

DEC 14 2010

Department of Water Resources
Eastern Region

James Cefalo
Presiding Officer
Division of Water Rights
900 N. Skyline Dr. Ste A
Idaho Falls, ID 83402-1708

Sidney L. Schvaneveldt

**BEFORE THE
DEPARTMENT OF WATER RESOURCES
STATE OF IDAHO**

**IN THE MATTER OF APPLICATION
FOR TRANSFER NO. 70722 IN THE
NAME OF EL RAY AND/OR
JANICE BALLS**

**NOTICE OF EXHIBITS AND WITNESS
LIST TO BE ENTERED INTO HEARING**

**SIDNEY L. SCHVANEVELDT
PROTESTANT**

1. Sidney L. Schvaneveldt, Protestant to Application for Transfer No. 70722 with Idaho Department of Water Resources, 6762 W. 2200 S. Weston, ID 83286, does hereby enter into evidence and provide witness list to the above named proceeding. Please Send notices and correspondence regarding this Exception to:

Sidney L. Schvaneveldt
6762 W. 2200 S.
Weston, ID 83286

with a copy to:

Clinton Aston
P.O. Box 35
Weston, ID 83286

2. The existing well located at NW ¼ NE ¼ Sec. 8 Twp 16 S. Rge 38 E. B.M., County of Franklin, which the Applicant for Transfer No. 70722 seeks to transfer Right No. 13-2209

is located on property owned by Clinton K. Aston as recorded on Warranty Deed dated July 28, 2004, granted by protestant Sidney L. Schvaneveldt. The water from the well has been used by protestant for over thirty (30) years, and is currently used by Clinton K. Aston. The water from the well is used on property filed under Claim No. 13-4120 and has been used on property since June of 1962.

3. Please enter into evidence and assign a corresponding exhibit number for the enclosed documents, Claim to a Water Right No. 13-7661 in the name of El Ray Balls and Jay N. Fannesbeck, Idaho Department of Water Resources. These documents further show issues the Pre-Hearing Conference And/ Or Hearing Procedure need to address:

Issue

1. Will the proposed transfer reduce the quantity of water under existing water rights?
2. Will the proposed transfer constitute an enlargement in use of the original right?
4. Will the proposed transfer conflict with the local public interest, where local public interest, where local public interest is defined as interests that the people in the area directly affected by a proposed water use and its potential effects on the public water source?

The enclosed documents from the file of 13-7661 show evidence of the above mentioned issues, with all corresponding exceptions on file. The Claim for Water Right No. 13-7661 was filed after the date of Application for Transfer No. 70722, but is an attempt to claim groundwater not put to beneficial use before March 25, 1963, under provision 42-243, Idaho Code. It was also attempt to circumvent the IDWR procedures for transferring water under section 42-222, Idaho Code. The Statutory Claim does constitute as evidence in Application for Transfer No. 70722 and needs to be included as evidence.

4. Because of new ownership of property, Clinton Aston, P.O. Box 35 Weston, ID 83286, should be included as a party in the Hearing set for: January 5, 2011. The existing well located at NW ¼ NE ¼ Sec. 8 Twp 16 S. Rge 38 E. B.M., County of Franklin, which the Applicant for Transfer No. 70722 seeks to transfer Right No. 13-2209 is located on property owned by Clinton K. Aston as recorded on Warranty Deed dated July 28, 2004, granted by protestant Sidney L. Schvaneveldt.
4. Furthermore all individuals and entities that filed an exception for Claim to Water Right No. 13-7661, should be included as witnesses in the proceeding mentioned above. The issues that are relevant to Exception of 13-7661, are relevant to issues of Application for Transfer No. 70722. Please include those individuals as possible witnesses.

WHEREFORE, Protestant requests that you enter into evidence and assign exhibit numbers for the enclosed documents. Furthermore protestant asks that Statutory Claim No. 13-7661 be

evaluated in conjunction with the Application for Transfer No. 70722. Also include the witnesses before mentioned.

Dated this 13th day of December, 2010


Sidney L. Schvaneveldt

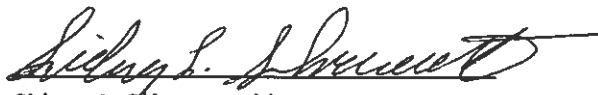
Certificate of Service

On the 13th day of December, 2010, I mailed a true and correct copy of the foregoing Evidence, and Witness List, postage prepaid to:

James Cefalo
Presiding Officer
Division of Water Rights
900 N. Skyline Dr. Ste A
Idaho Falls, ID 83402-1708

El Ray Balls
203 N. Westside Hwy
Weston, ID 83286

Jay Norman Fannesbeck
6022 W. Hwy 36
Weston, ID 83286


Sidney L. Schvaneveldt

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

CLAIM TO A WATER RIGHT

Under the provisions of Section 42-243, Idaho Code, any person claiming a water right established by diversion and application of water to beneficial use must file a claim with the Department of Water Resources. The filing of this claim does not confirm the water right claimed. Water rights represented by a valid permit, license, decree, or previous claim are exempt from this requirement, as are uses of water for domestic purposes as defined in Section 42-111, Idaho Code. A filing fee must be submitted with this claim. See the instruction sheet to determine the appropriate fee.

Notice is hereby given that JAY NORMAN FONNESBECK AND EIRAY BAILS
6022 W. Hwy 36 Weston ID 83286 Telephone No: 747-3295
(Mailing Address) (Name of Claimant) (Zip Code)

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

1. Date of Priority: (When the water was first applied to beneficial use) JUNE 13, 1960
A claim is not acceptable for the use of surface water with a priority later than May 20, 1971. A claim is not acceptable for the use of ground water with a priority date later than March 25, 1963, unless the water is used for domestic purposes as defined in Section 42-111, Idaho Code.

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

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

(cfs or af)	(Irrigation, Domestic, Stock, Etc.)	(Both dates inclusive) (MM/DD) (MM/DD)
Quantity <u>6 cfs</u>	Use <u>IRRIGATION</u>	Period of Use From <u>04/01</u> to <u>10/31</u>
Quantity _____	Use _____	Period of Use From _____ to _____
Quantity _____	Use _____	Period of Use From _____ to _____
Quantity _____	Use _____	Period of Use From _____ to _____

4. 6 cfs TOTAL QUANTITY USED.
(cfs or af)

5. A) Location of point of diversion is _____ 1/4 of NE 1/4 of NE 1/4, Govt. Lot _____
Sec. 36 Township 15S Range 37E B.M., FRANKLIN County; additional
points of diversion, if any: NW 1/4 NE 1/4 SEC. 8 T16S R38E

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch etc.).
Give sizes and capacities. Be specific. Describe any changes in the system and give the date of the change.
2 ELECTRIC TURBINE PUMPS, EACH PUMPING 3 CFS, WHICH CARRY WATER TO DITCHES THROUGH AN 18" DIAMETER PVC MAINLINE AND ALSO A 10" MAINLINE, WHERE IT TRAVELS TO 2 IRRIGATION POUNDS AND THEN IS REPUMPED AT OWNERS PROPERTY THROUGH IRRIGATION MAINLINE AND LATERALS

6. A) Describe the place of use within each 40-acre tract in the appropriate box using the symbols listed below. If the use is for irrigation, describe the location by listing the number of irrigated acres within each 40-acre tract.
D - domestic, S - stockwater, M - municipal, C - Commercial, I - Industrial, X - other

Twp	Rge	Sec	NE¼				NW¼				SW¼				SE¼				TOTAL ACRES
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SE	SW	
16S	38E	8			30	10					20			10	40	30	40	40	220
		9										40	40	10		40	40	40	90
		10														40	40	40	120
		11											30						30
		12											40	40					80
		21					40	40											80

TOTAL ACRES ~~650~~ 650

- B) If water is used for purposes other than irrigation, fully describe the use. Be specific. _____

NOTE: Include here the type and number of stock watered: _____

7. Remarks: POINT OF DIVERSION #1 AND LAND USE LIST IS PREVIOUSLY RECOGNIZED
BY WATER LICENSE 13-2209

8. Map - Attach an 8 1/2"x11" map clearly identifying the point of diversion and the place of use by 40-acre subdivisions, section, township and range of the public land survey system. (A photocopy of a USGS 7 1/2 minute topographic quadrangle map is preferred.) Attach an aerial photograph of the place of use if available.

