



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

November 8, 2006

JAMES E. RISCH
Governor

KARL J. DREHER
Director

KEVIN B HOMER
PO BOX 51015
IDAHO FALLS, ID 83405-1015

RE: Ownership Change for Water Right 35-8865 et al – Campbell to Phillips

Dear Mr. Homer:

The Department of Water Resources has received your letter of October 13, 2006 regarding water rights in the name of Derlin and DeOn Campbell and possible conveyance to Caroline Phillips. In your letter, you asked several questions related to ownership of the rights. I'll try to answer your questions in the order presented.

1. *What water right, if any, is owned currently by Chad and Caroline Phillips (tied to described property, with the popular address: 7444 West Arco Highway, Idaho Falls, Idaho)?*

Review of the water right files and the documentation submitted by Phillips indicates that Caroline Phillips likely owns water right 35-12117 (domestic) and portions of water rights 35-8001A, 35-8001B, 35-8865 and 35-8957 (irrigation). I have enclosed a copy of those rights as licensed by the Department or decreed by the Snake River Basin Adjudication court for your reference.

2. *Is there in fact some kind of transfer pending, by which any water right previously owned by Derlin and DeOn Campbell is being transferred to Chad and Caroline Phillips?*

Chad and Caroline Phillips submitted notice to the Department, pursuant to Section 42-248, *Idaho Code*, that ownership for water rights 35-8865 and 35-12117 had been changed. The deed submitted along with the notice supports ownership of appurtenant water rights in the name of Caroline Phillips. It is important to note, although notice to the Department is required by law, the change in ownership occurs when the property is conveyed. It is not clear why notice was not submitted for the other water rights listed in item 1. Unless there is separate documentation that the other water rights have not been conveyed, Phillips should update the notice to include portions of water rights 35-8001A, 35-8001B and 35-8957 and pay the additional fee associated with splitting three more rights (\$300).

3. *If so, please tell me the details of that transfer, including these specifics:*

a. The total amount of the water right being transferred;

I have enclosed a map illustrating the places of use for the irrigation rights and the location of Phillip's parcel of land. I have also enclosed a table showing the split portions for each of the rights. Water rights 35-8001A and 35-8001B have a priority date October 26, 1981. The two rights provide a total of 1.02 cfs for irrigation of 51 acres. A total of 2.1 acres is located within the Phillip's parcel. The split would be proportional based on the acres (see table).

Water right 35-8865 has a priority date of July 19, 1989 and added 3 acres and 0.06 cfs to the overall irrigated area. Water right 35-8957 has a priority date of October 21, 1991 and added 5 acres and 0.10 cfs to the place of use. The two rights essentially added 8 acres and 0.16 cfs to the original 51-acre place of use. Phillip's parcel includes 3.5 acres out of the 8 acres. The split would also be proportional based on the acres (see table).

b. The documents forming the basis of the transfer (i.e. do the Phillips contend that the Campbells signed some document that gave the Phillips the right to apply for that transfer?);

I have enclosed a copy of the notice of owner change and attachments for your review.

c. If the transfer is being made on the basis of some law or regulation without any request or application by the Phillips, then please tell me the reference for that law or regulation;

I noted Section 42-248, Idaho Code. I am also enclosing an order of the Department for an unrelated case that should provide you with some additional reference for water right ownership issues.

d. The date on which that transfer was applied for;

The notice from Phillips was received by the Department on October 18, 2006.

e. The date on which the transfer will likely be complete.

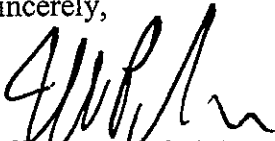
I plan to hold action to update the Department records and will provide a copy of this letter to Phillips for response regarding rights 35-8001A, 35-8001B and 35-8957.

4. *Is there any action by which the Campbells can, administratively, delay that transfer?*

A dispute regarding ownership of the water rights must be in the form of an action to quiet title before a district court. If you choose to proceed with such an action, please inform the Department. The Department will update the water right records based on the court's decision.

