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Raymond D. Givens (1917-2008)

May 12, 2009

VIA HAND DELIVERY

Mr. Gary L. Spackman
Administrator
Water Management Division
Idaho Department of Water Resources
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

RECEIVED

MAY 12 2009

DEPARTMENT OF
WATER RESOURCES

Re: *In the Matter of Applications to Appropriate Water Nos. 65-23239 and 65-23105
and Application for Transfer No. 73787 in the Name of Eagle Springs Ranch, LLC*

Dear Gary:

Enclosed is *Eagle Springs Ranch, LLC's Exceptions To, And Petition For Reconsideration Of, Preliminary Order* ("Petition") which I am re-filing in the above-referenced matter.

This Petition was timely filed on May 6, 2009, as evidenced by the enclosed copy of the first page of the Petition conformed by the Department as being received on May 6, 2009. However, the original Petition and service copies may have been missing pages 7 and 8 and my understanding is the original has not been located in your offices, so I am re-filing and re-serving the Petition in its entirety.

Please contact me if you have any questions.

Sincerely,



Michael C. Creamer

MCC/ch
Enclosures
cc w/enc.: Lloyd Mahaffey
Jayne Reed
Scott Campbell, Esq.
Scott King, SPF Water Engineering
John Westra, Western Region

10274-1/559421_1

RECEIVED

MAY 06 2009

DEPARTMENT OF
WATER RESOURCES

COPY

Jeffrey C. Fereday [ISB No. 2719]
Michael C. Creamer [ISB No. 4030]
GIVENS PURSLEY LLP
601 W. Bannock Street
P. O. Box 2720
Boise, ID 83701-2720
Telephone No. (208) 388-1200
Fax No. (208) 388-1300

Attorneys for Applicant Eagle Springs Ranch, LLC
556749_3

RECEIVED

MAY 12 2009

DEPARTMENT OF
WATER RESOURCES

BEFORE THE DEPARTMENT OF WATER RESOURCES

FOR THE STATE OF IDAHO

**IN THE MATTER OF APPLICATIONS TO
APPROPRIATE WATER NOS. 65-23239
AND 65-23105 AND APPLICATION FOR
TRANSFER NO. 73787 IN THE NAME OF
EAGLE SPRINGS RANCH, LLC**

**EAGLE SPRINGS RANCH, LLC'S
EXCEPTIONS TO, AND PETITION FOR
RECONSIDERATION OF,
PRELIMINARY ORDER**

Eagle Springs Ranch, LLC ("Eagle Springs"), through its attorneys Givens Pursley LLP, hereby files its Exceptions to, and Petition for Reconsideration of, Preliminary Order in the above-captioned matter. Eagle Springs appreciates the Hearing Officer's apparent careful analysis and summary of the relatively complex record concerning these interrelated Applications. Eagle Springs nevertheless believes it should take exception to specific findings of fact and conclusions of law in the Preliminary Order that either are in error or that should be clarified to avoid future uncertainties. Eagle Springs also requests reconsideration of the Hearing Officer's recommendation to automatically subordinate Eagle Springs' two aesthetic water rights to future appropriations for consumptive uses, and to make them automatically subject to future amendment if the Idaho Water Resource Board ("IWRB") seeks to amend its minimum streamflow right.

Jeffrey C. Fereday [ISB No. 2719]
Michael C. Creamer [ISB No. 4030]
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P. O. Box 2720
Boise, ID 83701-2720
Telephone No. (208) 388-1200
Fax No. (208) 388-1300

RECEIVED

MAY 12 2009

DEPARTMENT OF
WATER RESOURCES

Attorneys for Applicant Eagle Springs Ranch, LLC
10274-1/556749_3

BEFORE THE DEPARTMENT OF WATER RESOURCES

FOR THE STATE OF IDAHO

**IN THE MATTER OF APPLICATIONS TO
APPROPRIATE WATER NOS. 65-23239
AND 65-23105 AND APPLICATION FOR
TRANSFER NO. 73787 IN THE NAME OF
EAGLE SPRINGS RANCH, LLC**

**EAGLE SPRINGS RANCH, LLC'S
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EXCEPTIONS

Eagle Springs takes exception to the following findings of fact, conclusions of law and/or conditions of the Preliminary Order. The statements below summarize facts in the record by way of the Application, Testimony and/or Hearing Exhibits:

1. Finding of Fact 16. Eagle Springs believes that Finding of Fact 16 should be modified to more appropriately designate the location of the natural channels of Coski Creek and Charters Creek given their substantial historical modifications and intended use. Further, the Preliminary Order identifies Channel V as the natural channel for Charters Creek. However, Charters Creek has not historically discharged into Channel V, and is not expected to do so under typical operation. During normal and high runoff conditions, the majority of flow entering the property from Charters Creek should flow through Ponds 9B and 9A into Channel VI, and subsequently into Channel XIV, Ponds 5A, 5B, 5C (and connecting channels), and then to the South Fork Payette River. The following proposed revision of Finding of Fact 16 would more accurately reflect where natural flow discharges of Coski and Charters Creek will flow through the project.