State of Idaho)
County of Bonneville) ss.

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the forgoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiant's knowledge.

Elroy Ball
Claimant's Signature (and title if claim is for an organization)

Sworn to before me this 30th day of June, 2005.

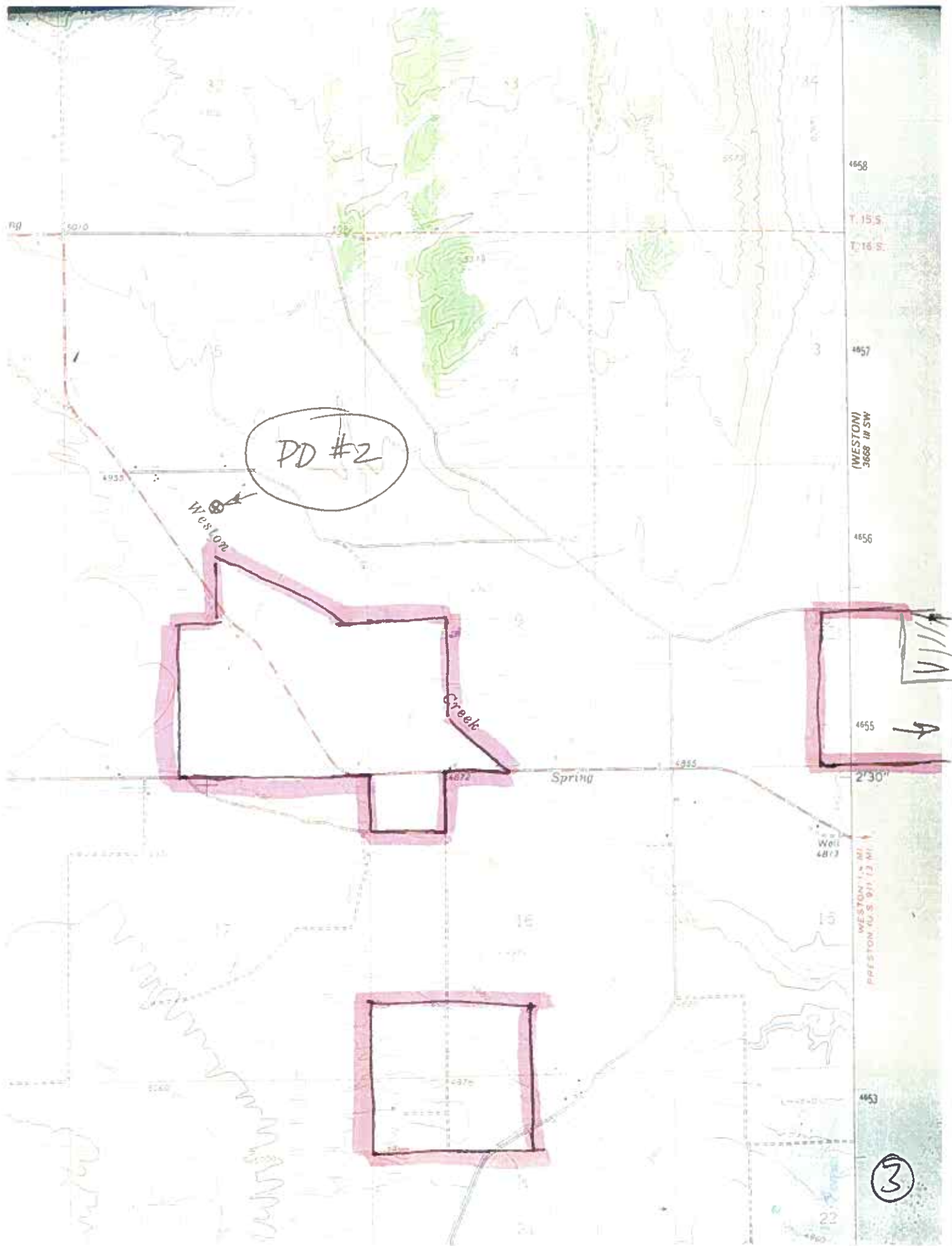
Wendy J. Murphy
Notary Public
Residing at: Idaho Falls
My commission expires: 6/23/06

FOR DEPARTMENT USE ONLY

Received by K. P. Ricketts Date 6/30/05
Prelim. check by _____ Date _____
Fee 250.00 Receipt # ED031017
Receipt prepared by KPR Date 6/30/05

Published in Preston Citizen
Publication dates 6/16 & 6/23/05
Publication checked by _____ Date _____
Exceptions filed by _____

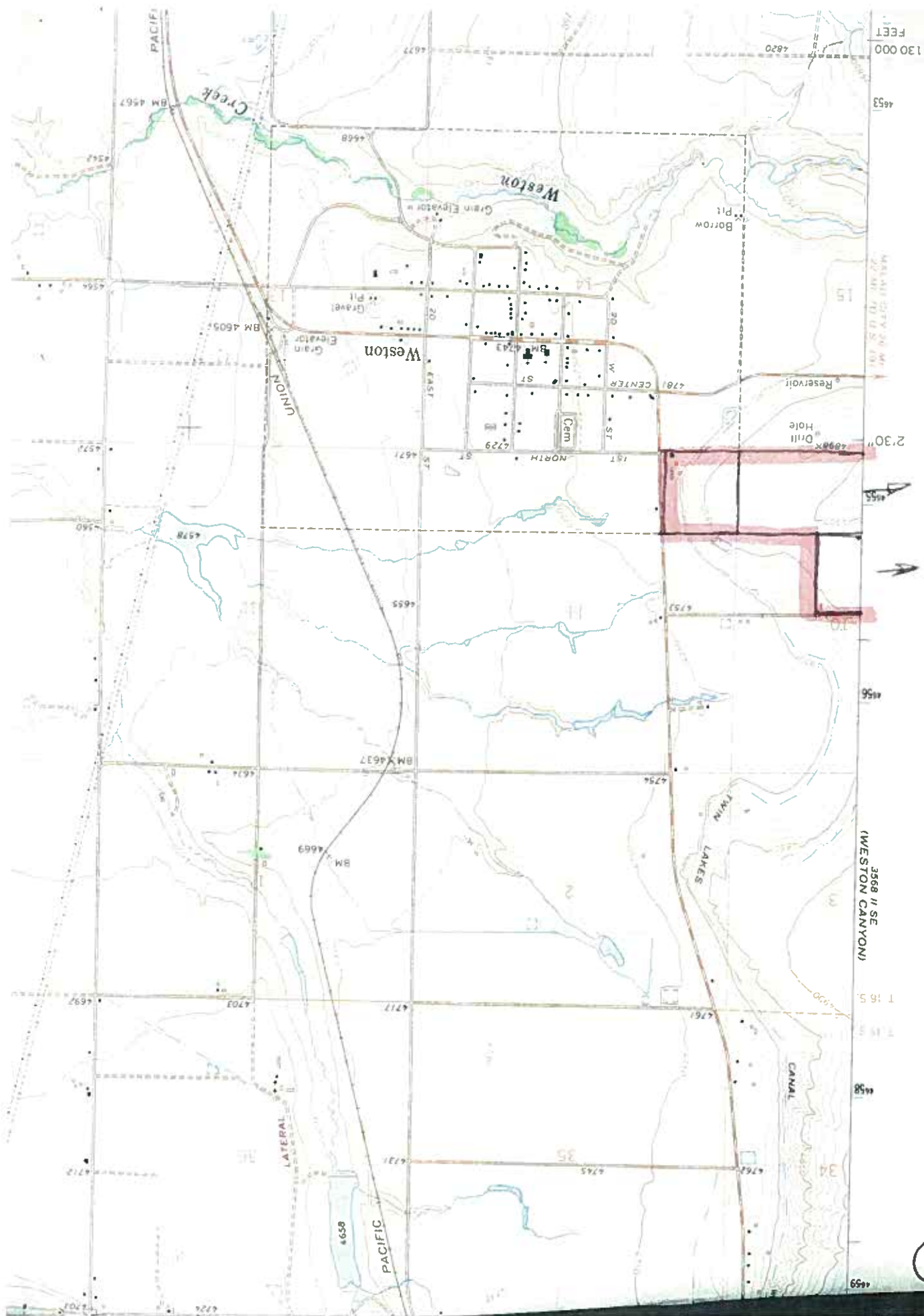
(2)