Please feel free to call if you have any additional questions.

Sincerely,



Jeff Peppersack, Manager
Water Right Permits Section

c: Chad & Caroline Phillips, with enclosures

Enclosures

Copies of Decreed/Licensed Rights – 35-12117, 35-8001A, 35-8001B, 35-8865 and 35-8957
Map of irrigation water right places of use
Table of split portions for irrigation rights
Copy of Notice of Change in Water Right Ownership – Phillips
Copy of Order of Department – Transfers 72515 and 72516

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

In Re SRBA)
Case No. 39576)
_____)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Water Right 35-12117

1997 NOV 28 PM 3:09

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

NAME & ADDRESS: DERLIN L CAMPBELL
DEON L CAMPBELL
7444 W ARCO HWY
IDAHO FALLS ID 83402

SOURCE: GROUNDWATER

QUANTITY: 0.07 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.

PRIORITY DATE: 05/22/1974

POINT OF DIVERSION: T02N R36E S13 NWNWNW Within BONNEVILLE County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	STOCKWATER	01-01 12-31	0.03 CFS
	DOMESTIC 1 HOME	01-01 12-31	0.04 CFS

PLACE OF USE: STOCKWATER Within BONNEVILLE County
T02N R36E S13 NWNW

DOMESTIC Within BONNEVILLE County
T02N R36E S13 NWNW

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

DATED:

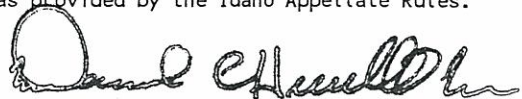


DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DATED:



DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)
Water Right 35-12117

MICROFILMED
DEC 16 1998

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

In Re SRBA)
Case No. 39576)
_____)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Water Right 35-08001A

2002 JAN 31 PM 4: 21
DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED _____

NAME AND ADDRESS: DEON L CAMPBELL
DERLIN L CAMPBELL
7444 W ARCO HWY
IDAHO FALLS, ID 83402

SOURCE: GROUNDWATER

QUANTITY: 0.10 CFS

USE OF THIS RIGHT WITH RIGHT NO. 35-08001B IS LIMITED TO A
TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 204 AF.

PRIORITY DATE: 10/26/1981

POINT OF DIVERSION: T02N R36E S13 NWNENW Within Bonneville County
NWNWNW

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 11-01	0.10 CFS

PLACE OF USE:	Irrigation	Within Bonneville County
	T02N R36E S13	NWNW 20.0
		SWNW 1.0
	51.0 Acres Total	

USE OF THIS RIGHT WITH RIGHT NO. 35-08001B IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 51 ACRES IN A SINGLE
IRRIGATION SEASON.

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 5 ACRES WITHIN
THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance
with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a
final judgment and that the court has and does hereby direct that the above judgment or order shall be a final
judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Roger Burdick

Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

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

In Re SRBA)
Case No. 39576)
_____)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Water Right 35-08001B

2002 JAN 31 PM 4:21
DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

NAME AND ADDRESS: DEON L CAMPBELL
DERLIN L CAMPBELL
7444 W ARCO HWY
IDAHO FALLS, ID 83402

SOURCE: GROUNDWATER

QUANTITY: 0.92 CFS

USE OF THIS RIGHT WITH RIGHT NO. 35-08001A IS LIMITED TO A
TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 204 AF.

PRIORITY DATE: 10/26/1981

POINT OF DIVERSION: T02N R36E S13 NWENW Within Bonneville County
NWNWNW

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 11-01	0.92 CFS

PLACE OF USE:	Irrigation	Within Bonneville County
	T02N R36E S13	NENW 29.0 SWNW 1.0
	51.0 Acres Total	NWNW 20.0 SENW 1.0

USE OF THIS RIGHT WITH RIGHT NO. 35-08001A IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 51 ACRES IN A SINGLE
IRRIGATION SEASON.

