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DEC 14 2010

Department of Water Resources
Eastern Region

Kirby A. Jensen
2781 N 3375 W
Moore, Idaho 83255-8715
Phone 208-589-5472

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

In the matter of application for transfer no 76256
in the name of Telford Lands LLC

**TO: ROBERT L. HARRIS
HOLDEN, KIDWELL, HANN & CRAPO, P.L.L.C.**

RESPONSE TO FIRST DISCOVERY REQUEST INTERROGATORIES

RESPONSE TO INTERROGATORY NO. 1.: As most of the facts are

available on the internet or the Web (World Wide Web), it would appear that anyone with access to the Web could have knowledge of the facts. More specifically, employees of the Idaho Department of Water Resources, the protesters, the applicant and his attorney could have knowledge of the facts.

RESPONSE TO INTERROGATORY NO. 2.: With respect to anyone having access to the Web, they may be aware of all documents relative to the case which are available on the Web. With respect to employees of the Department, they may be aware of additional documents which may be unavailable on the Web as well as those that are. With respect to the protesters, in addition to being aware of documents available on the Web they may be aware of common knowledge as to the history of water right development within water district 34 as well as conversations, allegations, recitations and other communications regarding knowledge of the facts of this matter. With respect to the applicant and his attorney, they may be expected to be aware of all the facts relevant to

this matter. Specifically the water rights as they currently exist, the water rights as they are proposed to be modified or amended, and certain "WELL USE AGREEMENT" between one of the protesters (Harold Babcock) and one of the successors in interest (Telford Lands, LLC).

RESPONSE TO INTERROGATORY NO. 3.: With respect to documents or other information available on the Web, each water right which is addressed in Transfer No 76286 has detailed information, relative to such water right, which can be accessed, downloaded and printed to reflect the facts which may be known by each person with access to the Web. With respect to other documents available to employees of the Department, there could be numerous documents which are unavailable on the Web as well as information available only to employees of the Department, such as rules, procedures, guidelines, policies, etc. With respect to the protesters, most have access to the Web, and some may have obtained copies of documents unavailable on the Web from the department. With respect to the applicant and his attorney, it is my belief that they have access to all documents available on the Web, all documents which may be available to the public from the Department, the Well Use Agreement as well as other correspondence between the applicant and protestant Harold Babcock. In addition to water right information being available on the Web, there is a data base called "Google Earth" which shows aerial photography of Water District 34 as well as GPS data which includes elevations.

RESPONSE TO INTERROGATORY NO. 4.: With respect to describing and explaining evidence I possess that Transfer No. 76286 violates the criteria of Idaho Code

42-222(1), the following is presented: By utilizing the data base "Google Earth" the following facts appear:

1. The elevation just below the Mackay Dam is displayed at 6006 ft.
2. The elevation where the river exits the valley and enters Box Canyon through the lava flow is displayed at 5256 ft.

Therefore in the space of 30 miles, direct from the Mackay Dam to the head of Box Canyon, there is 750 feet less elevation. It would appear from this information that the description of "Drainage" is more accurate than the description of "Basin". Thus it would appear there would be unequal effects from one point of diversion to another with respect to ground water diversions as well as surface water diversions. It would seem that electing to change a point of diversion up stream would have an effect on prior appropriators similar to a person cutting in line. In addition to injury, it is emotionally upsetting. Most would agree that an act which causes physical and emotional injury is upsetting to the "Local Public Interest"

RESPONSE TO INTERROGATORY NO. 5.: With respect to resolving my protest the following is submitted:

1. No multiple points of diversion as they are similar to "line cutting".
2. Limit the diversion rate to the new well to 213 inches or 4.26 cfs as that is equal to the amount of Telford's original water right in the "Babcock well" and Telford's original water right which was in the "Wade Waddoups well".

RESPONSE TO REQUEST FOR PRODUCTION NO. 1.: With respect to all documents that reflect the facts known to anyone with access to the Web, please direct

your attention to the Idaho Department of Water Resources web site, specifically the water rights and adjudication search. With respect to all documents that reflect the facts known to employees of the department, they are in possession of those documents and currently I have obtained no copies from them, therefore please direct your request to them. With respect to the protesters, I have no knowledge of what the other protesters possess at this time. I however do have a copy of the "Well Use Agreement". A copy of which is included with this response. With respect to documents that reflect the facts known to the applicant and his attorney, I have no knowledge of what they have possession of.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2.: With respect to production of documents which demonstrate injury, please direct your attention to the database application "Google Earth" for confirmation of the information previously provided in this response document. I am currently unable to produce a copy of the elevations relevant to co-ordinates.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3.: With respect to this Request, my response is the same as the response given to Request No. 2.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4.: With respect to this Request, my response is the same as the response given to Request No. 1.

DATED this 13th day of December, 2010

A handwritten signature in black ink, appearing to read "Kirby A. Jensen", with a long horizontal flourish extending to the right.

