

NEILL ENTERPRISES, INC.

File
RECEIVED

JUL - 2 1992

June 30, 1992

Department of Water Resources
Western Regional Office

Mr. David R. Tuthill, Jr., P.E.
Manager, Western Region Office
State of Idaho Department of Water Resources
Western Region 2735 Airport Way
Boise, Idaho 83705-5082

RE: Application for Permit #63-11791

Dear Mr. Tuthill:

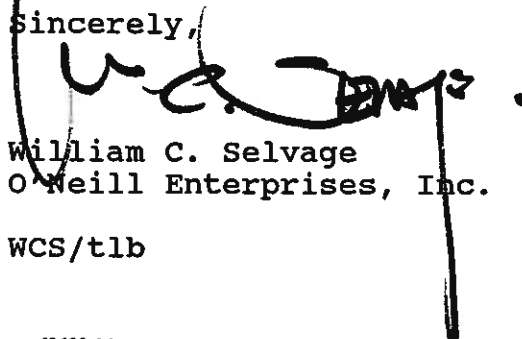
I am in receipt of the two letters regarding ("protesting") our application for water right permits and am a bit uncertain as to the implications and relevancy to the letters, and the intent of the protests. In reading the letter from New Dry Creek Ditch Company to Tim Gass, it is apparent that the New Dry Creek Ditch Company does not have jurisdiction over this water. By reference, please note applications for stream alteration permits #635-878 and #635-858 which have been issued on this waterway.

In further discussion with Tim Gass, who represents Drainage District #2, he clearly stated in his letter that Drainage District #2 does not have any jurisdictional rights over this water. He notes merely a blanket statement regarding drainage districts rights. The attached letter indicates jurisdictional rights for this waterway are under the Water Resource Board as an unnamed slough.

I have been in contact with both "protestors" and have verbally had the conversations with them regarding any rights they may hold over this waterway to which neither protestor claimed any. I also have been unsuccessful to date to get any written withdrawal of the protests.

In view of that fact, we hereby request that the permit application be moved forward and issued at the earliest possible time.

Sincerely,


William C. Selvage
O'Neill Enterprises, Inc.

WCS/tlb

wcs62692.1tb

New Dry Creek Ditch Co., Ltd.

Eagle, Idaho

Board of Directors: Fred Kunkler, President
Ken Bruneel, Vice-President, Dana Purdy, Secretary
Bert Johnson, Jack Belmain

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JUN 15 1992

June 15, 1992

State Dept. of Water Resources
Western Region
2735 Airport Way
Boise, ID 83705-5082

Department of Water Resources
Boise Regional Office

RE: Application for Water Right
No. 63-11791

Gentlemen:

The New Dry Creek Ditch Company has just been made aware of the fact that O'Neill Enterprises Association has filed on water that comes out of the drain commonly know as the "Elmore Drain". This drain is under the jurisdiction of Drainage District #2.

Please be advised that The New Dry Creek Ditch Company has been accepting this water into our system for years and we feel it is an important part of our water system. The New Dry Creek Ditch does oppose any diversion of this drain water out of our system.

If Water Resources feels that we need to file independently on this water to insure that it continues to flow into our system, please let us know. Please keep our company advised as to the status of the O'Neill water filing.

Sincerely,



Lynne Sedlacek, Bookkeeper
The New Dry Creek Ditch Company, Ltd.
%1200 Herford Drive
Eagle, ID 83616

c: Drainage District #2
%Gass Law Offices
Main Street Plaza, Suite 204
1655 Fairview Ave.
Boise, ID 83702

Law Offices
Timothy J. Gass
Counselor & Attorney at Law
Main Street Plaza, Suite 204
1655 Fairview Ave.
Boise, Idaho 83702

TELEPHONE (208) 345-3817
FAX (208) 345-5862

Elbert E. Gass
of Counsel

MAILED-6-15-92
FAXED-6-15-92

June 15, 1992

Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082

RE: Application for Water Right No. 63-1191
Meadow Creek Homeowners

To Whom It May Concern:

I have enclosed a copy of a letter faxed to the office of Drainage District No. 2 from New Dry Creek Ditch Company, Ltd. opposing any drainage diversion from the Elmore Drain.

The Elmore Drain is not part of the drainage system of Drainage District No. 2 and therefore, so long as no water is pumped from the District's ditch which is north of the Elmore Drain, Drainage District No. 2 objects only as follows.