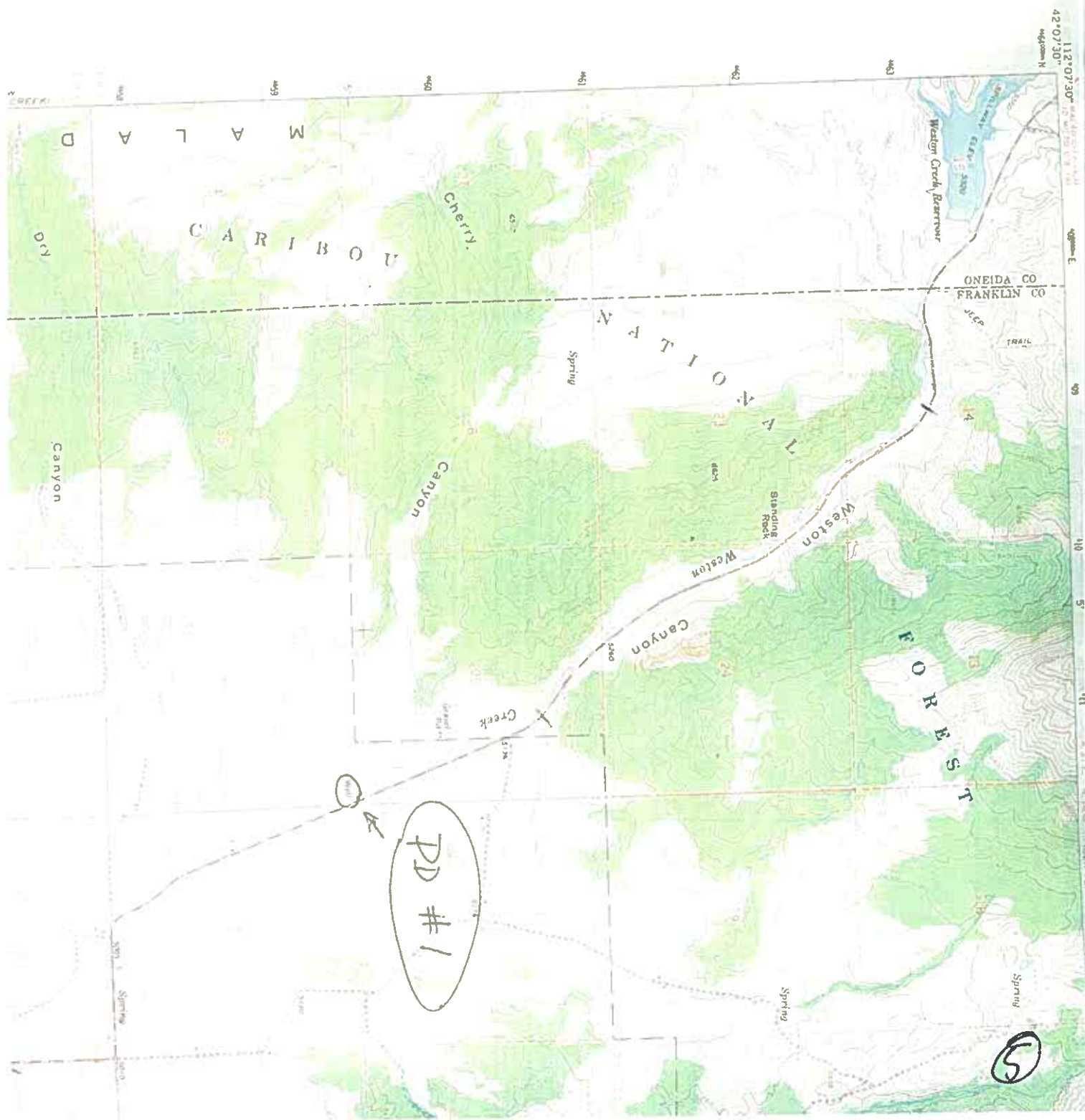
AS # 8983
(WESTON # 3683)

WESTON 1/4 (N) PRESTON 1/4 S 9/11 (3 MI)

③



4





State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. SKYLINE DR., SUITE A, IDAHO FALLS, ID 83402-1718

PHONE: (208) 525-7161 FAX: (208) 525-7177 WEB SITE: www.idwr.state.id.us

EASTERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

November 09, 2005

JAY N FONNESBECK
6022 W HWY 36
WESTON ID 83236

EL RAY BALLS
203 N WESTSIDE HWY
WESTON ID 83286

RE: Water Right Claim No 13-7661

Dear Claimant(s):

The Department of Water Resources acknowledges receipt of your water right claim. Please refer to the above referenced number in all future correspondence regarding this application.

A legal notice of the claim has been prepared and is scheduled for publication in the Preston Citizen on November 16 and 23, 2005. If exceptions to the claim are filed you will be sent a copy of the exceptions(s).

The filing and advertising of the claim does not confirm the water right claimed. It will serve to record and preserve the information and the evidence, including any exceptions, regarding the claim.

If, at a later date, you find that you have additional information or supporting evidence that you would like to have included with the claim, you may have the information or evidence added at any time. Corrections to the claim may be made by filing an amended claim; no additional filing fees are required to amend a claim.

Also, please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

6

We are enclosing a copy of the claim for your records. Please feel free to contact this office if you have any questions.

Sincerely,

Sharla Cox
Administrative Assistant

Enclosure(s)



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. SKYLINE DR., SUITE A, IDAHO FALLS, ID 83402-1718

PHONE: (208) 525-7161 FAX: (208) 525-7177 WEB SITE: www.idwr.state.id.us

EASTERN REGION
November 14, 2005

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

Jay Fannesbeck
6022 W Hwy 36
Weston ID 83236

El Ray Balls
203 N Westside Hwy
Weston ID 83236

RECEIVED

DEC 05 2005

Department of Water Resources
Eastern Region

RE: Claim to A Water Right 13-7661

Dear Mr. Fannesbeck and Mr. Balls:

Please find a copy of the "Amended Place of Use" sheet that you faxed to our office on Monday, November 14, 2005. First of all, the acreage was not totaled correctly. The total acres were 475 and you had written 474. I had to change the total to 475. I hope that is ok with you.

Now that you have amended your Claim with the place of use, you need to revise your map that came in with the claim. I have made a color copy of the one you submitted. Please revise this map or make a new one and submit to our office as soon as possible.

If you have any questions, please feel free to contact us.

Sincerely,

Sharla Cox
Administrative Assistant

Enclosure: Copy of Amended Place of Use
Copy of Claim Map
Copy of Blank Map – to use for amendment

Place(s) of use:

Place of Use Legal Description: IRRIGATION FRANKLIN County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
16S	38E	8		SWNE	2724		SENE	106						
				NESE	40		NWSE	14		SESE	2527			
		9		NWSW	12		SWSW	4039		SESW	4			
		10		NWSE	39		SWSE	40		SESE	40			
		11		SWSW	11									
		16		NWNW	28									
				SWSW	36		SESW	36						
		21		NENW	3736		NWNW	36		NWNE	6			

Total Acres: ~~475~~ 474

226

171

77

Dates:

Licensed Date:

Decreed Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

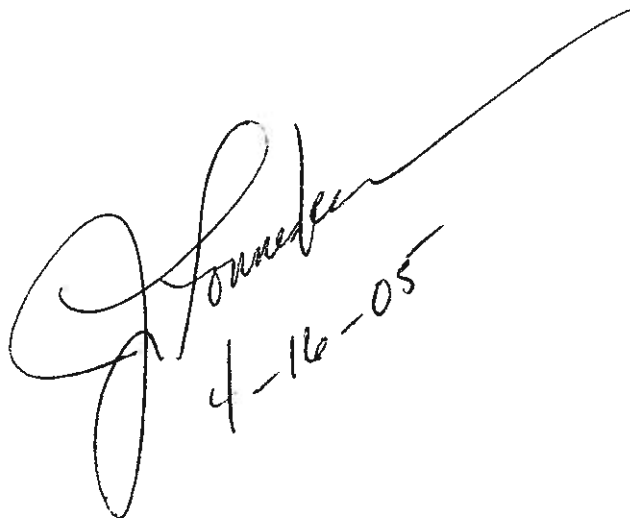
Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date: 06/30/2005

