

Water Right No. 63-32403

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR EXTENSION OF TIME TO AVOID
FORFEITURE OF A WATER RIGHT

RECEIVED

MAY 31 2007

WATER RESOURCES
WESTERN REGION

Section 42-222, Idaho Code, provides that a water right shall be lost and forfeited and the water right revert to the state upon the failure of a water user to apply the water to beneficial use for a period of five (5) years. The Director may allow an additional five (5) year period of non-use without forfeiture upon a showing of reasonable cause.

1. Name of water right holder MARION D. AND JUDY L. GROOTHUIS
2. Mailing address 3490 SADDLEMAN PL. EAGLE, ID 83616
3. The right was obtained or is evidenced by:
 - a. Decree to _____ in Case of _____
 - vs. _____ Dated _____ in _____
 - Court, _____ County of _____ Fully _____ describe _____ decree _____
- b. License No. _____ c. Claim No. _____
- d. SRBA No. _____
4. Source of water DRY CREEK tributary to BOISE RIVER
(Name of stream or source)
5. Date of priority of right 9/13/1874
6. Description of Right:
amount 0.13 cfs for IRRIGATION purposes from 03/01 to 11/15
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
7. Point of Diversion SE 1/4 NE 1/4 of Sec. 31 Twp. 5N Rge. 2E County ADA

8. Lands irrigated or Place(s) of Use: PLEASE ALSO SEE ATTACHMENT B

TWP	RGE	SEC	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
5N	2E	31			3.3					2.9									6.2
				(.73)	(1.2)				(5.91)										7.94

Total Acres 14.04

VOID

9. Give the last date when water was put to beneficial use _____
Length of extension of time requested _____ years, or until _____ (Date)

10. Explain fully your reasons for requesting an extension of time within which to resume the use of your water right and reasons for non-use _____

The information contained in this application is true to the best of my knowledge.

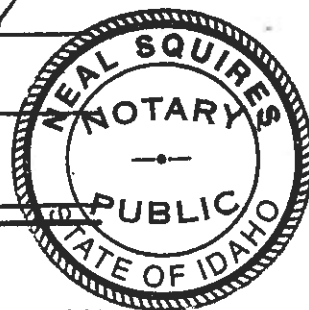
(Signature of Applicant)

Subscribed and sworn to before me this 30 day of May, 20 07

(Notary Public)

My commission expires 4-28-2010

Residing at Eagle, Idaho



ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined this application for extension of time within which to resume the use of a water right and I hereby _____ said application subject to the following conditions or reasons:

Signed this _____ day of _____, 20 _____

Chief, Water Allocation Bureau

FOR DEPARTMENT USE ONLY

Date Received 5/31/07 FEE Received by 70 Date 5/31/07 Receipt # W0035444
Preliminary ☒ by _____ Publication prepared by _____ Pub. approved by _____ Date _____
Published in _____ Dates Published _____
Protests filed by _____
Copies of protests forwarded by _____ Hearing held by _____ Date _____
Recommended for - APPROVAL / DENIAL By _____

ATTACHMENT A

Application for Extension of Time to Avoid Forfeiture of a Water Right Marion D. and Judy L. Groothuis Water Right No. 63-32403

Response to Item 10:

Mr. and Mrs. Groothuis acquired Lots 1 and 2 in Block 2 of the Echanove Subdivision No. 1 in Eagle, Idaho by warranty deed in March 2004. The lots are adjoining, and each is roughly ten acres. The grantor, Bull Development, Inc., conveyed a portion of water right nos. 63-3162 and 63-4849 for the irrigation of 6.04 acres on Lot 2, and a portion of those same rights for the irrigation of 8.05 acres on Lot 1. (Please see Exhibit 1 to this Attachment.) Thus the total portion of right nos. 63-3162 and 63-4849 conveyed was for 14.09 acres.

Water right no. 63-4849 is surface water; right no. 63-3162 is for groundwater and is supplemental to 63-4849. The Idaho Department of Water Resources previously recognized each right as being for the irrigation of 139 acres. (Please see Exhibit 2 to this Attachment.) Bull Development divided up that right among all the lots in the Echanove Subdivision. The Groothuises filed an application to change ownership of the rights after purchasing the property. After completing the name change, the Department on September 6, 2006 issued a notice of claim to a water right for the former nos. 63-4849 and 63-3162. The notice of claim indicated that the claim was for irrigation of 6.2 acres of water from former 63-4849 and 6.2 acres of water from former 63-3162. Thus, the notice of claim allowed irrigation of only a total of 6.2 acres. (Please see Exhibit 3 to this Attachment.)