The natural stream channels must be identified as they flow through the development. The channel identifiers are taken from Applicant's Exhibit 13. Coski Creek is identified as follows: The natural channel labeled Coski Creek on Exhibit 13 as it flows into Pond 8, continuing as the channel through Pond 8, the short unnamed channel connecting from Pond 8 to Channel III as it flows to Pond 3, the channel through Ponds 3 and 4, and Channel XIII from Pond 4 to the confluence with Channel VI. Charters Creek is identified as follows: The natural channel labeled Charters Creek on Exhibit 13 as it flows into Pond 9B, continuing as the channel through Ponds 9B and 9A to Channel VI, Channel VI, Channel XIV downstream (west) of its confluence with Channel VI, the channel through Pond 5A, Channel XV, the channel through Pond 5B, Channel XVI, the channel through Pond 5C, and the channel discharging water to the South Fork Payette River.

The above proposed Finding of Fact 16 also clarifies that Coski Creek flows from its native channel onto the project property, into Pond 8 and continues through the constructed channels and ponds to its confluence with Charters Creek (Channel VI).

Attached hereto as Exhibit 1 is a map, which served as Hearing Exhibit 13, which highlights in yellow the Coski Creek system described above, and highlights in pink the Charters Creek system described above.

2. Finding of Fact 27. Finding of Fact 27 incorrectly states that Ponds 4, 5A and 5C and the channel paralleling the South Fork Payette River connecting the ponds are the only water features on the Eagle Springs property that derive water from the South Fork Payette River.

Eagle Springs' applications requested (and the Preliminary Order authorizes) two aesthetic water rights from the South Fork Payette with a pumping station below the Alder Creek Bridge that could deliver water to channels and ponds, including Pond 4, and a 12 cfs pumping station from Pond 4 that could deliver water to other water features on the Eagle Springs property.

As proposed by the Applications and described in the record, water would be diverted from the South Fork Payette River at two points identified as Pumping Station B (PS-B) at Section 35 NWSE and Pumping Station A (PS-A) at Section 34 SENE. Water pumped from PS-B would be discharged at two locations: 1) directly into Channel X where it flows to Channel XI, Pond 2, Channel XII, Pond 3, and Pond 4; or 2) into Pond 14 where it can flow into the existing Alder Creek Diversion Ditch and then into various channels and ponds (including Ponds 1, 2, 8, 11, 12), ultimately reaching Pond 3 and Pond 4. Pumping Station A will divert from South Fork Payette River into Pond 4.

A third pumping station, identified as Pumping Station C (PS-C), lifts water from Pond 4 via pipeline to Pond 9C. Water from Pond 9C, which includes water from the South Fork Payette River, can flow into all of the ponds and channels on the west side of the project, including Ponds 4, 5A, 5B, 5C, 6, 9A, 9B, 9C, 10, 18 and 19; and also into all connecting channels including Channels IV, V, VI, VII, VIII, IX, XIII, XIV, XV, XVI, and XVII. Therefore, South Fork Payette River water will flow into and through all ponds and channels identified on Hearing Exhibit 13, except for Ponds 15, 16 and 17. Ponds and streams receiving South Fork Payette River water are highlighted on Exhibit 2 hereto, which also shows direction of flow in pipelines with dark black arrows, and direction of flow in open channels with thinner blue arrows.

The Preliminary Order should find that the Applications propose diversions of water from the South Fork Payette River that would serve water features throughout the Southfork Landing development, and contain the above description of the proposed system operations as appropriate.

3. Finding of Fact 29. Finding of Fact 29 incorrectly states that there is no water right that authorizes diversion and use of South Fork Payette River water for irrigation of the Eagle Springs property. Permit 65-13399 was identified in the remarks section of the Eagle Springs/Barnes Ventures transfer application as a permit appurtenant to a portion of the Southfork Landing development.

Permit No. 65-13399, authorizes diversion of 3.0 cfs for irrigation of 200 acres within a 512-acre permissible place of use for irrigation purposes on the Eagle Springs Ranch property. Attached as Exhibits 3 through 6, respectively, are copies of documents from the Department's files concerning Right 65-13399: Permit Report; Permit; and map from permit file; and a copy of Hearing Exhibit 13 with the point of diversion and approximate place of use boundary of right 65-11324 identified.

The Preliminary Order should find that Eagle Springs holds Permit No. 65-13399 authorizing diversion from the South Fork Payette River of 3.0 cfs to irrigate 200 acres of land owned by Eagle Springs on the west side of the development.