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 46 ACRES WITHIN
THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance
with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a
final judgment and that the court has and does hereby direct that the above judgment or order shall be a final
judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Roger Burdick

Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 35-08865

Priority: July 19, 1989

Maximum Diversion Rate:

0.06 CFS

Maximum Diversion Volume:

12.0 AF

This is to certify, that DERLIN L CAMPBELL

7444 W ARCO HWY

IDAHO FALLS ID 83402

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated July 19, 1989; and has submitted Proof of Beneficial Use on July 8, 1992. An examination indicates that the works have a diversion capacity of 1.450 cfs of water from a GROUNDWATER source, and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
IRRIGATION	04/01 to 10/31	0.06 CFS	12.0 AF

LOCATION OF POINT(S) OF DIVERSION:

NENW , Sec. 13, Township 02N, Range 36E
NWNW , Sec. 13, Township 02N, Range 36E
BONNEVILLE County

PLACE OF USE: IRRIGATION

TWN RGE SEC
02N 36E 13

ACRES
NENW 30
SENN 2

ACRES
NWNW 26

ACRES
SWNW 1

TOTAL
59

Total number of acres irrigated:

59

CONDITIONS/REMARKS:

1. The maximum diversion volume is defined as the maximum allowable volume of water that may be diverted annually from the source under this right. The use of water confirmed by this right is limited to the amount that can actually be beneficially used. The maximum diversion volume may be adjusted to more accurately describe the beneficial use or to implement accepted standards of diversion and use efficiency.
2. This water right is appurtenant to the described place of use.
3. This right is subject to all prior water rights and may be forfeited by five years of non-use.
4. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
5. This right is for the use of trust water and is subject to review 20 years after the issuance of the permit to determine availability of water and to re-evaluate the public interest.
6. Diversion and use of water under this right is subject to an annual use fee if rules are subsequently promulgated which provide for the submittal of the fee.
7. The Director retains jurisdiction of the right issued to change, add or remove any requirement as determined to be appropriate.

MAY 17 1995

State of Idaho
Department of Water Resources**WATER RIGHT LICENSE**

WATER RIGHT NO. 35-08865

CONDITIONS/REMARKS:

8. Rights 35-08001A, 35-08001B and 35-08957 are also diverted through the points of diversion described above.
9. Use of this right with the rights listed below is limited to a total combined annual diversion volume of 236.0 af and to the irrigation of a combined total of 59 acres in a single irrigation season. The combined rights include: 35-08001A, 35-08001B and 35-08957.
10. This right is limited to the irrigation of 3 acres within the place of use described above in a single irrigation season.
11. Use of this right with Rights 35-08001A, 35-08001B, 35-08957 and all other rights shall provide no more than .02 cfs per acre nor more than 4.0 afa per acre for the lands above.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code.
Witness the seal and signature of the Director, affixed at Boise, this 10TH
day of MAY, 1995.

Acting for

R. Keith Higginson, Director

NOT RECORDED

MAY 17 1995

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 35-08957

Priority: October 21, 1991

Maximum Diversion Rate:

0.10 CFS

Maximum Diversion Volume:

20.0 AF

This is to certify, that DERLIN L CAMPBELL
DEON L CAMPBELL

7444 W ARCO HIGHWAY
IDAHO FALLS ID 83402

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated October 21, 1991; and has submitted Proof of Beneficial Use on July 8, 1992. An examination indicates that the works have a diversion capacity of 1.450 cfs of water from a GROUNDWATER source, and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
IRRIGATION	04/01 to 10/31	0.10 CFS	20.0 AF

LOCATION OF POINT(S) OF DIVERSION:

NENW , Sec. 13, Township 02N, Range 36E
NWNW , Sec. 13, Township 02N, Range 36E
BONNEVILLE 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>
02N	36E	13	NENW 30	NWNW 26	SWNW 1	59
			SESW 2			

Total number of acres irrigated: 59

CONDITIONS/REMARKS:

1. The maximum diversion volume is defined as the maximum allowable volume of water that may be diverted annually from the source under this right. The use of water confirmed by this right is limited to the amount that can actually be beneficially used. The maximum diversion volume may be adjusted to more accurately describe the beneficial use or to implement accepted standards of diversion and use efficiency.
2. This water right is appurtenant to the described place of use.
3. This right is subject to all prior water rights and may be forfeited by five years of non-use.
4. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
5. This right is for the use of trust water and is subject to review 20 years after the issuance of the permit to determine availability of water and to re-evaluate the public interest.
6. Diversion and use of water under this right is subject to an annual use fee if rules are subsequently promulgated which provide for the submittal of the fee.