The status of the remaining 7.89 acres worth of water is the subject matter of a civil action initiated by the Groothuises against the developer on September 29, 2006. (Please see Exhibit 4 to this Attachment.) This action is pending in the District Court for Ada County and

has yet to be resolved. The Groothuises believe that when the original 139 acres is allocated according to the deeds to the lots in the Echanove Subdivision, there is enough water remaining from the original right nos. 63-4849 and 63-3162 to fulfill the amount conveyed to the Groothuises in their deeds. (This is explained more fully in Attachment B to the Application.) Further administrative and/or legal process may be necessary to accomplish the proper recognition of 14.09 acres of water on the Groothuises' lots. Mr. Groothuis has obtained a bid to construct the necessary irrigation system to irrigate the 14.09 acres and is able to construct it as soon as a final determination is made on the water rights. A three-year extension of time is necessary to allow the final determination on the water rights to occur and to construct the irrigation system necessary to irrigate the lots. The Groothuises anticipate being able to put the full amount of water to beneficial use much sooner than that, however.

The reason for non-use is due to matters beyond the Groothuises' control, as described above.

241647
GB/JB



A Pioneer Company
PIONEER TITLE COMPANY
OF ADA COUNTY
8151 W. Rifleman Ave. / Boise, Idaho 83704
(208) 377-2700

ADA COUNTY RECORDER J. DAVID NAVARRO
BOISE IDAHO 03/04/04 02:41 PM
DEPUTY Bonnie Oberbiller
RECORDED - REQUEST OF
Pioneer
AMOUNT 6.00



CORPORATE WARRANTY DEED

[Handwritten signature]

FOR VALUE RECEIVED,

Bull Development Inc., an Idaho Corporation

a corporation duly organized and existing under the laws of the State of Idaho, grantor, does hereby Grant, Bargain, Sell and Convey unto

Marion D. Groothuis and Judy L. Groothuis, husband and wife

whose address is: 6624 Randolph Dr., Boise, ID 83709, grantee, the following described real estate, to-wit:

Lot 2 in Block 2 of Echanove Ranch Subdivision No. 1, according to the Official Plat thereof, filed in Book 82 of Plats at Page 8918, 8919 and 8920, records of Ada County, Idaho and amended by an Affidavit recorded June 20, 2001, as Instrument No. 101060347.

SUBJECT TO current years taxes, irrigation district assessment, public utility easements, subdivision, restrictions, U.S. patent reservations, easements of record and easements visible upon the said premises.

TO HAVE AND TO HOLD The said premises, with their appurtenances unto the said Grantee, his heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that it is the owner in a fee simple of said premises; that they are free from all encumbrances and that it will warrant and defend the same from all lawful claims whatsoever.

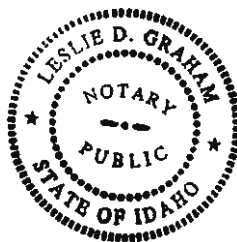
IN WITNESS WHEREOF, The Grantor, pursuant to a resolution of its Board of Directors has caused its corporate name to be hereunto subscribed by its officers this 2nd day of March, 2004.

Bull Development Inc.

By: *[Signature]*
Michael S. Homan, President

STATE OF IDAHO, County of ADA, ss.

On this 2nd day of March, in the year of 2004, before me Glen V. Bennett, a notary public, personally appeared Michael S. Homan known or identified to me to be the President of the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.



[Signature]
Leslie D. Graham
Notary Public of IDAHO
Residing at Boise
Commission expires: March 8, 2006

Ex. 1 to
Attachment

Exhibit "A"

Grantor hereby expressly reserves unto Grantor all surface and ground water rights appurtenant to the parcel of land hereby conveyed, except for those water rights hereinafter expressly quitclaimed to the Grantee: Grantor hereby quitclaims to Grantee a prorata portion of the water rights represented by water right nos. 63-3162 and 63-4849 for the irrigation of 6.04 acres of land within the parcel of land hereby conveyed and Grantor makes no warranties of title or other warranties, express or implied, as to the nature, validity, or extent of the water rights hereby quitclaimed.