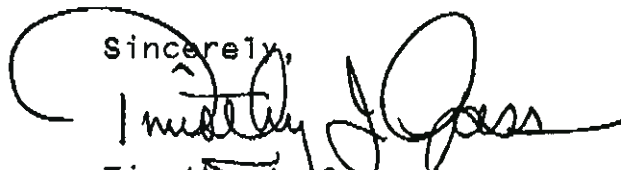
If the Homeowners Association intends to pump water from the District's ditch located generally north of the Elmore Drain, Drainage District No. 2 would object.

The Idaho Department of Water Resources has no right to grant water rights or to allow diversions, dams, or other rights of any drain ditch pursuant to I.C. Section 42-2938 which states that the board of drainage commissioners have exclusive charge of all drainage systems organized pursuant to Idaho Code.

Therefore, the Department has no right, title, or authority to permit Meadow Creek Homeowners to divert from the Elmore Drain.

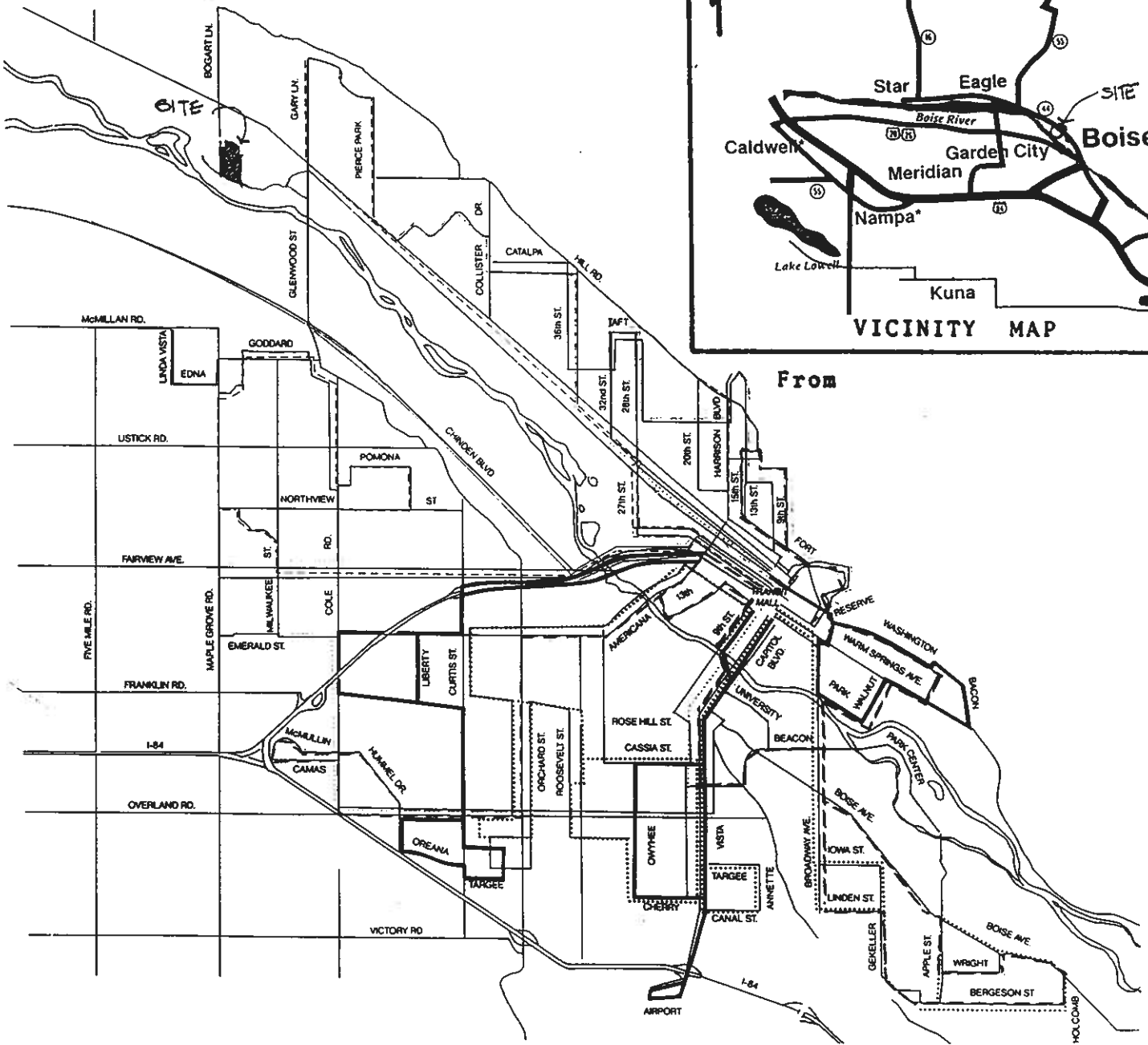
The request for permission to divert should therefore be denied.

