enjoyment, fellowship and spiritual growth. For more information visit our website, or call reservations to reserve your spot on our calendar. A deposit is required with your reservation.

- About the Living Waters Ranch
and owners

3. **Delivery System Diagram:** Indicate all major components and distances between components. Indicate weir size / ditch size / pipe i.d. as applicable.

System under 72-4174 C/D -CP

Note that the waterways of the point of injection + point of redirection is not identified on conditions due to uncertainty.



General Diagram of System Supplying Water to the Aesthetic Pond at Living Waters Ranch near Challis, Idaho. Not to Scale and all Buildings, Roads and other Features are not Shown. Sizes and Dimensions of System Features are Included in the Narrative Discussion.

Scale: 1" = NTS

☒ Copy of USGS Quadrangle Attached Showing location(s) of point(s) of diversion and place(s) of use (required). ☐ Aerial Photo Attached (required for irrigation of 10+ acres) ☒ Photo of Diversion and System Attached

4.

Well or Diversion Identification No.*	Motor Make	Hp	Motor Serial No.	Pump Make	Pump Serial No. or Discharge Size
Lower Diversion	N.A.	N.A.	N.A.	N.A.	14" screw gate to a ditch about 2 ft wide by 18 in deep
Upper Diversion	N.A.	N.A.	N.A.	N.A.	14" screw gate to a ditch about 2 ft wide by 18 in deep

*Code to correspond with No. on map and aerial photo

D. FLOW MEASUREMENTS

1.

Measurement Equipment	Type	Make	Model No.	Serial No.	Size	Calib. Date
Flume with staff gage	Parshall	N.A.	N.A.	N.A.	12"	N.A.

2. Measurements: 0.58 cfs * From Field Exam from 72-116625

RECEIVED

JUN 29 2004

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP**

RECEIVED

JUN 30 2004

DEPARTMENT OF
WATER RESOURCESDepartment of Water Resources
Southwest Region

Please print or type. Attach pages with additional information. Instructions are included at the end of this form.
Incomplete forms will be returned.

- 1 Please list the water right number(s) and/or adjudication claim number(s) (if any) for each water right to be changed. List just the adjudication claim number if there is no corresponding water right record on file with the department. Indicate, by checking in the space provided (under the "split" heading), if the change in ownership is limited to a portion of a water right in which case division of the existing water right or adjudication claim record will be required.

Water Right No(s)	Adjudication Claim No(s)	Split	Water Right No(s)	Adjudication Claim No(s)	Split
A72-00109A	DECREED AS 72-106C				
A72-00106A	72-106L				
	72-106M				

- 2 The following **REQUIRED** information must be submitted with this form

- A The appropriate **FILING FEE**. See instructions for fee amounts.
- B A copy of the most recent **DEED, TITLE POLICY, CONTRACT OF SALE** or other legal document indicating your ownership of the property and water right(s) or claim(s) in question, **WITH ATTACHED LEGAL DESCRIPTION**.
- C Either of the following (if necessary to clarify division of water rights or other complex property descriptions)
PLAT OF PROPERTY or **SURVEY MAP** clearly showing the location of the point(s) of diversion and place of use of your water right(s) and/or adjudication claim(s) (these are usually attached to your deed or on file with the county)
OR
If your water right(s) and/or adjudication claim(s) is for ten or more acres of irrigation, you must submit a USDA Farm Service Agency **AERIAL PHOTO** with the irrigated acres outlined and point(s) of diversion clearly marked. The **AERIAL PHOTO** should be submitted in place of the **PLAT OF PROPERTY** or **SURVEY MAP**.

- 3 Name and Address of Former Owner/Claimant(s) Patsy L. Strickland 95446
19479 - Hidden Valley Road, Guerneville, CA
- 4 New Owner/Claimant(s) CHRISTOPHER + DEBRA JAMES CO-TRUSTEES OF FIRSTFRUITS
Name Connector (Check one) ☐ and, ☐ or, ☐ and/or FOUNDATION
- New Mailing Address Po Box 1190
- City, State and ZIP Code CHALLIS, ID 83226
- New Telephone Number (208) 879-4560
- 5 Date you acquired the property 11-25-2002

* Deed shows Firstfruits
officers / trustees

- 6 If the change in ownership affects the entire water right for each water right or adjudication claim number listed in item 1, THEN SKIP THIS ITEM AND GO TO ITEM 7. If the change in ownership divides the water right(s) among multiple owners, you must describe, in detail, your portion of each water right after the change. Fill in the appropriate spaces in the box(es) below to describe your water right(s) after the change (one water right per box, you may copy this page as necessary). If your quantity of water is greater than a proportionate split, you must attach documentation to show justification for a larger amount. If you are not sure how to identify your portion of the original water right or adjudication claim records, please contact the nearest IDWR office for assistance.