4. Finding of Fact 32. Finding of Fact 32 incorrectly states that there is no water right authorizing diversion and use of South Fork Payette River water for irrigation of the Eagle Springs property.

For the reason stated in Exception 3 above, the Preliminary Order should find that Eagle Springs holds Permit No. 65-13399 authorizing diversion from the South Fork Payette River of 3.0 cfs to irrigate 200 acres of land owned by Eagle Springs on the west side of the development.

5. Conclusion of Law 16. Conclusion of Law 16 incorrectly indicates that the transferred water rights are to be administered by the watermaster of water district 63. The water rights are diverted within Basin 65.

6. Order at Page 16. The Order at page 16 requires the owner of the development served by the aesthetic and recreational water rights to disclose to lot purchasers "at the time of the sale of the lots" that the full flow of the aesthetic streams and full storage in the ponds may not be possible because of senior priority water rights in the South Fork Payette River or by climatic conditions. Eagle Springs already has sold several lots within the subdivision. Eagle Springs has proposed to make the disclosure to all lot owners, including current lot owners, through an amendment to its recorded covenants, conditions and restrictions, and by written notice of the water availability to, and acknowledgement of same from, future lot purchasers at or prior to their closing of any lot purchase.

7. Order at Page 17. The Order at Page 17 states that "[r]ecreation and aesthetic use of water under [water rights 65-23105 and 65-23239] shall be non-consumptive," and that "[w]ater diverted under [water rights 65-23105 and 65-23239] . . . shall be returned to the South Fork Payette River." The first of these proposed conditions does not accurately describe the consumptive nature of these water rights. The two conditions together create uncertainty and the potential for misunderstanding concerning administration of these water rights.

Water Rights Nos. 65-23105 and 65-23239 each have a consumptive component that results from the evaporative losses associated with their diversion and use in the stream channels and ponds. The consumptive component has been estimated using methods approved by the Department, and are the basis for the intended "dry-up" of 39 irrigated acres to offset the potential depletive effect of this consumptive component on the quantity of water available to prior water rights.

A condition that the rights "shall be non-consumptive" is a non-achievable condition. So is the condition that water diverted under the rights be returned to the river, inasmuch as some portion of the "water diverted under the rights" will be lost to evaporation in connection with the aesthetic and recreational use. Other water, provided as mitigation and left in the river by the dry-up of 39 irrigated acres, will more than make up for the evaporative losses and have a positive net effect on the river flows below Southfork Landing.

These two conditions should be replaced with a single condition stating that "the consumptive use associated with Water Rights Nos. 65-23105 and 65-23239 is mitigated by the reduction of total authorized irrigated acres under Water Right No. 65-5633 from 216 acres to 190 acres, a reduction of total authorized irrigated acres under Water Right No. 65-8850 from

103 acres to 90 acres, and a reduction of total authorized irrigated acres under Water Right No. 65-11324 from 110 acres to 97 acres.” In the alternative the two subject conditions should not be included in the Preliminary or Final Order.

8. Order at Page 18. The Order at page 18 incorrectly states that Water Right No. 65-11324 is limited to the irrigation of 90 acres within the place of use described in a single irrigation season. Water Right No. 65-11324 currently is authorized for irrigation of 110 acres, and would be reduced to 97 acres after eliminating irrigation on 13 acres as mitigation for evaporative losses under Water Right Nos. 65-23105 and 65-23239. The Preliminary Order should confirm that upon approval of the transfer, “Water Right No. 65-11324 is limited to the irrigation of 97 acres within the place of use described in a single irrigation season.”

9. Order at page 19. The Order at page 19 incorrectly states that Water Rights 65-8850 and 65-11324 when combined shall not exceed 0.26 cfs for aesthetic use nor exceed 1.94 cfs for irrigation uses. The combined diversion rate for aesthetic use should, however, be limited to the equivalent of 0.02 cfs per irrigated acre at the field headgate, which is a total diversion rate of 0.32 cfs at the point of diversion with a limitation of 0.26 cfs at the field headgate to recognize the conveyance losses currently included in the diversion rate for Water Right No. 65-8850.

REQUEST FOR RECONSIDERATION

In addition to the Exceptions listed above, Eagle Springs requests reconsideration of the following findings of fact, conclusions of law and conditions of the Preliminary Order:

1. Future Amendment or Subordination of Water Right Nos. 65-23105 and 65-23239.

Eagle Springs requests reconsideration of those portions of the Preliminary Order dealing with South Fork Payette River minimum streamflows held by the Idaho Water Resource Board and proposing to subordinate the aesthetic water rights to future uses. Specifically, the Preliminary Order improperly, arbitrarily and unnecessarily imposes conditions requiring future adjustment of Water Right Nos. 65-23105 and 65-23239 based on a renewed public interest review and requiring subordination of these rights to future appropriations for consumptive use.