Protest Deadline Date: 12/05/2005

Number of Protests: 3



4-16-05

Other Information:

State or Federal:

Owner Name Connector: And/Or

Water District Number:

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

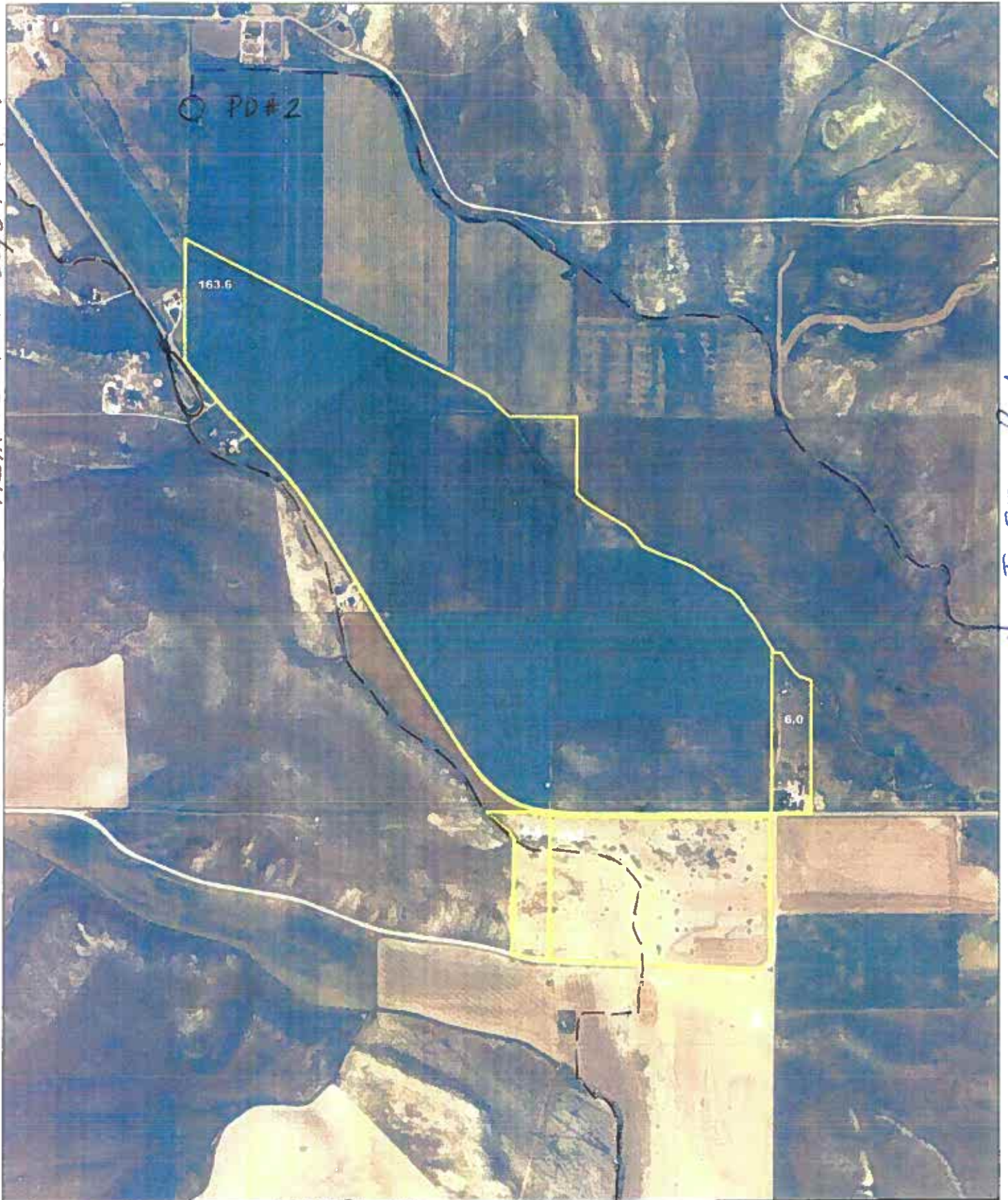
Close

RECEIVED
DEC 15 2005
Department of Water Resources
Eastern Region

9

From PD#1 to Jay's Pond #1

To E/Rays Pond



Tract 17395
Farm 1786

RECEIVED
DEC 05 2005

To Jay's Pond #2

Department of Water Resources
Eastern Region

0 0.08 0.16 0.24 0.32 Miles



Map Printed: Nov 16, 2005

From PD#1 to Jay's Pond #2



Tract 17395
Farm 1786

RECEIVED
DEC 05 2005

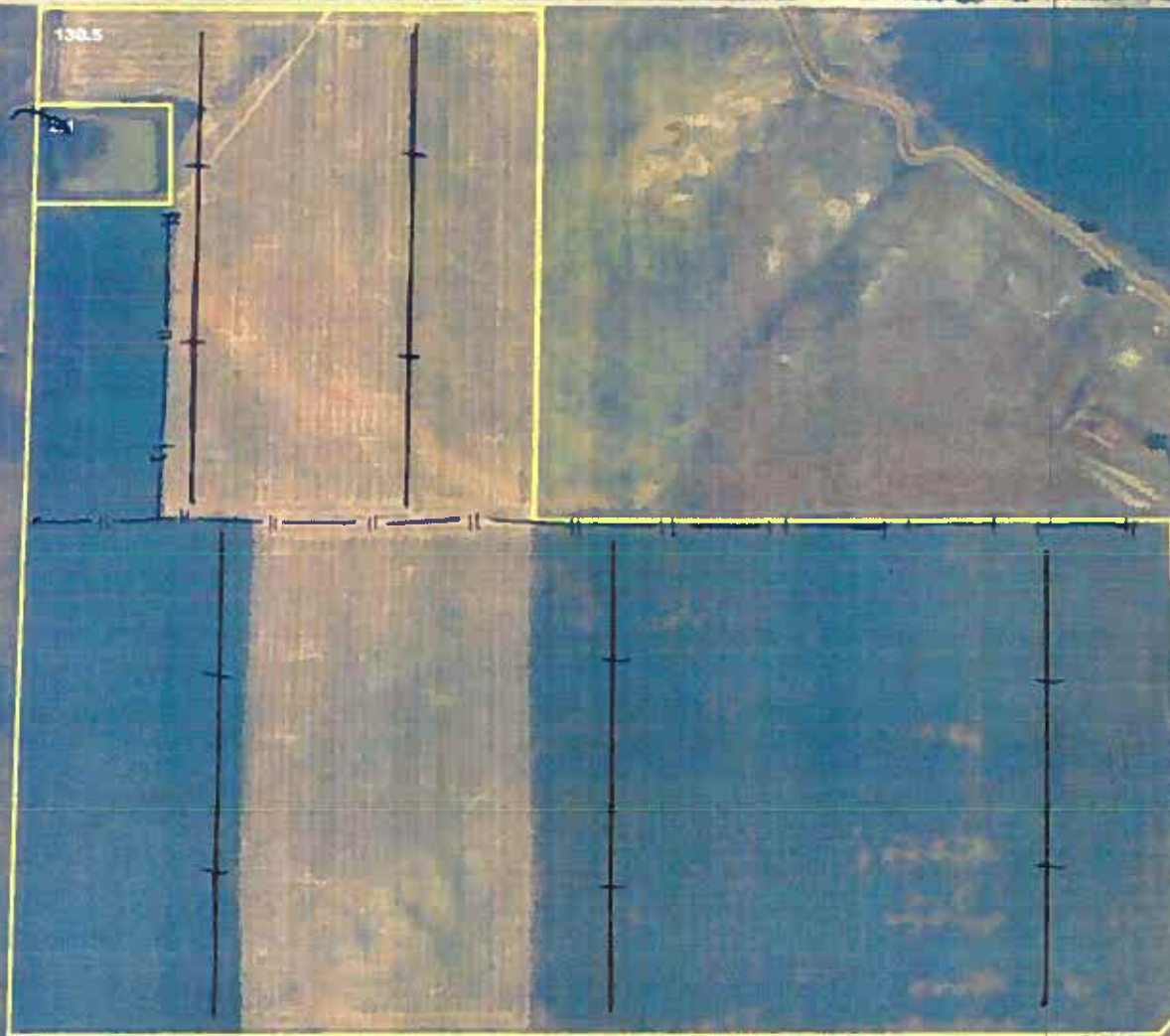
Department of Water Resources
Eastern Region