DESCRIPTION OF YOUR PORTION OF WATER RIGHT (If the right(s) will not be split, skip this area and proceed to item 7)		
Water Right and/or Adjudication Claim Number _____		
Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation	_____	_____
Stock	_____	_____
Domestic	_____	_____
Other _____	_____	_____
Total	_____	_____

DESCRIPTION OF YOUR PORTION OF WATER RIGHT (If the right(s) will not be split, skip this area and proceed to item 7)		
Water Right and/or Adjudication Claim Number _____		
Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation	_____	_____
Stock	_____	_____
Domestic	_____	_____
Other _____	_____	_____
Total	_____	_____

* 7.

Signature of New Owner(s) or Claimant(s)
(include title if applicable)

Christopher W. James, Trustee
for Fruitful Foundation

For Snake River Basin Adjudication Claims: Please attach a Notice of Appearance completed by your attorney, if you wish IDWR to correspond with him/her for all matters related to your claims.

For Office Use Only

Received by HAU/WH Date 6/24/04 Fee 56.66
 Receipted by HAU/WH Date 6/24/04 Receipt No. 3026872
 Processed by _____ AJ Date _____ WR _____ Date _____

RECEIVED

JUN 29 2004

Received by _____ Date _____



First American Title Company of Idaho

7311 POTOMAC DRIVE • BOISE, IDAHO 83704 • (AREA 208) 375-0700 • FAX 322-5597

BUYER'S CLOSING STATEMENT

Escrow: FA-49130TLE
Escrow Officer: Tina L. Smith
FINAL

Order: B46536
Date: 11/21/2002
Closing Date: 11/25/2002

ESCROW STATEMENT OF: Christopher W. James and Debra E. James, Co-Trustees of First Fruits Foundation, UDT September 29, 1986.

SELLER: Candant Mobility Government Financial Services Corporation by Burrow Services

Property Address: Garden Creek Road, Challis, ID 83226

ITEMS	DEBITS	CREDITS
TOTAL CONSIDERATION	175,000.00	
OTHER CONSIDERATION: Repair Credit		1,362.00
DEPOSIT HELD BY Cabin Creek Realty		5,000.00
<u>PRORATIONS/ADJUSTMENTS</u>	<u>FROM</u>	<u>TO</u>
County Taxes, TAX ACCOUNT RP14N18E356610		
CURRENT YEAR TAXES AT \$714.22	11/25/02	1/01/03 72 40
<u>TITLE CHARGES TO First American Title Company</u>		
Dead Recording Fee		9.00
<u>ESCROW CHARGES</u>		
Escrow Fee	285.00	
BALANCE DUE ESCROW		169,004.40
TOTALS	\$ 175,366.40	\$ 175,366.40

Christopher W. James and Debra E. James,
Co-Trustees of First Fruits Foundation,
UDT September 29, 1986.

BY: _____
Christopher W. James, Co-Trustee

BY: _____
Debra E. James, Co-Trustee

Order No.
Escrow No. _____
Loan No. _____

WHEN RECORDED MAIL TO GRANTEE:
Burrow Services Corporation
520 W. Palmdale Boulevard, Suite O
Palmdale, CA 93551

1364598 State of Idaho
APN: RP14N18E356610

0226054
Custer County Reg. of
CC T
Time 3:40 PM Date 11-27-2002
Ethel M Peck Clerk
W. Laughter \$ 6.00
City

WARRANTY DEED

For Value Received Ronald L. Dunton and Carol L. Van Dorn, husband and wife, the grantors, do hereby grant, bargain, sell and convey unto, Cendant Mobility Government Financial Services Corporation, the grantees, whose current address is:

Garden Creek Road Challis, Idaho 83226

the following described premises, to wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantees, their heirs and assigns forever. And the said Grantors do hereby covenants to and with the said Grantees, that they are the owners in fee simple of said premises; that said premises are free from all encumbrances except current year taxes, levies, and assessments, and except U.S. Patent reservations, restrictions, easements of record, and easements visible upon the premises, and that they will warrant and defend the same from all claims whatsoever.