RECEIVED
MAY 17 1995

State of Idaho
Department of Water Resources**WATER RIGHT LICENSE**

WATER RIGHT NO. 35-08957

CONDITIONS/REMARKS:

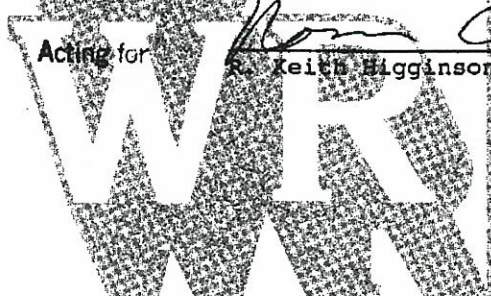
7. The Director retains jurisdiction of the right issued to change, add or remove any requirement as determined to be appropriate.
8. Rights 35-08001A, 35-08001B and 35-08865 are also diverted through the points of diversion described above.
9. Use of this right with the rights listed below is limited to a total combined annual diversion volume of 236.0 af and to the irrigation of a combined total of 59 acres in a single irrigation season. The combined rights include: 35-08001A, 35-08001B and 35-08865.
10. This right is limited to the irrigation of 5 acres within the place of use described above in a single irrigation season.
11. Use of this right with Rights 35-08001A, 35-08001B, 35-08865 and all other rights shall provide no more than .02 cfs per acre nor more than 4.0 afa per acre for the lands above.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code.
Witness the seal and signature of the Director, affixed at Boise, this 12TH
day of MAY, 1995