0.05 0 0.05 0.1 0.15 0.2 Miles



Map Printed: Nov 16, 2005

From PD #1 or #2 to Elmer's Pond



Tract 216 RECEIVED
Farm 2875 DEC 05 2005

Department of Water Resources
Eastern Region

0.05 0 0.05 0.1 0.15 0.2 Miles



Map Printed: Nov 17, 2005

42°07'30"

Wagon Creek Reservoir

ONEIDA CO
FRANKLIN CO

FOREST

SCANNED
11/07/10 11:01

NATIONAL

Weston Canyon

Standing Rock

Cherry

Canyon

Creek

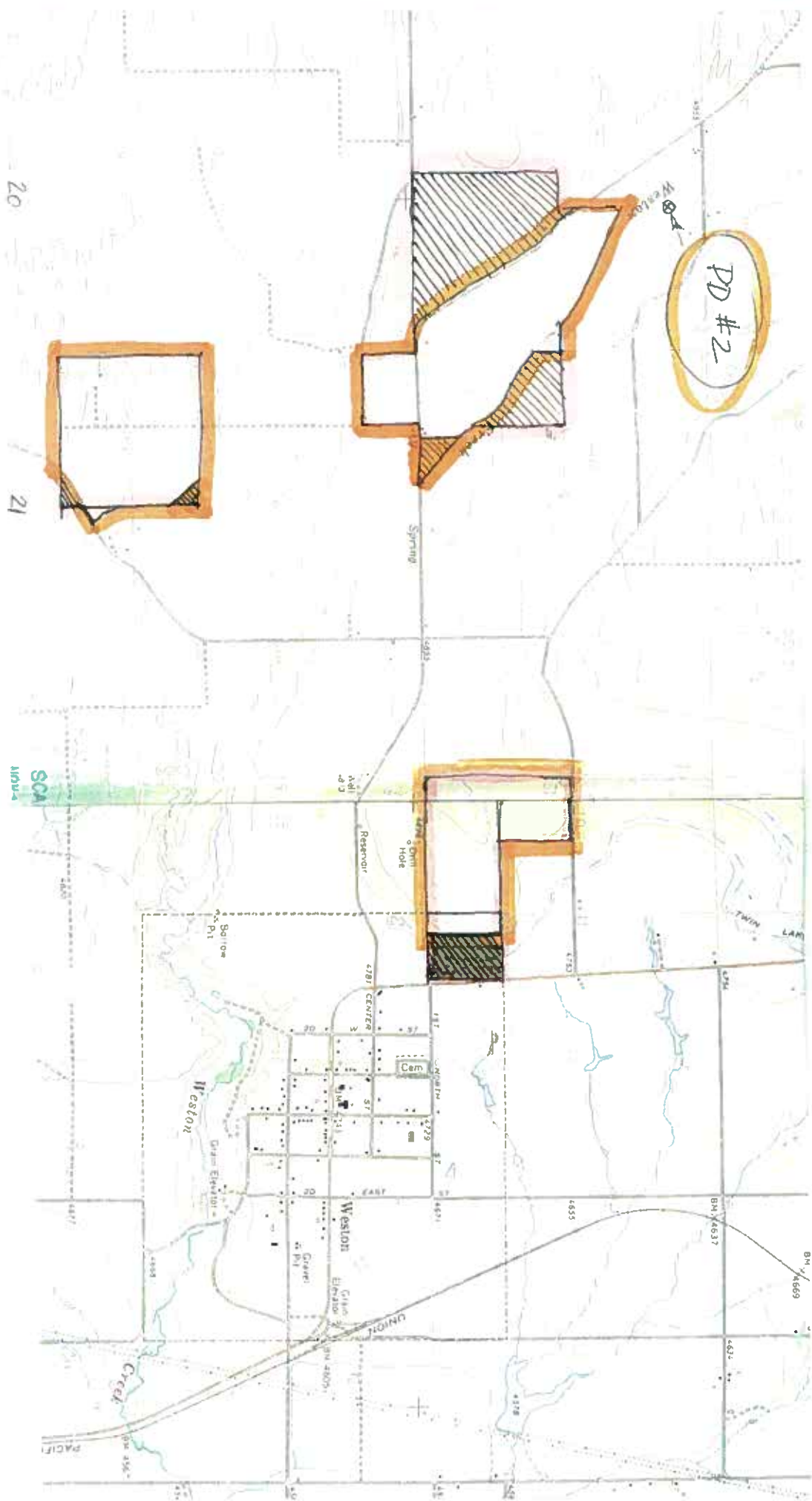
Gravel Pit

DD #1

W40

Spring

13



DD #2



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. SKYLINE DR., SUITE A, IDAHO FALLS, ID 83402-1718

PHONE: (208) 525-7161 FAX: (208) 525-7177 WEB SITE: www.idwr.state.id.us

EASTERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

November 09, 2005

Legal Notice Department

PRESTON CITIZEN

PO BOX 472

PRESTON ID 83263

RE: Statutory Claim No. 13-7661

Dear LEGAL NOTICE DEPARTMENT:

Enclosed you will find a legal notice which we wish to have published in your newspaper on the dates indicated (once a week for two consecutive weekly issues). If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office before December 5, 2005. Your cooperation is appreciated.

Sincerely

Sharla Cox
Administrative Assistant

15

The following claim(s) have been filed based on diversion and beneficial use of water:

13-7661

JAY N FONNESBECK
6022 W HWY 36
WESTON ID 83236
And/Or
EL RAY BALLS
203 N WESTSIDE HWY
WESTON ID 83286

Point(s) of Diversion: NWNE S8 T16S R38E and NENE S36 T15S R37E, FRANKLIN County
Source GROUND WATER

Use: IRRIGATION 04/01 To 10/31 6 CFS
Total Diversion: 6 CFS

Priority Date: 6/13/1960

Place Of Use: IRRIGATION

T16S R38E S10	NWSE SWSE SESE
T16S R38E S11	SWSW
T16S R38E S16	NWNW SWSW SESW
T16S R38E S21	NENW NWNW
T16S R38E S8	SWNE SENE NESW SESW NESE NWSE SWSE SESE
T16S R38E S9	NWSW SWSW SESW

Number of Acres 650

Exceptions to a claim may be filed with the Department of Water Resource, Eastern Region, 900 N Skyline Dr Ste A, Idaho Falls ID 83402 together with an exception fee of \$25.00.

KARL J DREHER, Director

Published on November 16 and 23, 2005



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. SKYLINE DR., SUITE A, IDAHO FALLS, ID 83402-1718

PHONE: (208) 525-7161 FAX: (208) 525-7177 WEB SITE: www.idwr.state.id.us

EASTERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

November 14, 2005

Preston Citizen
PO Box 472
Preston ID 83263
Fax 852-0158

Dear Anne:

Please find enclosed a REVISED legal advertisement for Jay Fannesbeck and ElRay Balls. I mailed it down to you last Wednesday, November 9, 2005. Please run this one instead of the one I mailed you.

If you have any questions, please feel free to contact me.

Sincerely,

Sharla Cox
Administrative Assistant

The following claim(s) have been filed based on diversion and beneficial use of water:

13-7661

JAY N FONNESBECK
6022 W HWY 36
WESTON ID 83236

And/Or

EL RAY BALLS
203 N WESTSIDE HWY
WESTON ID 83286

Point(s) of Diversion: NWNE S8 T16S R38E and NENE S36 T15S R37E, FRANKLIN County

Source GROUND WATER

Use: IRRIGATION 04/01 To 10/31 6 CFS

Total Diversion: 6 CFS

Priority Date: 6/13/1960

Place Of Use: IRRIGATION

T16S R38E S10 NWSE SWSE SESE

T16S R38E S11 SWSW

T16S R38E S16 NWNW SWSW SESW

T16S R38E S21 NENW NWNW

T16S R38E S8 SWNE SENE NESE NWSE SESE

T16S R38E S9 NWSW SWSW SESW

Number of Acres 475

Exceptions to a claim may be filed with the Department of Water Resource, Eastern Region, 900 N Skyline Dr Ste A, Idaho Falls ID 83402 together with an exception fee of \$25.00.