Sincerely,


Timothy J. Gass

TJG/cf

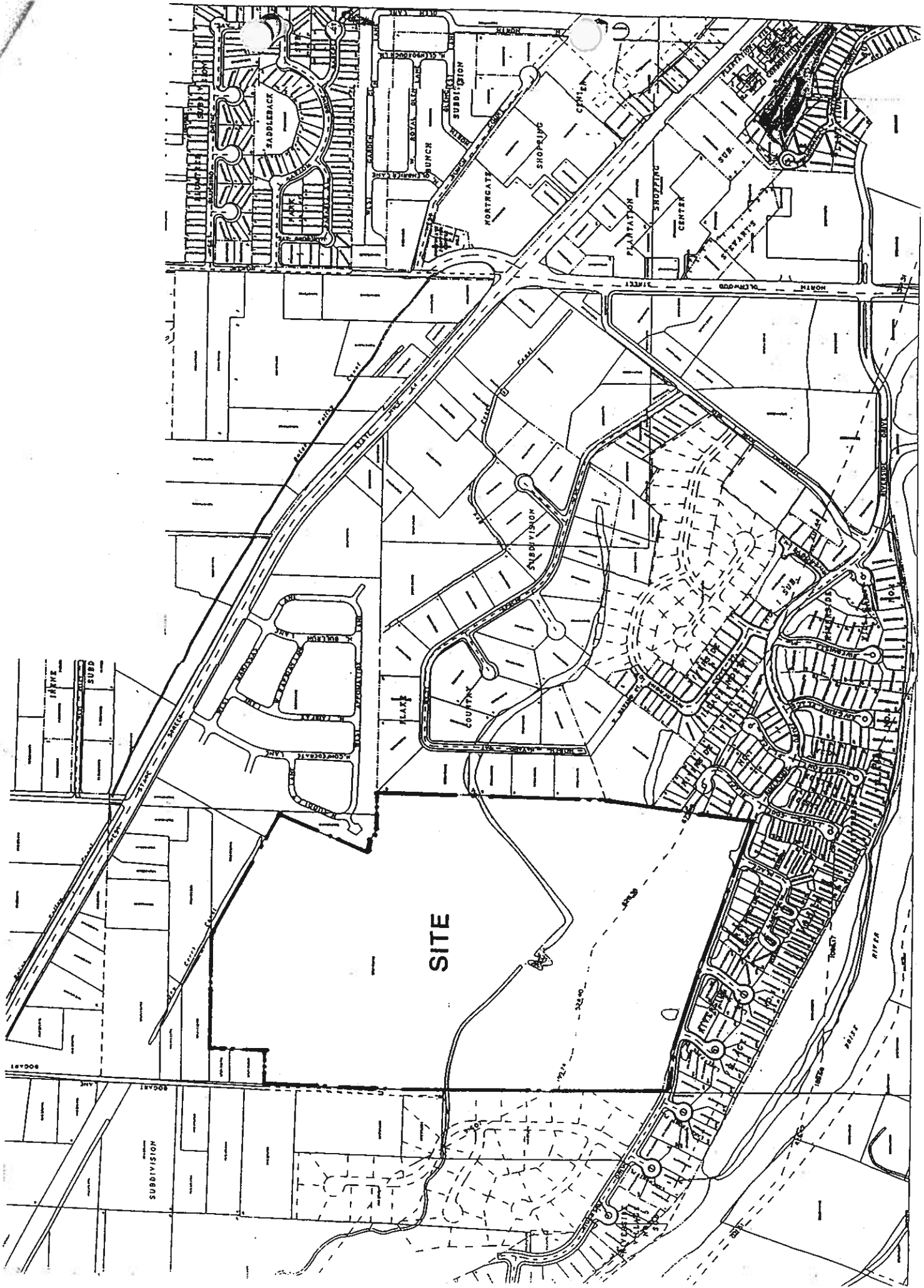
Encl.