Acting for

R. Keith Higginson

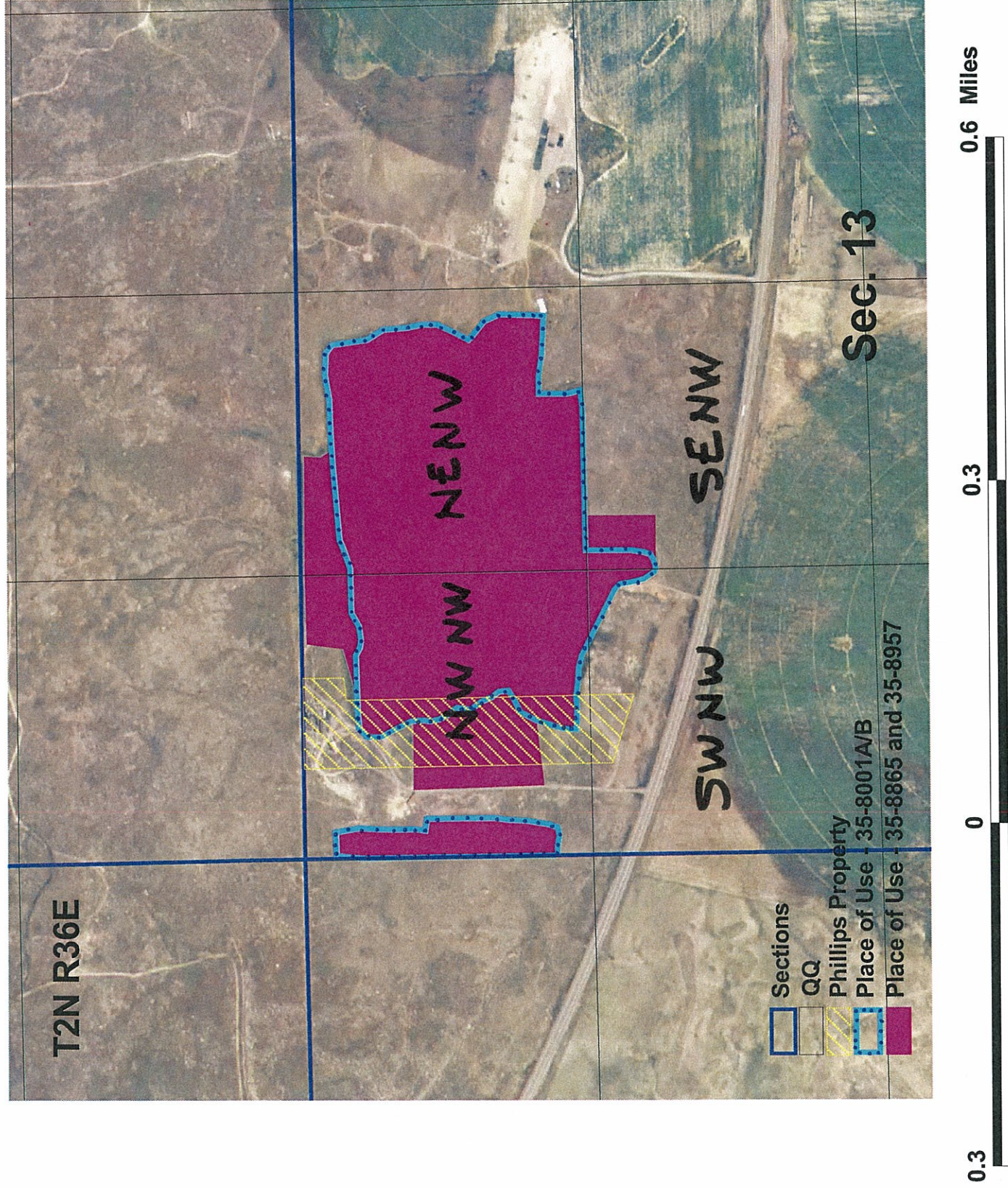
Director



MICROFILMED

MAY 17 1995

Water Rights 35-8001A/B, 35-8865 and 35-8957



Split of Water Rights for Phillips

WR Number	35-8001A		35-8001B		8001A/B	
	Campbell	Phillips	Campbell	Phillips	Campbell	Phillips
Rate	0.10	0.09	0.01	0.04	1.02	0.97
Volume					204.0	195.6
Acres	5.0	4.8	0.2	1.9	51.0	49.0

note: Phillips portion is 2.1 acres out of 51 acres covered by these two water rights

WR Number	35-8865		35-8957		8865/8957	
	Campbell	Phillips	Campbell	Phillips	Campbell	Phillips
Rate	0.06	0.03	0.10	0.04	0.16	0.09
Volume	12.0	6.8	20.0	11.2	32.0	18.0
Acres	3.0	1.7	5.0	2.8	8.0	4.5

note: Phillips portion is 3.5 acres out of 8 acres added by these two water rights

All Rights		All Rights	
Combined	Phillips	Combined	Phillips
Rate	1.18	1.06	0.12
Volume	236.0	213.6	22.4
Acres	59.0	53.5	5.6

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP

RECEIVED

OCT 18 2006

Please print or type. Attach pages with additional information. Instructions are included at the end of this form.
 Incomplete forms will be returned.

**DEPARTMENT OF
 WATER RESOURCES**

Please list the water right number(s) and/or adjudication claim number(s) (if any) for each water right to be changed. List just the adjudication claim number if there is no corresponding water right record on file with the department. Indicate, by checking in the space provided (under the "split" heading), if the change in ownership is limited to a portion of a water right in which case division of the existing water right or adjudication claim record will be required.