Idaho water law currently establishes a preference hierarchy only among water rights appropriated for domestic, agricultural and manufacturing purposes, and authorizes the Department to regulate and limit the use of water for power purposes. Idaho statutes and regulations provide for a heightened and continuing, albeit still limited, public interest review in the appropriation of “trust water.” Other than these express exceptions and statements of authority, Idaho law provides all persons a constitutional right to appropriate and divert the unappropriated waters of the state to beneficial uses. Once perfected, water rights are to be administered in priority. The primary policy behind the priority principle is to provide certainty to those who make substantial investments in developing a water right. As recently as February 25, 2009, the Presiding Judge in the Snake River Basin Adjudication held that aesthetic and recreational uses are beneficial uses under Idaho law on a par with other recognized beneficial

uses. *See Amended Consent Decree Re: Aesthetic, Recreation and Wildlife (ARW) Purposes of Use*, Basinwide Issue 00-91014.

Here, the record demonstrates the availability of unappropriated water in the Payette River at the proposed points of diversion, and contains substantial evidence concerning the significant public interest benefits that would be provided by the two aesthetic and recreation appropriations. The Preliminary Order acknowledges this. The record also contains substantial evidence concerning the significant effort and expense that Eagle Springs already has undertaken, and in reliance on the Department's authorization to proceed, will undertake to develop these water rights.

Finding of Fact 14 and the proposed conditions of the Order, however, substantially undercut the certainty that otherwise should be afforded Water Right Nos. 65-23105 and 65-23239 by finding that their approval "should be subject to future consumptive uses," and by unilaterally and unconditionally making the rights "subject to adjustment" in the event the IWRB attempts to modify its minimum stream flow right no. 63-12733 in the future.

The Department lacks authority to condition any water right other than power rights in such ways, and the conditions should be removed from the Preliminary Order. To the extent, however, that these proposed conditions ostensibly are based on some balancing of the public interest, the Preliminary Order arbitrarily "balances" an entirely unknown future interest of the public against the demonstrated public interest benefits and investments of Eagle Springs' proposed aesthetic and recreation diversions by finding and concluding that "the components of [these rights] *should be subject to adjustment.*" Preliminary Order at pg. 14 and 17.

To compound the error, the Preliminary Order proposes to make the Eagle Springs' aesthetic and recreation water rights "junior and subordinate to future water rights authorizing diversion and use of water . . . for consumptive uses. . . ." Preliminary Order at pg. 14 and 17. There are no facts in the record bearing on the possible impact of the Eagle Springs' aesthetic and recreation rights on future consumptive uses generally, or on hypothetical future consumptive uses in the Payette River Basin specifically. Nor are there facts even suggesting what these future consumptive use rights might be, or how the interests of their owners or the public may or may not be served by a subordination of the Eagle Springs' rights.

Nevertheless, the Preliminary Order arbitrarily concludes that the public interest benefit of any as yet unknown future consumptive use of surface or ground water in the Payette River Basin is greater than the interests that will be served by the Eagle Springs' water right applications currently before it. As now worded, the automatic subordination condition of the Preliminary Order precludes even the possibility of examining the continuing public interest of the Eagle Springs water rights when a new consumptive use is proposed. Eagle Springs would be barred from challenging the subordination of its water rights (i.e., even attempting to obtain some consideration of the balance of interests) regardless of the quantity, or location or purpose of use of any new appropriation.

The Department lacks authority to unilaterally subordinate the Eagle Springs aesthetic rights to future consumptive uses. The record contains no facts supporting such a condition, whether based on a public interest analysis or not. To the extent that a "continuing public

interest” condition may be imposed on a non-power right or non-trust water right—which is what the Preliminary Order attempts to impose—then that review actually would have to be “continuing,” and may not be arbitrarily predetermined and concluded by a final order here. Eagle Springs should have to have the ability to “weigh in” on any future appropriation application or any amendment of IWRB Right No. 65-12733 to assert the significant public interest benefits of its own diversions in comparison to the new right or amended right.

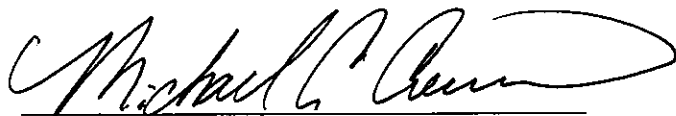
The Preliminary Order should be revised to eliminate all findings and conditions that Water Right Nos. 65-23105 and 65-23239 should be amended upon completion of any future public interest review of IWRB Right No. 65-12733 or that they “should be subject to” or “shall be junior and subordinate” to future consumptive water rights. To the extent a continuing or future public interest evaluation is permissible or warranted, the Preliminary Order and Final Order should not state more than that Water Right Nos. 65-23105 and 65-23239 *may* be subject to amendment in the event that IWRB’s minimum streamflow water right is amended, and that their exercise *may* be subject to appropriate additional conditions to accommodate future consumptive uses, based on an analysis of the public interest in the diversions of the respective rights made at that time.