Dated: November 1, 2002

Ronald L. Dunton
Ronald L. Dunton

Carol L. Van Dorn
Carol L. Van Dorn

STATE OF Idaho
COUNTY OF CUSTER SS.

On Nov 7, 2002 before me, HELEN HOWARD a notary public, personally appeared, Ronald L. Dunton and Carol L. Van Dorn, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Helen R. Howard My Commission Expires: 3/20/04

HELEN R. HOWARD
STATE OF IDAHO
NOTARY PUBLIC

CENDANT File No. 1364598

Property Address: Garden Creek Road, Challis, ID 83226

EXHIBIT "A"

TRACT I

A fraction of the SW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 35, Township 14 North, Range 18 E.B.M., Custer County, Idaho, described as: Beginning at the SE corner of said Section 35; thence 1321.38 feet west to the SE corner of said SW $\frac{1}{4}$ SE $\frac{1}{4}$, the TRUE POINT OF BEGINNING; thence N. 45°00' W. 974.45 feet to a point on the southerly right-of-way of the Garden Creek Road; thence S. 52°12'05" W., 277.55 feet along said right-of-way to the northeasterly line of the land described as Tract II in the Deed to David W. Edminston, et. ux., recorded April 23, 1976, as Instrument no. 142030, records of Custer County, Idaho; thence the following 3 courses along said Edminston land; S. 45°00' E., 69.50 feet; thence S 46°44' W., 111.00 feet; thence S. 45°00' E. 556.82 feet to a point on the south boundary line of said SW $\frac{1}{4}$ SE $\frac{1}{4}$; thence E. 546.29 feet to the True Point of Beginning. Except county road

TRACT II:

A fraction of the SW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 35, Township 14 North, Range 18 E.B.M., Custer County, Idaho, described as: Beginning at the SE corner of said Section 35; thence 1321.38 feet west to the SE corner of said SW $\frac{1}{4}$ SE $\frac{1}{4}$; thence N. 0°02'15" E. along the east line of said SW $\frac{1}{4}$ SE $\frac{1}{4}$, 1074.80 feet to a point on the north right-of-way of the Garden Creek Road the REAL POINT OF BEGINNING; thence continuing N. 0°02'15" E., 247.25 feet to the NE corner of the SW $\frac{1}{4}$ SE $\frac{1}{4}$; thence S. 89°58'15" W. 1322.08 feet to the NW corner of the SW $\frac{1}{4}$ SE $\frac{1}{4}$; thence S. 0°00'30" W. along the west line of said SW $\frac{1}{4}$ SE $\frac{1}{4}$, 389.40 feet, more or less, to the most northerly corner of the land described as Tract II in the Deed to David W. Edminston, et. ux., recorded April 23, 1976, as instrument no. 142030, records of Custer County, Idaho; thence S. 45°00' E., along the northeasterly line of said Edminston land 533.83 feet to a point on the northerly right-of-way line of said Garden Creek Road; thence the following courses and distances along said north right-of-way; N. 52°12'05" E., 468.66 feet; thence 369.74 feet along a curve concave to the SE having a radius of S. 37°47'55" E. 825.00 feet and a central angle of 25°40'42"; thence N. 77°52'47" E. 31.60 feet; thence 222.36 feet along a curve concave to the NW having a radius of N. 12°07'13" W. 975.00 feet and a central angle of 13°04'02" to the Real Point of Beginning. Except county road.