241649
GB/JB



A Pioneer Company
PIONEER TITLE COMPANY
OF ADA COUNTY
8151 W. Rifleman Ave. / Boise, Idaho 83704
(208) 377-2700

ADA COUNTY RECORDER J. DAVID NAVARRO
BOISE IDAHO 03/04/04 02:41 PM
DEPUTY Bonnie Oberbiling
RECORDED - REQUEST OF
Pioneer
AMOUNT 6.00

2



CORPORATE WARRANTY DEED



FOR VALUE RECEIVED,

Bull Development Inc., an Idaho Corporation

a corporation duly organized and existing under the laws of the State of Idaho, grantor, does hereby Grant, Bargain, Sell and Convey unto

Marion D. Groothuis and Judy L. Groothuis, husband and wife

whose address is: 6624 Randolph Dr., Boise, ID 83709, grantee, the following described real estate, to-wit:

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SUBJECT TO current years taxes, irrigation district assessment, public utility easements, subdivision, restrictions, U.S. patent reservations, easements of record and easements visible upon the said premises.

TO HAVE AND TO HOLD The said premises, with their appurtenances unto the said Grantee, his heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that it is the owner in a fee simple of said premises; that they are free from all encumbrances and that it will warrant and defend the same from all lawful claims whatsoever.

IN WITNESS WHEREOF, The Grantor, pursuant to a resolution of its Board of Directors has caused its corporate name to be hereunto subscribed by its officers this 2nd day of March, 2004.

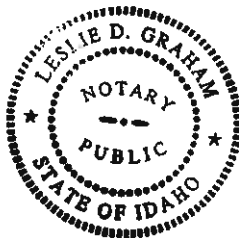
Bull Development Inc.

By: Michael S. Homan

Michael S. Homan, President

STATE OF IDAHO, County of ADA, ss.

On this 2nd day of March, in the year of 2004, before me Leslie D. Graham, a notary public, personally appeared Michael S. Homan known or identified to me to be the President of the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.



Leslie D. Graham
Leslie D. Graham
Notary Public of Idaho
Residing at Boise
Commission expires: March 8, 2006

Exhibit "A"

Grantor hereby expressly reserves unto Grantor all surface and ground water rights appurtenant to the parcel of land hereby conveyed, except for those water rights hereinafter expressly quitclaimed to the Grantee: Grantor hereby quitclaims to Grantee a prorata portion of the water rights represented by water right nos. 63-3162 and 63-4849 for the irrigation of 8.05 acres of land within the parcel of land hereby conveyed and Grantor makes no warranties of title or other warranties, express or implied, as to the nature, validity, or extent of the water rights hereby quitclaimed.

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

05/31/2007

WATER RIGHT NO. 63-3162

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	ELENA ANITA GIBBENS 7481 N BOGART LN BOISE, ID 83703 (208)853-9239
Current Owner	PEDRO ECHANOVE RT 1 DRY CREEK RD BOISE, ID 83703
Current Owner	PETRA ECHANOVE RT 1 BOISE, ID 83703
Original Owner	HILARIO ECHANOVE
Original Owner	PEDRO ECHANOVE

Priority Date: 07/14/1959

Basis: License

Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	/	/	1.5 CFS	
Total Diversion			1.5 CFS	

Ex. 2 to
Attach A

Location of Point(s) of Diversion:

GROUND WATER	NWNE	Sec. 31	Township 05N	Range 02E	ADA County
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Place(s) of use:

Place of Use Legal Description: IRRIGATION ADA County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
05N	02E	31		NWNE	40		SWNE	37						
				NENW	40		SENE	22						

Total Acres: 139

Dates:

Licensed Date: 08/28/1979

Decreed Date:

Permit Proof Due Date:

Permit Proof Made Date:

Permit Approved Date:

Permit Moratorium Expiration Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal:

Owner Name Connector:

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

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

05/31/2007

WATER RIGHT NO. 63-4849

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	ELENA ANITA GIBBENS 7481 N BOGART LN BOISE, ID 83703 (208)853-9239
Current Owner	BETTY L ECHANOVE
Current Owner	PEDRO ECHANOVE RT 1 DRY CREEK RD BOISE, ID 83703

Priority Date: 02/21/1883

Basis: Statutory Claim

Status: Active

<u>Source</u>	<u>Tributary</u>
CURRENT CREEK	DRY CREEK
DRY CREEK	BOISE RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	1/15	7/01	2.78 CFS	
Total Diversion			2.78 CFS	

Location of Point(s) of Diversion:

--	--	--	--	--	--

CURRENT CREEK	NWNE	Sec. 31	Township 05N	Range 02E	ADA County
DRY CREEK	SWNE	Sec. 31	Township 05N	Range 02E	ADA County
DRY CREEK	SENE	Sec. 31	Township 05N	Range 02E	ADA County
DRY CREEK	NENW	Sec. 31	Township 05N	Range 02E	ADA County