Water Right No(s).	Adjudication Claim No(s).	Split	Water Right No(s).	Adjudication Claim No(s).	Split
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
<u>35-8865</u>	_____	<u>X</u>	_____	_____	_____
<u>35-12117</u>	_____	_____	_____	_____	_____

2. The following **REQUIRED** information must be submitted with this form:

- A. The appropriate **FILING FEE**. See instructions for fee amounts. \$125 paid
- B. A copy of the most recent **DEED, TITLE POLICY, CONTRACT OF SALE** or other legal document indicating your ownership of the property and water right(s) or claim(s) in question, **WITH ATTACHED LEGAL DESCRIPTION**.
- C. Either of the following (if necessary to clarify division of water rights or other complex property descriptions):
PLAT OF PROPERTY or **SURVEY MAP** clearly showing the location of the point(s) of diversion and place of use of your water right(s) and/or adjudication claim(s) (these are usually attached to your deed or on file with the county).

OR

If your water right(s) and/or adjudication claim(s) is for ten or more acres of irrigation, you must submit a USDA Farm Service Agency **AERIAL PHOTO** with the irrigated acres outlined and point(s) of diversion clearly marked. The **AERIAL PHOTO** should be submitted in place of the **PLAT OF PROPERTY** or **SURVEY MAP**.

3. Name and Address of Former
 Owner/Claimant(s)

Derlin Campbell

4. New Owner/Claimant(s)

Chad + Caroline Phillips

Name Connector (Check one): ☐ and, ☐ or, ☐ and/or

New Mailing Address

7944 West Arco Highway

City, State and ZIP Code

Idaho Falls, Idaho 83402

New Telephone Number

208-552-0686 or 208-552-3169

5. Date you acquired the property

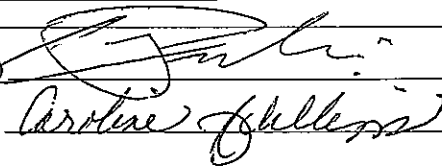
March, 2005

6. If the change in ownership affects the entire water right for each water right or adjudication claim number listed in item 1, THEN SKIP THIS ITEM AND GO TO ITEM 7. If the change in ownership divides the water right(s) among multiple owners, you must describe, in detail, your portion of each water right after the change. Fill in the appropriate spaces in the box(es) below to describe your water right(s) after the change (one water right per box, you may copy this page as necessary). If your quantity of water is greater than a proportionate split, you must attach documentation to show justification for a larger amount. If you are not sure how to identify your portion of the original water right or adjudication claim records, please contact the nearest IDWR office for assistance.

DESCRIPTION OF YOUR PORTION OF WATER RIGHT (If the right(s) will not be split, skip this area and proceed to item 7)		
Water Right and/or Adjudication Claim Number _____		
Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation	_____	_____
Stock	_____	_____
Domestic	_____	_____
Other _____	_____	_____
Total	_____	_____

DESCRIPTION OF YOUR PORTION OF WATER RIGHT (If the right(s) will not be split, skip this area and proceed to item 7)		
Water Right and/or Adjudication Claim Number _____		
Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation	_____	_____
Stock	_____	_____
Domestic	_____	_____
Other _____	_____	_____
Total	_____	_____

7. Signature of New Owner(s) or Claimant(s)
(include title if applicable)


Caroline J. Hultess

For Snake River Basin Adjudication Claims: Please attach a Notice of Appearance completed by your attorney, if you wish IDWR to correspond with him/her for all matters related to your claims.

For Office Use Only

Received by _____ Date _____ Fee \$125
 Received by JC Date 10-11-06 Receipt No. E032299
 Processed by _____ AJ Date _____ WR _____ Date _____

WARRANTY DEED

BOONEVILLE COUNTY RECORDER
1179525 MAR 8 '05 PM 3:59

Order No. 3030510821

FOR VALUE RECEIVED

Derlin L. Campbell and Deon L. Campbell, Husband and Wife

the grantor(s), do(es) hereby grant, bargain, sell and convey unto

Caroline Phillips, a married person as sole separate property
whose current address is

7444 W Arco Hwy Idaho Falls, ID 83402

the grantee(s), the following described premises, in Bonneville County, Idaho, TO WIT:

Beginning at a point that lies North 89°29'50" East 416.00 feet along the Section line from the Northwest corner of Section 13, Township 2 North, Range 36 East of the Boise Base line and Meridian and running thence North 89°29'50" East 416.00 feet along said the Section line; thence South 00°05'29" West 208.00 feet; thence South 89°29'50" West 104.00 feet; thence South 00°05'29" West 1322.61 feet to a point on a curve on the Northerly right of way of U.S. Highway 20; thence along said curve, to the right a distance of 329.06 feet, said curve having a radius of 11259.16 feet, a central angle of 1°40'28" and a chord that bears North 71°22'40" West 329.04 feet; thence North 00°05'29" East 1422.79 feet to the point of beginning.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee(s), that (s)he is/are the owner(s) in fee simple of said premises; that they are free from all encumbrances Except: Current Year Taxes, conditions, covenants, restrictions, reservations, easements, rights and rights of way, apparent or of record.

And that (s)he will warrant and defend the same from all lawful claims whatsoever.

Dated: 3/01/2005

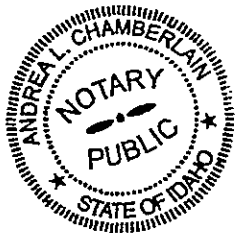
Derlin L. Campbell
Derlin L. Campbell

Deon L. Campbell
Deon L. Campbell

State of Idaho }
County of Bonneville } ss.

On this 2 day of March, in the year 2005, before me, a Notary Public in and for said state, personally appeared Derlin L. Campbell and Deon L. Campbell, known or identified to me to be the person whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

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



Andreal Chamberlain
Notary Public for the State of Idaho
Residing at:
Commission Expires:

Residing in Idaho Falls, Idaho
Commission Expires 10/11/08

Alliance Title & Escrow Corp.
451 Park Ave. P.O. Box 50642
Idaho Falls, ID 83405-0642

INSTRUMENT NO.	1179525
DATE	3-8-05
INSTR. CODE	295
IMAGED FOR	3-20
FEE	
STATE OF IDAHO) ss. COUNTY OF BONNEVILLE)	
I hereby certify that the within instrument was recorded.	
Ronald Longmire, County Recorder	
By	<i>R Longmire</i>
Deputy	
Request of	ATEC

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATIONS)
FOR TRANSFER NOS. 72515 AND)
72516 IN THE NAME OF RICHARD J.)
MURGOITIO)
_____)

**ORDER DENYING PETITION
FOR RECONSIDERATION**

This matter having come before the Idaho Department of Water Resources (the "Department") through a petition to reconsider the issuance of a preliminary order rejecting two applications for transfer of a water right, the Department makes the following Findings of Fact, Conclusions of Law, and Order denying the petition for reconsideration:

FINDINGS OF FACT

1. The Department issued water right license no. 63-11291 to Lou L. Murgoitio on February 25, 1993. The water right authorized the irrigation of 338.6 acres within Ada County with 4.4 cubic feet per second (cfs) from a ground water source to supplement an existing surface water supply.

2. On February 14, 2005, Richard J. Murgoitio (the "applicant") executed a warranty deed conveying real property with appurtenances to Charter Pointe Development, LLC (the "purchaser"). The real property conveyed was the land to which supplemental ground water right no. 63-11291 is appurtenant. The sale of the property closed on February 17, 2005. The purchaser acquired the land for the purpose of developing it into a residential subdivision. The developer subsequently conveyed the land to the individual lot owners.

3. The applicant filed an initial transfer application with the Department on February 15, 2005. On August 1, 2005, the applicant replaced the initial application for transfer with two amended transfer applications. The two amended transfer applications seek authorization to change the point of diversion and place of use for portions of water right no. 63-11291 to two new locations. The first application, designated application for transfer no. 72515, proposed to change 0.71 cfs from 40 acres to a 48-acre place of use. The second application, designated application for transfer no. 72516, proposed to change 0.45 cfs from 30.8 acres to a 22.8-acre place of use. Application for transfer nos. 72515 and 72516 will be referred to hereafter as "the applications."