Kirby A. Jensen

RECEIVED

DEC 14 2010

Department of Water Resources
Eastern Region

WELL USE AGREEMENT

DEC 28 1999

10:30 A.M.
BUTTE COUNTY RECORDER
Dayla Moore

This agreement is made and entered into this 24th day of September, 1999, by and between HAROLD BABCOCK and MARJORIE BABCOCK, his wife, of Butte County, Idaho, hereinafter referred to as **FIRST PARTY** and CANNON SHELLEY PROPERTY LIMITED PARTNERSHIP, an Idaho Limited Partnership Having As Its General Partners Alan M. Cannon Jr. and Katherine B. Cannon, husband and wife and Seth Alan Cannon, of Bingham County, Idaho, hereinafter referred to as **SECOND PARTY**,

WITNESSETH

That for and in consideration of the mutual covenants and agreements herein set forth, the parties hereto agree as follows:

1. **FIRST PARTY** is the record owner of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 29, T5N R26E, BM upon which an irrigation well, together with the pump, motor, electrical panel and other necessary and attendant equipment and facilities essential for diverting ground water and introducing the same into the delivery facilities, is located. Water has for many years been diverted from said well pursuant to water rights nos. 34-02230A and 34-12377, held by **FIRST PARTY**, and nos. 34-02330B and 34-12376, previously held by Everett T. Acors, Jr., and Eyleen Acors, his wife, and used for irrigation purposes by **FIRST PARTY** and the Acors on their respective farms. **SECOND PARTY** has purchased the interests of Acors and the parties hereto have agreed to restate, in writing, their relationship with respect to the operation, maintenance, inspection, repair, rehabilitation and replacement of said well and the attendant facilities and equipment.

2. **FIRST PARTY** hereby formally grants to **SECOND PARTY** a right-of-way and easement for access to the referenced well and facilities for the above described purposes and for the existing facilities for delivery of water under rights nos. 34-02330B and 34-12376 into the Moore Canal, and the operation, maintenance, inspection, repair, rehabilitation and replacement of the same. *He has abstracted the Moore Canal.*

3. The parties agree to share any and all electrical costs for operation of the motor and pump by means of which water is diverted from said well, on the basis of the amount of water diverted by and for the use of either party. Any and all rebates or credits from the supplier of electrical power for operation of the pump and motor shall be shared equally, as well as all costs of operation, maintenance, inspection, repair, rehabilitation and replacement of the well or any of the common equipment and facilities attendant thereto and used in connection therewith. It is understood that the bills or invoices from the electrical power provider presently come directly to **FIRST PARTY**, and upon receipt by **SECOND PARTY** of a legible copy thereof, together with a brief written division of the amount in accordance

with the power used by each, at **SECOND PARTY**'s address (707 East 1500 North, Shelley, Idaho 83274), **SECOND PARTY** shall pay **SECOND PARTY**'s proportionate share to the power provider forthwith. The parties agree to consult one another and to arrive at a mutual decision with respect to all other costs in advance of incurring any such.

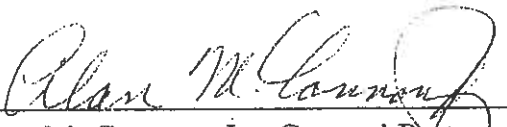
4. Should either party default in the performance of any of the covenants or agreements contained herein, such defaulting party shall pay to the other party all costs and expenses, including, but not limited to, a reasonable attorney's fee, including such fees on appeal, which the offended party may incur in enforcing this agreement or in pursuing any remedy allowed by law for breach hereof, whether such is incurred by the filing of suit or otherwise.

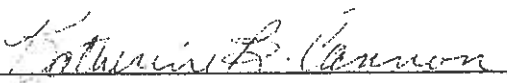
5. This agreement shall be binding upon and inure to the benefit of the heirs, personal representatives, administrators, successors and assigns of the parties hereto.

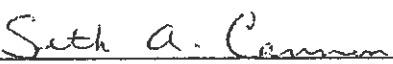

Harold Babcock


Marjorie Babcock
FIRST PARTY

CANNON SHELLEY PROPERTY
LIMITED PARTNERSHIP


Alan M. Cannon, Jr., General Partner

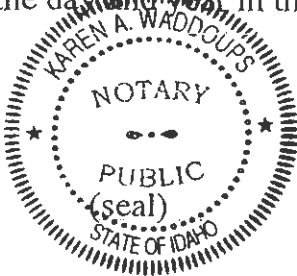

Katherine B. Cannon, General Partner


Seth Alan Cannon, General Partner
SECOND PARTY

STATE OF IDAHO)
)ss.
County of Bonneville)

On the 23 day of ~~September~~ *November*, 1999, before me, the undersigned, a notary public in and for said State, personally appeared **HAROLD BABCOCK**, known or identified to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