Place(s) of use:

Place of Use Legal Description: IRRIGATION ADA County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
05N	02E	31		NWNE	40		SWNE	37						
				NENW	40		SENE	22						

Total Acres: 139

Conditions of Approval:

1. 2 P/D IN SENE, SEC. 31, T5N., R2E. & NWNE, SEC. 31, T5N, R2E.
--

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:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal:

Owner Name Connector:

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

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number 63-32403
Date Received: 9/20/1989
Receipt No: X7777777
Received By:

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

JUDY L GROOTHUIS Phone: (208)938-1613
3490 N SADDLEMAN PL
EAGLE ID USA 83616

MARION D GROOTHUIS Phone: (208)938-1613
3490 N SADDLEMAN PL
EAGLE ID USA 83616



2. Date of Priority: 09/13/1874

3. Source: DRY CREEK Trib. to: BOISE RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
05N	02E	31	SE SE NE	ADA	

5. Description of diverting works:

Dam, gravity ditches, & pressure irrigation from distribution pond.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	03/01	11/15	0.13	

7. Total Quantity Appropriated is:
0.13 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4 Lot	Use	Acres
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EX. 3 to
Attach A.

05N

02E 31

SW NE
SE NW

IRRIGATION 3.3
IRRIGATION 2.9

Section Acres 6.2

Total Acres 6.2

11. Place of use in counties: ADA

12. Do you own the property listed above as place of use? Yes

13. Other Water Rights Used:

14. Remarks:

PREPARED AMENDED CLAIM AT REQUEST OF MATT HOWARD ATTORNEY FOR BULL DEVELOPMENT.
RDH 8 APRIL 2003.

WESTERN REGION RECEIVED AMENDED CLAIM 14 JULY 2003.

This claim is the result of a split due to change in ownership for a portion of
63-4849. Claim created by DB 4/7/2004 to complete hard file.

This right is a split from former right 63-31737.

15. Basis of Claim: Beneficial Use

[REDACTED]

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number 63-32412
Date Received: 9/20/1989
Receipt No: x7777777
Received By:

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

MARION D GROOTHUIS Phone: (208)938-1613
3490 N SADDLEMAN PL
EAGLE ID USA 83616

JUDY L GROOTHUIS Phone: (208)938-1613
3490 N SADDLEMAN PL
EAGLE ID USA 83616

2. Date of Priority: 07/14/1959

3. Source: GROUND WATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
05N	02E	31	SE NW NE	ADA	

5. Description of diverting works:

1000 ft deep, 8" cs, 20 hp pump

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	03/01	11/15	0.07	27.9

7. Total Quantity Appropriated is:
0.07 C.F.S. and/or 27.9 A.F.A.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4 Lot	Use	Acres
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05N

02E 31

SW NE
SE NW

IRRIGATION 3.3
IRRIGATION 2.9

Section Acres 6.2

Total Acres 6.2

11. Place of use in counties: ADA

12. Do you own the property listed above as place of use? Yes

13. Other Water Rights Used:

14. Remarks:

Ownership changed by DH 3/6/2003

This claim is the result of a split due to change in ownership for a portion of 63-3162. Claim created by DB 4/7/2004 to complete hard file

Tran Application 68907 withdrawn negating the splits for this right. dvs 8/13/01.

Address change for Elena Anita Gibbens per claimant request. DB 5/22/2002

Address change for Pedro Echenove by DB per claimant letter.
Also removed Petra Echanove from this claim per request. Per conversation w/ Pedro (son) she is now deceased. 5/10/2002

This right is a split from former right 63-31739 .

15. Basis of Claim: License

NO. _____ FILED _____
AM _____ P.M. _____

SEP 29 2006

J. DAVID NAVARRO, Clerk
By KATHY J. BIEHL
DEPUTY

Bruce M. Smith, ISB No. 3425
Carl J. Withroe, ISB No. 7051
MOORE SMITH BUXTON & TURCKE, CHTD.
950 West Bannock St., Suite 520
Boise, ID 83702
Phone: 208/331/1800
Fax: 208/331/1202

Attorneys for Plaintiffs

**IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR ADA COUNTY**

CV 00 0618281

MARION D. GROOTHUIS and JUDY L.
GROOTHUIS, husband and wife,

Plaintiffs,

v.

BULL DEVELOPMENT, INC., an Idaho
corporation; MICHAEL S. HOMAN, an individual;
JOHN DOES I through X; and JANE DOES I
through X,

Defendants.

Case No.