CONCLUSION

For the foregoing reasons, Eagle Springs requests that the Hearing Officer amend the Preliminary Order to make the changes and corrections described in the list of Exceptions above, and to eliminate conditions predetermining the need for future amendment or subordination of Water Right Nos. 65-23105 and 65-23239. Given the nature of the Exceptions and Request for Reconsideration, and certain exigencies of ongoing project development work, Eagle Springs also respectfully requests expedited review of its Exceptions and Petition so that a Final Order may issue at the earliest possible time.

DATED the 6th day of May, 2009.

GIVENS PURSLEY LLP

A handwritten signature in black ink, appearing to read "Michael C. Creamer", written over a horizontal line.

Michael C. Creamer
Attorneys for Eagle Springs Ranch, LLC

CERTIFICATE OF SERVICE

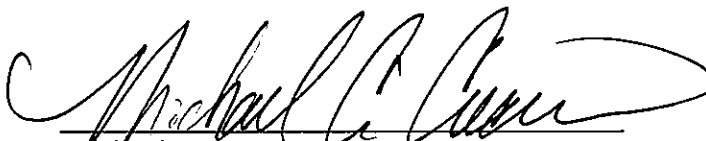
I HEREBY CERTIFY that on the 12th day of May, 2009, I re-served the following persons with a true and correct copy of the foregoing document originally filed with the Idaho Department of Water Resources on May 6, 2009, by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

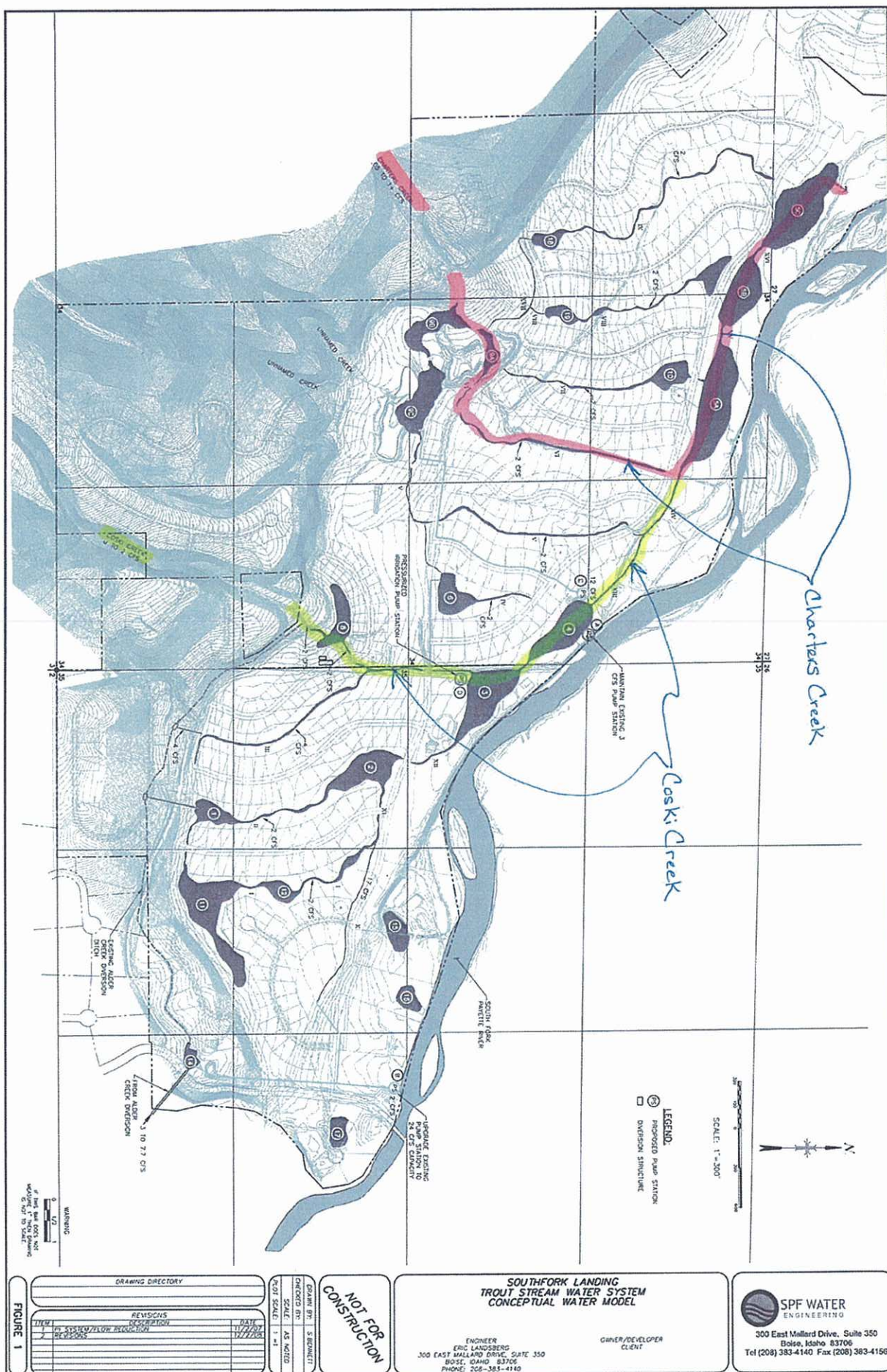
Jayne Reed
450 South Ford Road
Garden Valley, ID 83622