DATUM PLANE : IF NOT NGVD 1929, SPECIFY
a. HIGH WATER
b. LOW WATER

IN
IN/NEAR

COUNTY,
DATE: SHEET 1 OF
APPLICATION BY:





State of Idaho
DEPARTMENT OF WATER RESOURCES

FEB 14 1992

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

February 14, 1992

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

William C. Selvage
O'Neill Enterprises, Inc.
871 East Parkcenter Blvd.
Boise, Idaho 83706

*(F) MC 5th
pen 1/27*

RE: Jurisdiction of Elmore Drain, SCA Permit # 63-S-878

Dear Mr. Selvage

This letter is in regards to your letter dated January 31, 1991 concerning the jurisdiction on the Elmore Drain. Listed below are two sections of the Idaho Code that gives us jurisdiction over your project.

Idaho Code 42-3802 (b) "Alter" means to obstruct, diminish, destroy, alter, modify, relocate, or change the natural existing shape or direction of water flow of any stream channel within or below the mean high water mark thereof.

Idaho Code 42-3802 (d) "Stream channel" means a natural watercourse of perceptible extent, with definite bed and banks, which confines and conducts continuously flowing water.

Therefor based on the topography of USGS Topographic map "Eagle Quadrangle" (7.5 Minute series) the department considers Elmore Drain a natural watercourse (ID Code 42-3802d) and requires a Stream Channel Alteration Permit (ID Code 42-3802b).

If you have any questions, please contact this office.

Sincerely,

Melvin Gene Gibson
Stream Protection Specialist
Western Regional Office

MGG:g

NEILL ENTERPRISES, INC.

February 27, 1992

Mr. Melvin G. Gibson
Western Regional Office
State of Idaho
Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

Re: Wolfgram/Meadowcreek

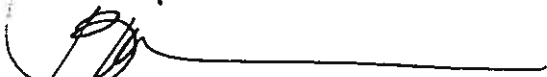
Dear Gene:

Enclosed please find copies of the applications for your review and processing for drop structures within the Elmore Drainage.

By reference, you have already provided us two stream alteration permits (63S 878 & 63S-878 amended). As you will recall, Permit 63S 878 is for storm drainage and has been approved by the Corps of Engineers. This application specifically addresses the installation of flow structures to insure flow controls through the property.

Your assistance in this matter is greatly appreciated.

Sincerely,



William C. Selvage
O'NEILL ENTERPRISES, INC.

WCS/lw
Enclosures

NEILL ENTERPRISES, INC.

January 31, 1992

Mr. Melvin G. Gibson
Stream Protection Specialist
Western Regional Office
State of Idaho
Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

Re: Amended Stream Alteration
63S-858 & 63S-878

Dear Gene:

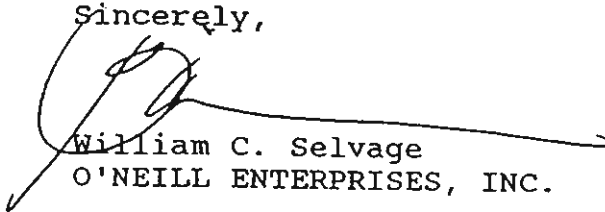
We hereby formally request amendment of our existing stream channel permit to include expansion of the area of work performed to allow for restoration and enhancement to the existing waterway. As you will note, this area of work is consistent with the exhibits originally submitted in May of 1991.

The work to be performed is the "mucking out" of the existing water way, to improve the waterway, and gather native materials for transplanting in our newly created waterways and existing waterway to the west. Part and parcel to this application are the existing construction techniques previously described including sediment traps and pools.

We certainly appreciate your ongoing assistance, support and guidance in these activities. Due to the fact, Water Resources is the controlling entity our this body of water, would you please forward me a letter to that effect, as the City and County is unsure of its jurisdiction.

Should you have any questions, do not hesitate to contact me. Again, thank you for your considerations and time.

Sincerely,



William C. Selvage
O'NEILL ENTERPRISES, INC.

WCS/lw
Attachments

WCS0910.2