Fee Category A.1.

**VERIFIED COMPLAINT AND
DEMAND FOR JURY TRIAL
UNDER IDAHO R. CIV. P. 38(b)**

Come now Plaintiffs, Marion D. Groothuis and Judy L. Groothuis, by and through their attorneys of record, Moore Smith Buxton & Turcke, Chartered, and complain and allege as follows:

VERIFIED COMPLAINT AND DEMAND FOR JURY TRIAL -- 1

Ex. 4 to
Attach A

NATURE OF THE ACTION

¶ 1. This controversy arises out of a sale of property in Ada County, Idaho. It concerns Defendants' fraudulent conduct and intentional misrepresentation about the amount of water Plaintiffs would receive for irrigation with the purchase of their two lots in the Echanove Subdivision No. 1 in Ada County, Idaho. Plaintiffs seek damages, delivery of the water promised, attorney fees, and any other relief that may be proper.

PARTIES

¶ 2. Plaintiffs Marion D. "Butch" Groothuis and Judy L. Groothuis, husband and wife, are residents of Ada County, Idaho, and specifically reside at 3490 N. Saddleman Place, Eagle, Idaho 83616.

¶ 3. Defendant Bull Development, Inc. is an Idaho Corporation with its principal office in Boise, Idaho.

¶ 4. Defendant Michael S. Homan is a resident of Boise, Idaho and was, at the time of the acts complained of, President of Defendant Bull Development, Inc.

¶ 5. Defendants John Does I through X and Jane Does I through X are parties whose true name is not known.

VENUE AND JURISDICTION

¶ 6. A live and present controversy exists between the parties regarding the acts complained of. Said acts occurred in the greater Boise, Idaho metropolitan area and venue is proper in Ada County pursuant to I.C. § 5-404. The amount in controversy exceeds the statutory jurisdictional threshold and thus jurisdiction is proper in the District Court.

FACTUAL ALLEGATIONS

¶ 7. Defendants owned the two lots at issue in this case and marketed them for sale. In 2005 or 2006, the Groothuis contacted the Defendants about purchasing the lots.

¶ 8. Said lots are adjoining, comprising roughly ten acres each, and are identified as Lots 1 and 2 in Block 2 of the Echanove Subdivision No. 1, according to the official plat thereof, filed in Book 82 of Plats at page 8918, 8919, and 8920, recorded with the records of Ada County.

¶ 9. During negotiations for the sale of the property, Defendants represented that the two lots in which the Plaintiffs were interested in purchasing would include water rights sufficient to irrigate eight acres of ground on Lot 1 and six acres of ground on Lot 2.

¶ 10. Based on these and other representations regarding the property, the Plaintiffs entered into a contract for the purchase of the lots. The promised amount of irrigation water was a material factor in the Plaintiffs' decision to purchase the property.

¶ 11. Exhibit A to the deed for Lot 1 granted a portion of water right numbers 63-3162 and 63-4849 for the irrigation of 8.05 acres of land within Lot 1. Exhibit A to the deed for Lot 2 granted a portion of water right numbers 63-4849 and 63-3162 for the irrigation of 6.04 acres of land within Lot 2. The deeds and their attached exhibits are attached to this Complaint as Exhibit A.

¶ 12. After purchasing the property, Mr. Groothuis met with the Idaho Department of Water Resources to make a change in the ownership name of the water rights he and Mrs. Groothuis acquired upon their purchase of the two lots. The Department informed Mr. Groothuis that the water rights acquired likely consisted of water sufficient to irrigate only 4.6 acres of the two lots in total.

¶ 13. Plaintiffs proceeded to transfer the water rights into their name.

¶ 14. The Idaho Department of Water Resources completed the name change of Plaintiffs' water rights and on September 6, 2006 issued a Notice of Claim to a Water Right in the Snake River Basin Adjudication. Said Notice of Claim was for irrigation of 6.2 acres of surface water from the former water right number 63-4849 and 6.2 acres of groundwater from the former water right number 63-3162. This correspondence from the Department is attached to this Complaint as Exhibit B.

¶ 15. Because the water rights are complementary, there is sufficient water to irrigate only 6.2 acres of the two lots. This is substantially less than what was represented by the Defendants.

¶ 16. The reduction in water from what was represented and promised as part of the sale has substantially decreased the value of Plaintiffs' property and has severely reduced

Plaintiffs' use and enjoyment of it. Plaintiffs would not have purchased the property if only 6.2 acres of ground could be irrigated. Plaintiffs are entitled to compensation for the fraud and misrepresentation and/or are entitled to receive the amount of water promised and represented by Defendants as being included for the property.