SPF Water Engineering
Attn: Scott King
600 E. River Park Ln. Ste 105
Boise, ID 83706

Barnes Ventures Inc.
Attn: Scott Campbell
Moffatt Thomas
P.O. Box 829
Boise, ID 83701

Western Region
Attn: John Westra
2735 Airport Way
Boise, ID 83705


Michael C. Creamer



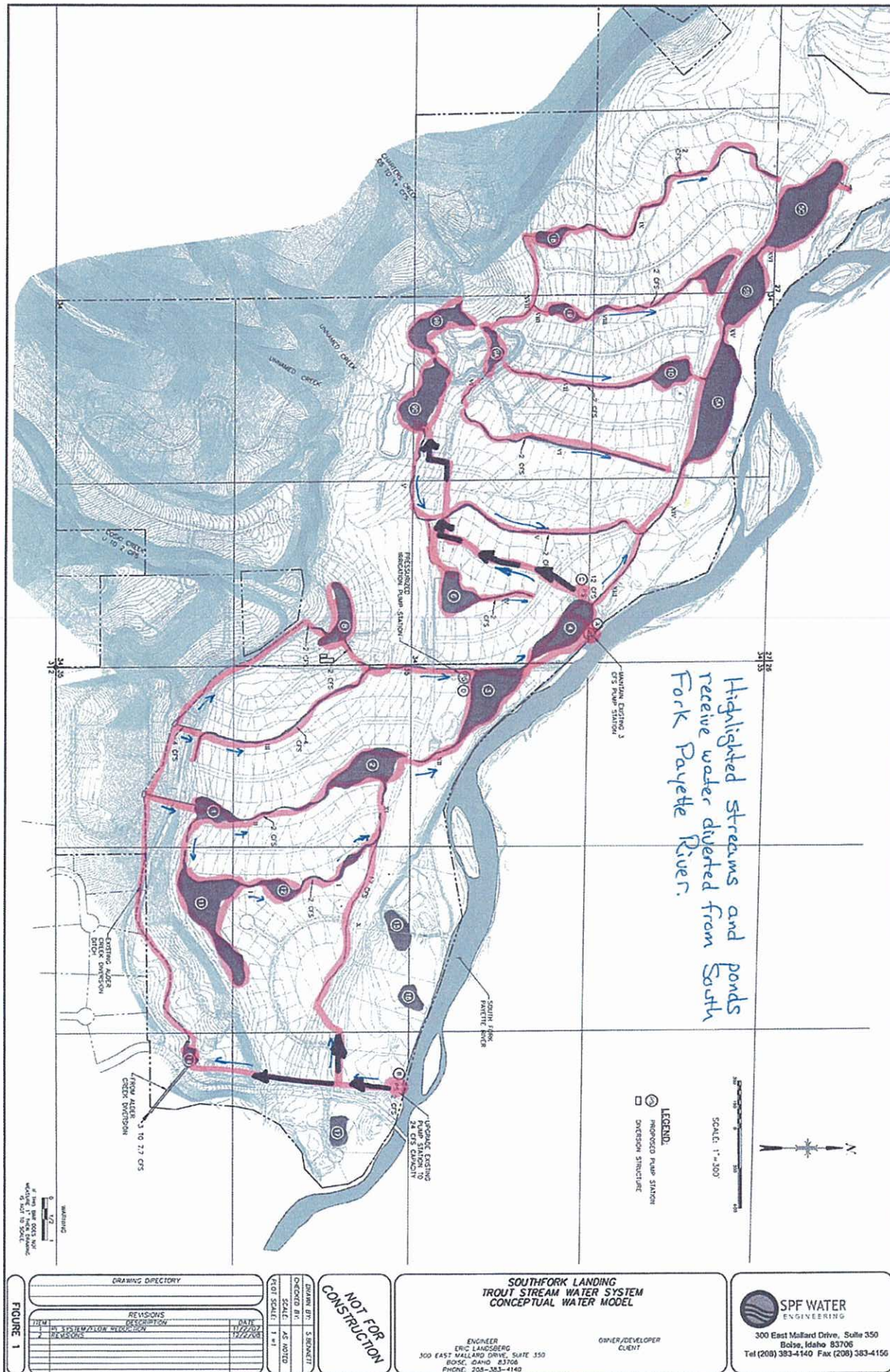


EXHIBIT 2

Close

IDAHO DEPARTMENT OF WATER RESOURCES
Water Permit Report

5/5/2009

WATER RIGHT NO. 65-13399

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	EAGLE SPRINGS RANCH LLC PO BOX 2020 BOISE, ID 83701 (208) 429-9596
Original Owner	JOHN B MC CALLUM PO BOX 143 GARDEN VALLEY, ID 83622-0143 (208)462-3082