KARL J DREHER, Director

Published on November 16 and 23, 2005



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. SKYLINE DR., SUITE A, IDAHO FALLS, ID 83402-1718

PHONE: (208) 525-7161 FAX: (208) 525-7177 WEB SITE: www.idwr.state.id.us

EASTERN REGION
November 14, 2005

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

Jay Fannesbeck
6022 W Hwy 36
Weston ID 83236

El Ray Balls
203 N Westside Hwy
Weston ID 83236

RE: Claim to A Water Right 13-7661

Dear Mr. Fannesbeck and Mr. Balls:

Please find a copy of the "Amended Place of Use" sheet that you faxed to our office on Monday, November 14, 2005. First of all, the acreage was not totaled correctly. The total acres were 475 and you had written 474. I had to change the total to 475. I hope that is ok with you.

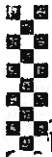
Now that you have amended your Claim with the place of use, you need to revise your map that came in with the claim. I have made a color copy of the one you submitted. Please revise this map or make a new one and submit to our office as soon as possible.

If you have any questions, please feel free to contact us.

Sincerely,

Sharla Cox
Administrative Assistant

Enclosure: Copy of Amended Place of Use
Copy of Claim Map
Copy of Blank Map – to use for amendment



Report

FAX # 525-7177

Place(s) of use:

Place of Use Legal Description: IRRIGATION FRANKLIN County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
16S	38E	8		SWNE	30 27		SENE	10						
				~~SESW~~	~~20~~		~~SESW~~	~~10~~						
				NESE	40		NWSE	30 14		~~SWSE~~	~~40~~		SESE	40 25
		9		NWSW	40 12		SWSW	40		SESW	40 4			
		10		NWSE	40 31		SWSE	10		SESE	40			
		11		SWSW	30 11									
		16		NWNW	30 28									
				SWSW	40 36		SESW	40 36						
		21		NENW	40 37		NWNW	40 36						

Total Acres: ~~650~~ 479

230

176

44

25

Dates:

Licensed Date:

Decreed Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date: 06/30/2005

Protest Deadline Date: 12/05/2005

Number of Protests: 3

344 Acres from 13-2209

130

474

[Signature]
11-14-05

Other Information:

State or Federal:

Owner Name Connector: And/Or

Water District Number:

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

Close

Received Time Nov. 14, 8:35AM

<http://www.idwr.state.id.us/apps/ExtSearch/RightReportAJ.asp?BasinNumber=13&SequenceNu...> 11/11/2005

20

No 6049

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO,

County of Franklin

} ss.

Rodney Boam

being duly sworn,

deposes and says:

That he is the Editor of THE PRESTON CITIZEN, a weekly newspaper published at Preston, in the County of Franklin and State of Idaho; that said paper has been and is in general circulation in the county aforesaid, and in the vicinity of Preston; that the advertisement, a copy of which is attached hereto, was published in said

newspaper once a week for 2 consecutive weeks in the regular and entire issue of said paper during the period of time of publication, and was published in the newspaper proper and not a supplement; that said paper has been established and regularly published for more than seventy-eight consecutive weeks prior to the date of first publication of said advertisement.

Such notice was published in the issue beginning with

Nov. 16, 2005, and ending
with the issue of Nov. 23, 2005

R. Boam

Fee \$ 78.71

Subscribed and sworn to before me this 30th day

of Nov. 2005
Ann Rawlings

Notary Public, Residing at Preston, Idaho

My Commission Expires 10/26, 2006

Department of Water Resources
Eastern Region

DEC 05 2005

RECEIVED

WATER CLAIM

The following claim(s) have been filed based on diversion and beneficial use of water: 13-7661

JAY N FONNESBECK
6022 W HWY 36
WESTON ID 83236

And/Or
EL RAY BALLS
203 N WESTSIDE HWY
WESTON ID 83286

Point(s) of Diversion: NWNE
S8 T16S R38E and NENE
S36 T15S R37E, FRANKLIN
County

Source GROUND WATER
Use: IRRIGATION 04/01 To
10/31 6 CFS

Total Diversion: 6 CFS
Priority Date: 6/13/1960
Place Of Use: IRRIGATION
T16S R38E S10 NWSE SWSE
SESE

T16S R38E S11 SWSW
T16S R38E S16 NWNW SWSW
SESW

T16S R38E S21 NENW NWNW
T16S R38E S8 SWNE SENE
NESE NWSE SESE

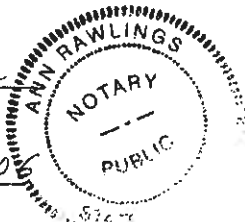
T16S R38E S9 NWSW SWSW
SESW

Number of Acres 474

Exceptions to a claim may be filed with the Department of Water Resource/Eastern Region, 900 N Skyline Dr Ste A, Idaho Falls ID 83402 together with an exception fee of \$25.00.

KARL J DREHER
DIRECTOR

Legal No. 6049 - Publish
Nov. 16 and 23, 2005.



(21)



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. SKYLINE DR., SUITE A, IDAHO FALLS, ID 83402-1718

PHONE: (208) 525-7161 FAX: (208) 525-7177 WEB SITE: www.idwr.state.id.us

EASTERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

November 09, 2005

JAY N FONNESBECK
6022 W HWY 36
WESTON ID 83236

EL RAY BALLS
203 N WESTSIDE HWY
WESTON ID 83286

RE: Water Right Claim No 13-7661

Dear Claimant(s):

The Department of Water Resources acknowledges receipt of your water right claim. Please refer to the above referenced number in all future correspondence regarding this application.

A legal notice of the claim has been prepared and is scheduled for publication in the Preston Citizen on November 16 and 23, 2005. If exceptions to the claim are filed you will be sent a copy of the exceptions(s).

The filing and advertising of the claim does not confirm the water right claimed. It will serve to record and preserve the information and the evidence, including any exceptions, regarding the claim.

If, at a later date, you find that you have additional information or supporting evidence that you would like to have included with the claim, you may have the information or evidence added at any time. Corrections to the claim may be made by filing an amended claim; no additional filing fees are required to amend a claim.

Also, please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

22

We are enclosing a copy of the claim for your records. Please feel free to contact this office if you have any questions.

Sincerely,

Sharla Cox
Administrative Assistant

Enclosure(s)

RECEIVED
DEC 05 2005
Department of Water Resources
Eastern Region

**BEFORE THE
DEPARTMENT OF WATER RESOURCES
STATE OF IDAHO**

**Exception of PacifiCorp,
an Oregon Corporation, dba
Utah Power**

Protestant

Claudia Conder
PacifiCorp
1407 West North Temple, Suite 320
Salt Lake City UT 84116

#197827 v1

24

Jody L. Williams
Holme Roberts & Owen, LLP
299 South Main Street, Suite 1800
Salt Lake City, Utah 84111-2263

2. Protestant owns water rights in the Bear River and Bear Lake decreed in the matter of *Utah Power & Light Company v. The Last Chance Canal Company, Limited, et al*, in Equity No. 203, July 14, 1920, and *Utah Power & Light Company v. Richmond Irrigation Company, et al*, February 21, 1922, as well as other rights in the Bear River below Claimant's proposed point of diversion.

3. Claimant has filed a Claim to a Water Right for 6.0 cfs to be used for domestic use, stock watering and irrigation.

4. The source for the Claim is a well which is the source for licensed Water Right No. 13-2209. Water from this source is fully appropriated.

5. On August 12, 2001, the Director of the Idaho Department of Water Resources issued the "Order Designating the Bear River Ground Water Management Area. Conclusion of Law No. 4 states that "Diversion and use of ground water for new consumptive purposes in the Bear River Basin generally reduces the amount of surface water available to supply prior water rights."

6. Protestant owns water rights in Bear Lake which is used to deliver supplemental irrigation water to surface water users diverting from the Bear River. The recipients of this supplemental irrigation water have delivery contracts with PacifiCorp. Diversions of water under the Statutory Claim could result in less water for surface water users, causing PacifiCorp to deliver them more water from Bear Lake. Additionally, Claimants' use would leave less water for Protestant to use in its hydroelectric plants under Protestant's nonconsumptive water rights.

7. Using water under both the Statutory Claim and the Licensed Water Right would enlarge both the Claim and the Licensed Water Right.