COUNT ONE: FRAUD AND MISREPRESENTATION

¶ 17. Each and every previous paragraph is incorporated and fully realleged as if set forth in full.

¶ 18. Defendants represented to Plaintiffs the amount of water that would be available for irrigation on their lots, specifically, that there were water rights for 14.09 of 20 acres. Those statements were false, as evidenced by the Notice of Claim to a Water Right issued by the Department of Water Resources. Those statements were material to the Plaintiffs' purchase, as they served a major role in the Groothuis' decision to purchase the lots at the purchase price. The Defendants knew or should have known those statements were false. The Defendants intended the Plaintiffs to act in reliance on those statements, as they emphasized the amount of water available was a factor in setting a price. Plaintiffs were ignorant of the statements' falsity, and they relied on Defendants' statements. Said reliance was justifiable. The Defendants' conduct has substantially deprived Plaintiffs of value and enjoyment of their property.

¶ 19. By intentionally making false statements regarding the amount of water that would be included with the lots as set forth above, Defendants have committed fraud and misrepresentation.

PRAYER

Wherefore, Plaintiffs pray that judgment be entered in their favor and against Defendants, and each of them, as to each Count herein as follows:

¶ 20. Compensatory damages against Defendants in an amount to be proven at trial;

¶ 21. An order compelling the Defendants to deliver the water in the amount promised for irrigating the remaining eight acres of Plaintiffs' lots;

¶ 22. Costs and reasonable attorney fees under Idaho R. Civ. P. 54(d)(1), I.C. § 12-120 and § 12-121; and

¶ 24. Plaintiffs hereby demand a jury trial.

Dated this 29th day of September, 2006.

Can I write

Carl J. Withroe
Attorneys for Plaintiffs

VERIFICATION

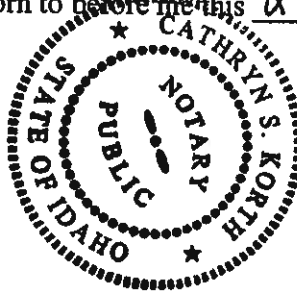
STATE OF IDAHO)
) :ss
County of Ada)

That they are the Plaintiffs in the above entitled action; that they have read the within and foregoing Complaint, know the contents thereof, and that the statements therein contained are true to the best of their knowledge and belief.

Marion D. Groothuis

Judy L. Groothuis

Subscribed and sworn to before me this 29th day of September 2006.



Cathryn S. Korth

Notary Public for Idaho

Residing at Boise, Idaho

Commission Expires: 3-6-2012

ATTACHMENT B

Application for Extension of Time to Avoid Forfeiture of a Water Right Marion D. and Judy L. Groothuis Water Right No. 63-32403

Explanation of Item 8:

As explained in Attachment A to this Application, there is currently a dispute pending in District Court regarding the conveyance of water rights from the developer to the Groothuises. Currently, the Department of Water Resources has allocated 3.3 acres worth of water on that portion of the Groothuises' lots located in the southwest quarter of the northeast quarter (SWNE) of section 31. The Department has allocated 2.9 acres worth of water on that portion of the Groothuises' lots located in the southeast quarter of the northwest quarter (SENE) of section 31.

The Department recognizes 37 acres worth of water in SWNE. When all the other lots in that $\frac{1}{4} \frac{1}{4}$ are allocated the amount of water conveyed in their deeds, there is 4.5 acres worth of unallocated water (excluding the 3.3 acres allocated from this $\frac{1}{4} \frac{1}{4}$ to the Groothuises' lots). This amount has been circled on the chart in item 8 of the application depicting the lands irrigated. The difference between that figure and the amount allocated by the Department to the Groothuises is 1.2 acres. The Department recognizes 23 acres in SENE. When all the other lots in that $\frac{1}{4} \frac{1}{4}$ are allocated the amount of water conveyed in their deeds, there is 8.81 acres worth of unallocated water (excluding the 2.9 acres allocated from this $\frac{1}{4} \frac{1}{4}$ to the Groothuises' lots). This amount has been circled on the chart in item 8 of the application depicting the lands irrigated. The difference between that figure and the amount allocated by the Department to the Groothuises is 5.91 acres. The Department also recognizes 40.3 acres of water in NENE. When all the lots in that $\frac{1}{4} \frac{1}{4}$ are allocated the amount of water conveyed in their deeds, there is 0.73

acres worth of unallocated water. This amount has been circled on the chart in item 8 of the application depicting the lands irrigated.