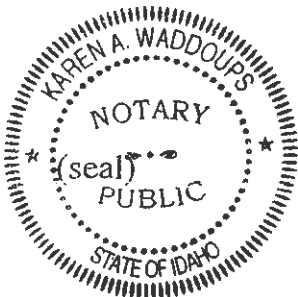
Karen A. Waddoups

Notary Public for Idaho
Residing at Idaho Falls, Idaho
My Commission Expires: _____

STATE OF IDAHO)
)ss.
County of Bonneville)

On the 23 day of ~~September~~ *November*, 1999, before me, the undersigned, a notary public in and for said State, personally appeared **MARJORIE BABCOCK**, known or identified to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



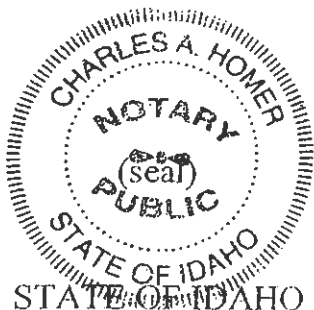
Karen A. Waddoups

Notary Public for Idaho
Residing at Idaho Falls, Idaho
My Commission Expires: _____

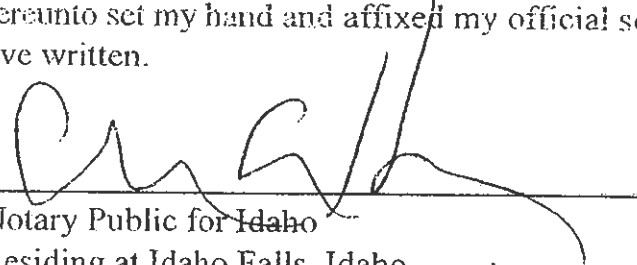
STATE OF IDAHO)
)ss.
County of Bonneville)

On the 24th day of September, 1999, before me the undersigned, a notary public in and for said State, personally appeared **ALAN M. CANNON, JR.**, known or identified to me to be one of the general partners in the partnership of **CANNON SHELLEY PROPERTY LIMITED PARTNERSHIP**, who subscribed said limited liability company name to the foregoing instrument, and acknowledged to me that such partnership executed the same in said limited liability company name.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



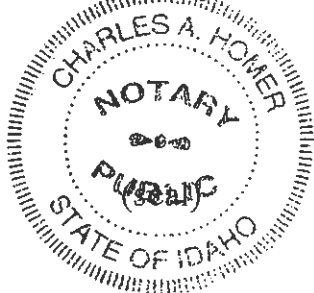
STATE OF IDAHO)
)ss.
County of Bonneville)

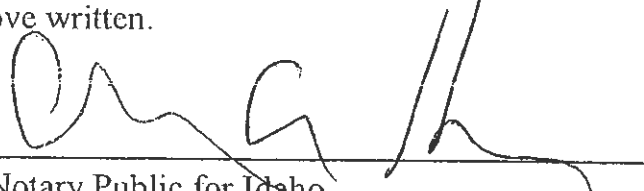


Notary Public for Idaho
Residing at Idaho Falls, Idaho
My Commission Expires: 12/6/2004

On the 24th day of September, 1999, before me the undersigned, a notary public in and for said State, personally appeared **KATHERINE B. CANNON**, known or identified to me to be one of the general partners in the partnership of **CANNON SHELLEY PROPERTY LIMITED PARTNERSHIP**, who subscribed said limited liability company name to the foregoing instrument, and acknowledged to me that such partnership executed the same in said limited liability company name.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



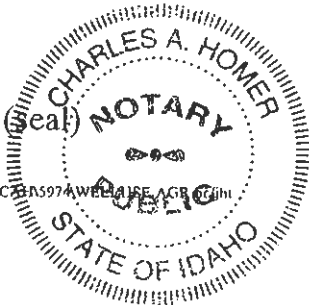


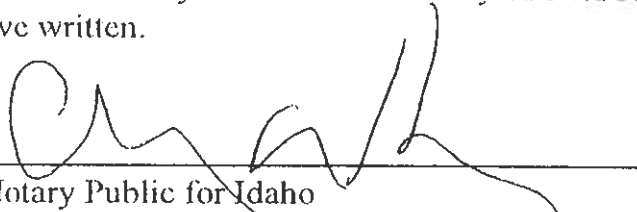
Notary Public for Idaho
Residing at Idaho Falls, Idaho
My Commission Expires: 12/6/2004

STATE OF IDAHO)
)ss.
County of Bonneville)

On the 24th day of September, 1999, before me the undersigned, a notary public in and for said State, personally appeared **SETH ALAN M. CANNON**, known or identified to me to be one of the general partners in the partnership of **CANNON SHELLEY PROPERTY LIMITED PARTNERSHIP**, who subscribed said limited liability company name to the foregoing instrument, and acknowledged to me that such partnership executed the same in said limited liability company name.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.





Notary Public for Idaho
Residing at Idaho Falls, Idaho
My Commission Expires: 12/6/2007

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