8. In addition to diminishing the quantity of Bear River water available to satisfy prior existing water rights, Protestant believes that granting the above-referenced Statutory Claim could conflict with the local public interest in the three following areas by reducing groundwater

25

inflow into the Bear River: First, increased reliance by existing users on supplemental irrigation water delivered from Bear Lake to make up the depletion from Bear River natural flow will stress Protestant's ability to supply the full amount of Bear Lake water already allocated to existing water users. Second, when the level of Bear Lake drops, recreation and other non-consumptive uses at the lake are adversely affected. The Idaho State Parks & Recreation boat launch becomes unusable; the State park receives little use due to its distance from the water; facilities built with State funds are unusable, and visitor days and the attendant revenue they produce for the State plummet. The local economy at the lake suffers. Third, traditional habitat for indigenous fish in Bear Lake may be decreased. Other wildlife species which depend on the lake may have similar problems due to habitat loss. The spread of noxious weeds and tamarisk is accelerated along the lake shore.

9. Claimants Balls and Fannesbeck have filed the Statutory Claim to irrigate acreage presently covered by Licensed Water Right No. 13-2209. Any irrigation on the land covered by Licensed Water Right No. 13-2209 occurring from the date of the application, June 13, 1960, to the present occurred using Water Right No. 13-2209. Now, Claimants assert that they commenced irrigating the land on June 13, 1960 without a water right in order to declare that it was irrigated by the Statutory Claim.

10. Since most of the land now claimed to be irrigated under the Statutory Claim was actually irrigated under the Licensed Water Right, the Statutory Claim must not be accepted.

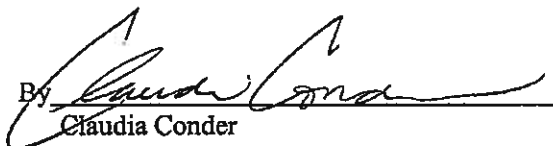
11. Claimant Balls filed Transfer 70722 on July 29, 2003 to transfer the place of use of Water Right No. 13-2209 to new acreage. Protestant did not protest Transfer 70722 because, at the time filed, it did not appear to enlarge the licensed water right. Claimant Balls appears to have filed Transfer 70722 in order to leave the previously irrigated land "bare" so that Claimants Balls and Fannesbeck could declare that it was being irrigated by the Statutory Claim. If the land was being irrigated under the Statutory Claim, the Transfer must be denied. If the land was being irrigated under the Licensed Water Right, the Statutory Claim must not be accepted.

12. Claimants are including land in the Statutory Claim that has not actually been irrigated or that was not included in the Licensed Water Right lands.

WHEREFORE, Protestant respectfully protests the above-referenced Statutory Claim and requests that it not be accepted, and that Transfer T70722 be evaluated in conjunction with the Statutory Claim.

DATED this 5th day of December, 2005.

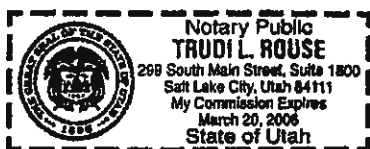
PACIFICORP, dba UTAH POWER

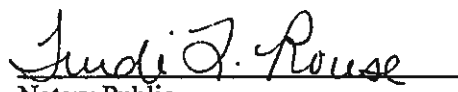
By 
Claudia Conder
PacifiCorp
1407 West North Temple, Suite 320
Salt Lake City UT 84116

STATE OF UTAH)
 :SS
COUNTY OF SALT LAKE)

On this 5th day of December 2005, before me, the undersigned, a notary public in and for said state, personally appeared Claudia Conder, known to me to be the person whose name is subscribed to the within instrument, who duly acknowledged to me that she executed the same.

WITNESS my hand and official seal.




Notary Public

MAILING CERTIFICATE

On this 5th day of December, 2005, I mailed a true and correct copy of the foregoing Protest, postage prepaid, to:

Idaho Department of Water Resources
Eastern Division
900 North Skyline Drive
Idaho Falls, Idaho 83402

David Cottle
3539 Brighton Point Drive
Salt Lake City UT 84121

Steve Clyde, Esq.
Clyde, Snow, Sessions & Swenson
201 South Main Suite 1300
Salt Lake City, Utah 84111

Jay N. Fannesbeck
6022 W. Hwy 36
Weston ID 83236

El Ray Balls
203 No. Westside Hwy
Weston ID 83286

Randall C. Budge, Esq.
Racine, Olson, Nye, Cooper & Budge
P O Box 1391
Pocatello, ID 83204-1391

Cheryl C. Williss, Chief
Division of Water Resources
P.O. Box 25486
Denver Federal Building Mail Stop 60189
Denver, Colorado 80225

Judi Rouse

November 26, 1999

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 42-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. Matter being protested Application for claim to a Water Right No. 13-7661 in the name of Jay Norman Fannesbeck and/or ElRay Balls

2. Name of protestant Sidney L. Schvaneveldt

3. Protestant's Representative for service (If different than protestant)
Clinton K. Aston

4. Service mailing address P.O. Box 35, Weston, ID 83286

5. Service telephone no. (435) 770-5999

6. Basis of protest (including statement of facts and law upon which the protest is based)

The existing well located at NW 1/4 NE 1/4 Sec. 8 Twp 16 S. Rge 38 E. B.M., County of Franklin as described on application for claim to water 13-7661 in the name of Jay Norman Fannesbeck and/or ElRay Balls, noted as PD #2 is located on property not owned by applicant's. The current owner of property is Clinton K. Aston as recorded on Warranty Deed dated July 28, 2004, granted by protestant Sidney L. Schvaneveldt. The water from the well has been used by protestant for over thirty (30) years, and is currently used by Clinton K. Aston. The water from well is used on property filed under Claim No. 13-4120 and has been used on property since June of 1962. Applicant's are attempting to file a claim for ground not previously put to beneficial use under provision 42-243, Idaho Code. "A claim is not acceptable for the use of ground water with a priority date later than March 25, 1963". Water rights for ground owned by applicant's is represented by Water Right No. 13-2209. Applicant's are also attempting to circumvent IDWR procedures for transferring water under section 42-222, Idaho Code, as evidenced by application for Transfer No. 70722 in the name of ElRay Balls and/or Janice Balls, with corresponding water right No.s 13-7643 and 13-7644 pending transfer.

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(additional pages may be attached to describe nature of the protest)

7. What would resolve your protest?

Denial of Application for claim to a Water Right No. 13-7661 in the name of Jay Norman Fannesbeck and/or ElRay Balls

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

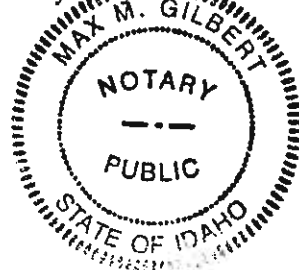
Signed this 19th day of Sept, 2005

Sidney L. Schvaneveldt
Protestant

Clinton K. Aston
Protestant's Representative

State of IDAHO
County of FRANKLIN

On this 19 day of September, 2005, before me, MAX M. GILBERT, a Notary Public in and for said State, personally appeared SIDNEY L. SCHVANEVELDT & CLINTON K. ASTON, known or identified to me 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 witness whereof I have set my hand and affixed my official seal the day and month above written.



Max M. Gilbert
Notary Public State of IDAHO
Residing at: PRESTON
Commission Expires 3-6-06

79

Receipt
#E031282

November 26, 1999

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

NOV 28 2005

Department of Water Resources
Eastern Region

NOTICE OF PROTEST

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 42-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. Matter being protested Application for claim to a Water Right No. 13-7661 in the name of Jay Norman Fannesbeck and/or Elray Balls
2. Name of protestant Weston City Council

3. Protestant's Representative for service (If different than protestant)

Mayor Leo Daley

4. Service mailing address Weston Clerk 283 E. Depot Weston, Id. 83286

5. Service telephone no. 208-747-3512

6. Basis of protest (including statement of facts and law upon which the protest is based)

This claim expands the historical water usage of well #132209 and well #134120 Weston City's primary source of culinary water would be affected by continuous pumping of 6 CFS of water from wells referenced in this claim. The city Well is in the same aquifer and close proximity.

(additional pages may be attached to describe nature of the protest)

7. What would resolve your protest? Denial of Application for claim to a Water Right No. 13-7661

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 11 day of 24, 20 05.