When the available, unallocated amounts are added to the amounts currently allocated to the Groothuises, the total available for the Groothuises is 14.04 acres. The Groothuises intend by this Application to prevent forfeiture of all 14.04 acres.

ATTACHMENT C

**Application for Extension of Time to Avoid Forfeiture of a Water Right
Marion D. and Judy L. Groothuis
Water Right No. 63-32412**

Explanation of Item 9:

The Groothuises do not know for certain when the water was last put to beneficial use. This Application comes after an email from an IDWR employee to a member of the Echanove Homeowners' Association stating that the water right was subject to forfeiture as of June 1, 2007. This email is attached as Exhibit 1 to this Attachment. Counsel for the Groothuises called IDWR, but the Department had no record of such email. Upon further research, counsel for the Groothuises learned that the Department had granted an application to prevent forfeiture filed by the Groothuises' predecessor-in-interest, Bull Development, Inc. The application states the water was last put to beneficial use in 1998. (Please see Exhibit 2 to this Attachment.) That application states that the right holder shall resume beneficial use of the water on June 1, 2007, but the Groothuises have never received a notice setting forth the date on which the use of the water is to be resumed and a form for reporting resumption of the use of the right. Nor have the Groothuises received any formal notice from the Department regarding forfeiture of their water rights.

>>From: "Welcker, Chris" <Chris.Welcker@idwr.idaho.gov>
>>To: <mnholdeman@hotmail.com>
>>Subject: Echanove Ranch Water Rights
>>Date: Fri, 9 Feb 2007 11:49:13 -0700

>>2735 Airport Way
>>Boise ID 83705-5082
>>
>>Phone (208) 334-2190
>>Cell (208) 830-4689
>>FAX (208) 334-2348

>>
>>Sorry for the delay in getting back to you.
>>
>>The basic question being posed is whether the irrigation water
>>rights associated with the old Echanove Ranch (63-03162 and
>>63-04849) and all of the split rights resulting from them will be
>>forfeited if the water is not used by June, 2007. There are
>>essentially two legal issues involved, the Application for
>>Extension of Time to Avoid Forfeiture and a completely separate
>>court ruling, which likely has some bearing on this situation.
>>Both of these issues are fairly clear on their own, but the exact
>>relationship between them is less clear.
>>
>>ISSUE #1: In 2001, Bull Development filed an Application for
>>Extension of Time to Avoid Forfeiture to prevent a forfeiture of
>>the water rights while the lots were sold and developed. This was
>>meant to give time, "for the new lot owners to begin irrigating
>>their lots and putting water to beneficial use." According to
>>section 42-222 of the Idaho Code, sixty days before the use of the
>>water is to be resumed, IDWR shall notify the owner of the
>>impending deadline and provide a form for reporting the resumption
>>of use of water. If the use of the water has not been resumed and
>>reported to IDWR, the right shall revert back to the state. The
>>date set for the resumption of use is June 1, 2007. The most
>>certain way to maintain your water rights is to resume the use of
>>water and report that use to IDWR.
>>
>>ISSUE #2: In 1999, the so-called "Facility Volume" decision in the
>>Snake River Basin Adjudication (SRBA) Court found that so long as
>>water rights are involved in the SRBA they should not be considered
>>forfeited by IDWR. The water rights we are discussing are still
>>part of the SRBA court case until the court issues a Partial
>>Decree. This will likely, but not definitely, happen this year or
>>in 2008. Once the Partial Decree comes from the court, there will
>>be a five-year period within which to re-establish beneficial use
>>of the water before forfeiture would be an issue again. A less
>>certain way to maintain your water right would be to use this court
>>case as a precedent to defend against forfeiture when June 1, 2007
>>passes. This would give you more time to resume use of the water.
>>
>>Using either of these standards, it is fairly easy to establish an
>>answer to the basic question of, "Will the irrigation water rights
>>be forfeited if they are not used by June, 2007?" Unfortunately
>>they do not give the same answer, which is why you and your
>>neighbors have received conflicting advice. According to Issue #1,
>>you must resume use and report the resumption by June, 2007 to
>>avoid forfeiture. Following Issue #2, you have until 2012, or
>>possibly later, to resume use before facing forfeiture for non-use.
>> But whether Issue #1 or Issue #2 supercedes the other is not
>>clear.
>>
>>An absolutely guaranteed definitive answer can only be achieved
>>through a subsequent court case that clarifies the exact legal
>>relationship between 42-222 and the "Facility Volume" decision. In
>>the absence of such a court case, and as a practical matter, IDWR
>>will not find forfeiture until 5 years after the Partial Decree and
>>so the June, 2007 deadline would not apply. This represents the
>>view of the Department at this time, but it is important to realize
>>that if your water rights ever became part of a court case in the
>>future, then this question could go before a judge who would make
>>the final determination. It is entirely possible that a judge
>>would agree with the Department's view and actions, but the
>>Department cannot guarantee the outcome of any court case.
>>
>>In the end, this means that if you resume use of the water on your
>>property and duly report to IDWR by June, you will definitely be
>>fine. If you decide to not use the water until after June 2007 but
>>before 2012 (5 years after the Partial Decree), you will probably
>>be fine, but you accept a certain level of risk.
>>
>>Regardless of your decisions, you and your neighbors should all
>>file Change of Ownership forms so that the Department can update
>>its records and direct correspondence to the correct owners. I
>>looked in the database, and you and your husband still need to fill
>>out a Change of Ownership form which I will mail out to you today.
>>
>>If you need more information, please feel free to contact me.
>>
>>
>>Chris
>>
>>
>>Chris Welcker
>>Stream Channel Protection Specialist
>>IDWR--Western Region