Priority Date: 07/06/1992

Status: Active

<u>Source</u>	<u>Tributary</u>
SOUTH FORK PAYETTE RIVER	PAYETTE RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	4/15	10/15	3 CFS	
Total Diversion			3 CFS	

Location of Point(s) of Diversion:

PAYETTE RIVER|SESENE|Sec. 34|Township 09N|Range 04E|BOISE County

IRRIGATION Use:
Acre Limit: 200

Place(s) of use:

Place of Use Legal Description: IRRIGATION BOISE County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
09N	04E	27	6	SWNW	8									
			7	NESW	3	6	NWSW	30		SWSW	40	7	SESW	36
			7	SWSE	7									
		28	3	NWNE	12	3	SWNE	30	4	SENE	25			
			2	NENW	5									
			4	NESE	29									
		34	3	NENE	5	2	NWNE	30		SWNE	40	3	SENE	37
				NENW	40		NWNW	40		SENE	30			
				NESE	30		NWSE	35						

Total Acres: 512

Conditions of Approval:

- 1.005 Use of water under this right is subject to control by the watermaster of State Water District No. 65 .
- 2.01J Prior to diversion of water under this right, the right holder shall install and maintain a measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works.
- 3.03A The rate of diversion of water for irrigation under this right and all other water rights on the same land shall not exceed 0.02 cubic feet per second for each acre of land.
4. This right is limited to the irrigation of 200 acres within the place of use described above in a single irrigation season.

Dates:

Proof Due Date: 08/01/1995

Proof Made Date: 07/31/1995

Approved Date: 08/10/1994

Moratorium Expiration Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Application Received Date: 07/06/1992

Protest Deadline Date:

Number of Protests: 0

Field Exam Date::

Date Sent to State Off:

Date Received at State Off:

Other Information:

State or Federal:

Owner Name Connector:

Water District Number: 65
Generic Max Rate per Acre:
Generic Max Volume per Acre:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Cary Act Number:
Mitigation Plan: False
Close

State of Idaho
Department of Water Resources
Permit To Appropriate Water

NO. 65-13399

Proposed Priority: July 6, 1992

Maximum Diversion Rate:

3.00 CFS

This is to certify, that JOHN B MC CALLUM
PO BOX 143
GARDEN VALLEY ID 83622-0143
has applied for a permit to appropriate water from:

PAYETTE RIVER, SOUTH FORK tributary of PAYETTE RIVER

and a permit is APPROVED for development of water as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>
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IRRIGATION	04/15 to 10/15	3.00 CFS
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LOCATION OF POINT(S) OF DIVERSION: SESENE , Sec. 34, Township 09N, Range 04E
BOISE County

PLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
09N	04E	27	Lot 6 (SWNW) 8	Lot 7 (NESW) 3	Lot 6 (NWSW) 30	
			SWSW 40	Lot 7 (SESW) 36	Lot 7 (SWSE) 7	124
		28	Lot 3 (NWNE) 12	Lot 3 (SWNE) 30	Lot 4 (SENE) 25	
			Lot 2 (NENW) 5	Lot 4 (NESE) 29		101
		34	Lot 3 (NENE) 5	Lot 2 (NWNE) 30	SWNE 40	
			Lot 3 (SENE) 37	NENW 40	NWNW 40	
			SENE 30	NESE 30	NWSE 35	287

Total number of acres irrigated: 512

CONDITIONS/REMARKS:

1. Proof of construction of works and application of water to beneficial use shall be submitted on or before August 1, 1995.
2. Subject to all prior water rights.
3. Use of water under this right is subject to control by the watermaster of State Water District No. 65.
4. A measuring device and lockable controlling works of a type acceptable to the Department shall be permanently installed and maintained as part of the diverting works prior to diversion of water under this right.
5. When water is not available to fill this right, the right holder shall cease diversion or shall rent water from the Payette River Rental Pool.
6. The rate of diversion of water for irrigation under this right and all other water rights on the same land shall not exceed 0.02 cubic feet per second for each acre of land.
7. This right is limited to the irrigation of 200 acres within the place of use described above in a single irrigation season.