Weston City
Protestant

Mayor - Leo R Daley
Protestant's Representative

Receipt
#E031471
(30)

November 26, 1999

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED
SEP 27 2005

NOTICE OF PROTEST

Department of Water Resources
Eastern Region

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 42-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. Matter being protested Claim No. 13-7661 = Jay Norman Fommesbeck and/or Elroy Balls
2. Name of protestant Sterling Bingham
3. Protestant's Representative for service (If different than protestant)
Kent Aston
4. Service mailing address PO Box 24 Weston, Id. 83286
5. Service telephone no. 208-747-3721
6. Basis of protest (including statement of facts and law upon which the protest is based)

This claim is not valid because a claim is being made for property that has not been watered from the sources named prior to March 25, 1963, as specified in Idaho State Code. Therefore, the priority date of June 13, 1960 is not valid.

(additional pages may be attached to describe nature of the protest)

7. What would resolve your protest? Remove property from the claim that has not been previously noted on existing water rights, established prior to March 25, 1963. Reference water right # 132209

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Receipt
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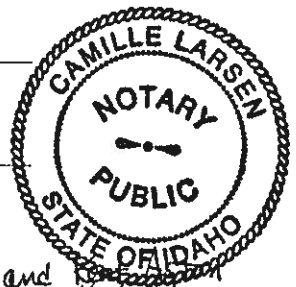
Signed this 7th day of Sept., 2005

Sterling Bingham

Protestant

Kent Aston

Protestant's Representative



State of Idaho
County of Franklin

On September 7, 2005 personally appeared before me Sterling Bingham and Kent Aston the signer(s) of the within instrument, who duly acknowledged to me that they executed the same.

Camille Larsen
06/08/07, Weston ID

31

November 26, 1999

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 42-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. Matter being protested Application for claim to a Water Right No. 13-7661 in the name of Jay Norman Fannesbeck and/or ElRay Balls
2. Name of protestant Clinton K. Aston
3. Protestant's Representative for service (If different than protestant)

4. Service mailing address P.O. Box 35, Weston, ID 83286

5. Service telephone no. (435) 770-5999

6. Basis of protest (including statement of facts and law upon which the protest is based) Department of Water Resources Eastern Region

The existing well located at NW 1/4 NE 1/4 Sec. 8 Twp 16 S. Rge 38 E. B.M., County of Franklin as described on application for claim to water 13-7661 in the name of Jay Norman Fannesbeck and/or ElRay Balls, noted as PD #2 is located on property owned by protestant, Clinton K. Aston as recorded on Warranty Deed dated July 28, 2004, granted by Sidney L. Schvaneveldt. The water from the well has been used by Sidney Schvaneveldt for over thirty (30) years, and is currently used by Clinton K. Aston. The water from well is used on property filed under Claim No. 13-4120 and has been used on property since June of 1962. Applicant's are attempting to file a claim for ground not previously put to beneficial use under provision 42-243, Idaho Code. "A claim is not acceptable for the use of ground water with a priority date later than March 25, 1963". Water rights for ground owned by applicant's is represented by Water Right No. 13-2209. Applicant's are also attempting to circumvent IDWR procedures for transferring water under section 42-222, Idaho Code, as evidenced by application for Transfer No. 70722 in the name of ElRay Balls and/or Janice Balls, with corresponding water right No.s 13-7643 and 13-7644 pending transfer. Applicant's have filed for water right for property which they have no ownership, Reed O Griffiths, Fannesbeck Family Trust and others as evidenced by county records.

(See attached Affidavit)

(additional pages may be attached to describe nature of the protest)

7. What would resolve your protest?

Denial of Application for claim to a Water Right No. 13-7661 in the name of Jay Norman Fannesbeck and/or ElRay Balls

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

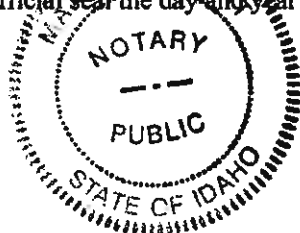
Signed this 19th day of Sept., 2005.

Protestant

Protestant's Representative

State of IDAHO
County of FRANKLIN

On this 19 day of September, 2005, before me, MAK N GILBERT, a Notary Public in and for said State, personally appeared CLINTON ASTON, known or identified to me 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 witness whereof I have set my hand and affixed my official seal the day and year in this certificate first above written.



Mary M Gilbert
Notary Public State of IDAHO
Residing at: Preston
Commission Expires 3-6-06

Receipt
E031281

32

Affidavit

BE IT ACKNOWLEDGED, that Clinton K. Aston
of P.O.Box 35 Weston, ID 83286, County of Franklin
does hereby file an exception of protest against a claim to
water right IDWR Claim No. 13-7661 in the name of
Jay Norman Fannesbeck and/or ElRay Balls.

And state the following reasons as facts based on legal documentation, for the purpose of showing the water claims rights of 13-7661 to be invalid.

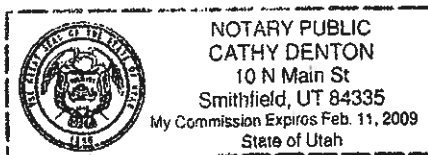
1. The existing well located at NW ¼ NE ¼ Sec. 8 Twp 16S. Rge38 E. B.M. County of Franklin as described on application for claim to water 13-7661 in the name of Jay Norman Fannesbeck and/or ElRay Balls, noted as PD#2 is located on property owned by Clinton K. Aston as recorded on Warranty Deed dated July 28, 2004, granted by Sidney L. Schvaneveldt. The water from the well has historically been used by Sidney Schvaneveldt for over thirty(30) years, and is currently used by Clinton K. Aston. The water from the well is used on property filed under Claim No. 13-4120 and has been used on property since June of 1962.
2. Applicant's are attempting to file a claim for ground water not previously put to beneficial use under provision 42-243, Idaho Code. "A claim is not acceptable for the use of ground water with a priority date later than March 25, 1963". Water rights for ground historically irrigated is represented by Water Right No. 13-2209. Applicant's are attempting to expand water rights by claiming prior use for ground that has not been irrigated.
3. Applicant's are attempting to circumvent Idaho Department of Water Resources procedures for transferring water under section 42-222, Idaho Code, as evidenced by application for Transfer No. 70722 in the name of ElRay Balls and/or Janice Balls, with corresponding water right No.s 13-7643 and 13-7644 pending transfer. The claim to water right no. 13-7661 is a duplication of transfer with added acreage, and is an attempt to expand water right.
4. Applicant's have filed a claim to a water right No. 13-7661, which includes property that is not currently owned or operated by applicant's as evidenced by county records. Property owned by Reed O. Griffith's, Fannesbeck Family Trust and others was listed on application for water right. The attempt is being made to include property not historically irrigated by groundwater and expand water right to new properties.

Signed

Clinton K. Aston

State of Utah
County of Cache

On this 21 day of September, 2005, before me, Cathy Denton, a Notary Public in and for said State, personally appeared Clinton K. Aston, known or identified to me 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 witness whereof I have set my hand and affixed my official seal the day and year in this certificate first above written



Cathy Denton
Notary Public State of Utah
Residing at Smithfield, UT
Commission expires 2-11-2009

SCANNED

NOV 17 2005

33



The pictured property is located at : NW ¼ NW ¼ Sec 16 Twp 16 S. Rge 38 E. B.M., County of Franklin and deeded to Norman Fannesbeck(Trustee) is described on claim to water right No. 13-7661. Property indicated has not been historically irrigated and does not have any water rights described under Idaho Code 42-243. There are currently no irrigation devices,(ditches, pipelines,etc.) located on property to divert water from any source. Intent of applicant is to obtain and move water rights for this property as outlined under claim.

SCANNED ^{Nov. 4 2005}
NOV 10 2005

34



The pictured property above and below is located at : NE ¼ & NW ¼ NW ¼ Sec 21 Twp 16 S. Rge 38 E. B.M., County of Franklin and deeded to Norman Fonnesbeck(Trustee) and Jay Fonnesbeck is described on claim to water right No. 13-7661. Property indicated has not been historically irrigated from groundwater and does not have any water rights described under provision 42-243 Idaho Code. There are currently no irrigation devices,(ditches, pipelines,etc.) located on property to divert water from source. Intent of applicant is to obtain and move water rights for this property as outlined under claim.



SCANNED
NOV 10 2005

35