Ex-1 to
Attach C

Form 2-222
12/99
FEE \$100.00

RECEIVED

OCT 04 2001

WATER RESOURCES
WESTERN REGION

Water Right No. 63-4849

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR EXTENSION OF TIME TO AVOID
FORFEITURE OF A WATER RIGHT

Section 42-222, Idaho Code, provides that a water right shall be lost and forfeited and the water right revert to the state upon the failure of a water user to apply the water to beneficial use for a period of five (5) years. The Director may allow an additional five (5) year period of non-use without forfeiture upon a showing of reasonable cause.

1. Name of water right holder Bull Development, Inc. (208) 429-1900
2. Mailing address 2229 W. State St., Ste. B, Boise, ID 83702
3. The right was obtained or is evidenced by:
 - a. Decree to n/a in Case of _____
vs. _____, Dated _____ in _____ (Name of Court)
Court, County of _____. Fully describe decree _____
 - b. _____
 - d. SRBA No. A63-4849
4. Source of water Dry Creek tributary to Boise River
(Name of stream or source)
5. Date of priority of right 02/21/1883
6. Description of Right:
amount 2.78 for Irrigation purposes from 1/15 to 7/01
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
7. Point of Diversion NW 1/4 NE 1/4 of Sec. 31 Twp. 5N Rge. 2E County Ada
SWNE, SENE, NENW Sec. 31, T5N, R2E
8. Lands irrigated or Place(s) of Use:

TWP	RGE	SEC.	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
5N	2E	31		40	37		40			22									139

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Total Acres 139

9. Give the last date when water was put to beneficial use 1998

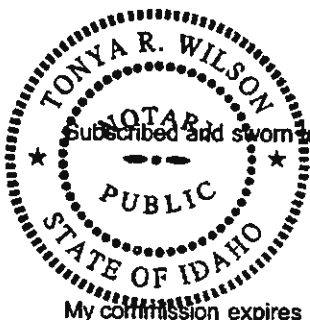
Ex 2 to
Attach. C

Length of extension of time requested 5 years, or until _____ (Date)

10. Explain fully your reasons for requesting an extension of time within which to resume the use of your water right and reasons for non-use See Appendix A

The information contained in this application is true to the best of my knowledge.

Bull Development Inc. By Michael J. Hansen Pres.
(Signature of Applicant)



Subscribed and sworn to before me this 2nd day of October, 20 01

Tonya Wilson
(Notary Public)

My commission expires 9/25/06

Residing at Ada County

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined this application for extension of time within which to resume the use of a water right and I hereby APPROVE said application subject to the following conditions or reasons:

The right holder shall resume beneficial use of water on or before June 1, 2007.
Approval of this extension does not confirm the right claimed.

Signed this 9th day of January, 20 02

L. Glen Saxton
Chief, Water Allocation Bureau

FOR DEPARTMENT USE ONLY

Date Received 10/4/01 FEE Received by Kb Date 10/4/01 Receipt # W028372
Preliminary T by _____ Publication prepared by At Pub. approved by At Date 11-7-01
Published in Idaho Statesman Dates Published 11-15-01 to 11-22-01
Protests filed by _____
Copies of protests forwarded by _____ Hearing held by _____ Date _____
Recommended for - 9 APPROVAL / 9 DENIAL By _____

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2002