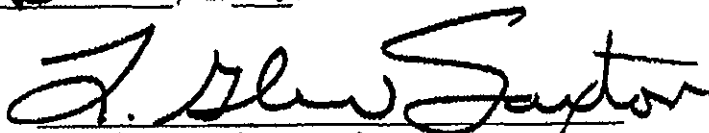
State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 65-13399

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code.
Witness the signature of the Director, affixed at Boise, this

10 th day of August, 1994.



R. Keith Higginson, Director

for

AUG 15 1994

Apparent change in acre per foot lot
per acreation

Approx.
boundary
from
applicant's map

SL 5/20/93

Section
CORNERS

P10
SENE

ROTATION

200 ACRES PER
IRRIG. SEASON within
512 Acre P10 per
Office visit by
T. McCallum (spouse)
7/19/94 - SL

Aug 15 1994

65-13399

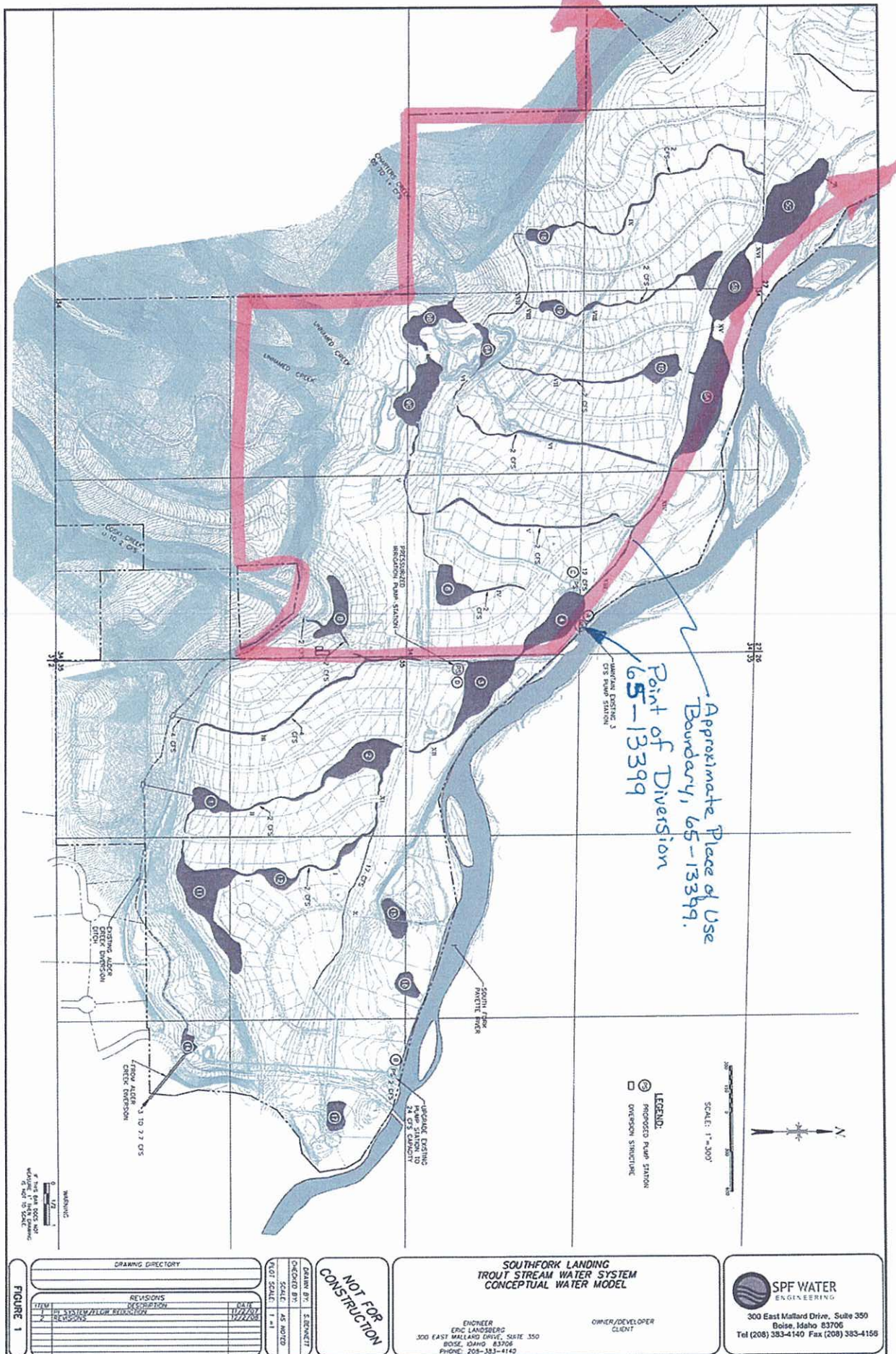


EXHIBIT 6