0226055

Order No. _____
Escrow No. _____
Loan No. _____

Custer County Reg of
CCT

WHEN RECORDED MAIL TO GRANTEE:

Time 3:30 P.M. Date 11-27-2002
Ethel M. Peck, Clerk
Lina Laugha 39th
Deputy

1364598 State of Idaho
APN:

WARRANTY DEED

For Value Received Cendant Mobility Government Financial Services Corporation, the grantors, do hereby grant, bargain, sell and convey unto

Christopher W. James & Paul Debra E. James, Co-Trustees of
First Fruits Foundation, UDT September 29, 1986

the grantees, whose current address is: Garden Creek Road, Challis, ID. 83226

the following described premises, to wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantees, their heirs and assigns forever. And the said Grantors do hereby covenants to and with the said Grantees, that they are the owners in fee simple of said premises; that said premises are free from all encumbrances except current year taxes, levies, and assessments, and except U.S. Patent reservations, restrictions, easements of record, and easements visible upon the premises, and that they will warrant and defend the same from all claims whatsoever.

Dated: _____

Diane Adair
Cendant Mobility Government Financial Services Corporation, BY Diane Adair
AUTHORIZED SIGNATORY OF BURROW
CLOSING MANAGEMENT CORPORATION
DBA BURROW SERVICES AS ATTORNEY-IN-FACT

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES SS.

On _____ before me, Katherine Owen personally appeared, Diane Adair, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.
WITNESS my hand and official seal

Signature _____ My Commission Expires: _____

ALL PURPOSE ACKNOWLEDGEMENT

State of CALIFORNIA
County of LOS ANGELES

On 11-15-02 before me, Katherine Owen
Date
Personally appeared Diane Adair

() personally known to me - OR - (xx) proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are/subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/he/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand & official seal.

Katherine Owen
Signature of Notary



ATTACHED LEGAL DESCRIPTION

Order No. B46536

TRACT I:

A fraction of the SW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 35, Township 14 North, Range 18 E.B.M., Custer County, Idaho, described as: Beginning at the SE corner of said Section 35; thence 1321.38 feet west to the SE corner of said SW $\frac{1}{4}$ SE $\frac{1}{4}$, the TRUE POINT OF BEGINNING; thence N. 45°00' W. 974.45 feet to a point on the southerly right-of-way of the Garden Creek Road, thence S. 52°12'05" W., 277.55 feet along said right-of-way to the northeasterly line of the land described as Tract II in the Deed to David W. Edminston, et. ux., recorded April 23, 1976, as instrument no. 142030, records of Custer County, Idaho, thence the following 3 courses along said Edminston land; S. 45°00' E. 69.50 feet; thence S. 46°44' W., 111.00 feet; thence S. 45°00' E. 558.82 feet to a point on the south boundary line of said SW $\frac{1}{4}$ SE $\frac{1}{4}$; thence E. 546.29 feet to the True Point of Beginning. Except county road.

TRACT II:

A fraction of the SW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 35, Township 14 North, Range 18 E.B.M., Custer County, Idaho, described as: Beginning at the SE corner of said Section 35; thence 1321.38 feet west to the SE corner of said SW $\frac{1}{4}$ SE $\frac{1}{4}$; thence N. 0°02'15" E. along the east line of said SW $\frac{1}{4}$ SE $\frac{1}{4}$, 1074.80 feet to a point on the north right-of-way of the Garden Creek Road the REAL POINT OF BEGINNING, thence continuing N. 0°02'15" E., 247.25 feet to the NE corner of the SW $\frac{1}{4}$ SE $\frac{1}{4}$, thence S. 89°58'15" W. 1322.06 feet to the NW corner of the SW $\frac{1}{4}$ SE $\frac{1}{4}$; thence S. 0°00'30" W. along the west line of said SW $\frac{1}{4}$ SE $\frac{1}{4}$, 389.40 feet, more or less, to the most northerly corner of the land described as Tract II in the Deed to David W. Edminston, et. ux., recorded April 23, 1976, as instrument no. 142030, records of Custer County, Idaho; thence S. 45°00' E., along the northeasterly line of said Edminston land 533.63 feet to a point on the northerly right-of-way line of said Garden Creek Road; thence the following courses and distances along said north right-of-way; N. 52°12'05" E., 469.68 feet; thence 369.74 feet along a curve concave to the SE having a radius of S. 37°47'55" E. 825.00 feet and a central angle of 25°40'42"; thence N. 77°52'47" E. 31.60 feet; thence 222.36 feet along a curve concave to the NW having a radius of N. 12°07'13" W. 975.00 feet and a central angle of 13°04'02" to the Real Point of Beginning. Except county road.

APPROVED BY
S. J. J.