4. On November 17, 2005, the Department mailed a letter to the applicant's attorney, asking for evidence of authority to change the water right and that the changes would be consistent with the requirements of Idaho Code § 42-222. The letter stated that, if the applicant did not respond to the request within 30 days, the Department would reject the applications.

5. On January 9, 2006, the applicant's attorney submitted a letter with attachments addressing some of the questions identified in the Department's letter of November 17, 2005. The letter referred to an undated document, attached to the applications, that reads as follows:

Providence Development Group LLC acknowledges that it has no interest in the supplemental water right number 63-11291 for any land in Section 2, Township 2 North, Range 1 East, and that Richard J. Murgoitio returns all right, title and interest in said water right.

6. On January 10, 2006, the Department, having determined that the question of current ownership or authority to change the water right was not adequately addressed, mailed a letter to the applicant's attorney asking for additional documentation to support ownership or authority to change the water right.

7. On February 10, 2006, the applicant's attorney submitted a letter and an affidavit by Justin Blackstock to the Department. The affidavit asserted that Blackstock was an authorized representative of Providence Development Group LLC, and that Providence Development Group LLC purchased real property from Richard and Rose Murgoitio. The affidavit stated the following:

In the land purchase, Providence Development Group LLC did not intend to obtain any interest whatsoever in the supplemental Water Right No. 63-11291. The attached acknowledgment of that fact was signed on behalf of Providence Development Group LLC and executed prior to the purchase of the property from the Murgoitios.

The document attached to the applications, quoted above in finding of fact no. 5, was also attached to the affidavit.

8. The Department determined that the question of current ownership or authority to change the water right was not adequately addressed. On March 15, 2006, the Department mailed a letter to the applicant's attorney asking for additional documentation to support ownership or authority to change the water right. In the letter, the Department again stated that, if the applicant did not respond to the request within 30 days, the Department would reject the applications.

9. On June 19, 2006, the Department issued a preliminary order rejecting the applicant's applications for transfer pursuant to Idaho Code § 42-222.

10. On June 30, 2006, the applicant, through his attorney, filed a Petition for Reconsideration of Preliminary Order ("petition") noting that he had been in contact with the Department's attorney following the Department's letter of March 15, 2006. On July 21, 2006, the Department granted the petition for the limited purpose of providing the Department with the opportunity to evaluate the petition and the supporting documentation. In the petition, the applicant alleged that both he and the purchaser intended that the applicant would retain all right, title and interest in supplemental water right no. 63-11291.

11. "Exhibit A," attached to the petition, is the undated statement document quoted earlier in finding of fact no. 5. The document is signed by Matthew Schultz as a representative of Providence Development Group, LLC, in which Providence acknowledged, "it has no interest in the supplemental water right number 63-11291," and that the applicant "returns (sic) all right, title and interest in said water right."

12. The applicant asserts in the petition that the purchaser signed "Exhibit A" before the sale of the property closed on February 17, 2005. The applicant does not explain why Providence Development, LLC signed the document rather than the named purchaser, Charter Pointe Development, LLC. The document does not show that Providence signed the document on behalf of the named purchaser. In addition, the document does not explain by what authority Providence may have signed the document on behalf of the named purchaser. The applicant acknowledges in the petition that "Exhibit A" was not recorded with the warranty deed, nor does the deed mention the applicant's reservation of any appurtenant water rights.

13. The applicant also alleges in the petition that any subsequent purchaser of the property could not claim title to supplemental water right no. 63-11291 as a bona fide purchaser because the applicant's transfer application was filed with the Department on February 15, 2005, before the close of the sale of the property.

14. The petition further alleges that the statute of frauds did not prevent supplemental water right no. 63-11291 from being withheld from the conveyance due to the doctrine of partial performance.

CONCLUSIONS OF LAW

1. Section 67-5243(3), Idaho Code, provides in pertinent part as follows:

Unless otherwise provided by statute or rule, any party may file a motion for reconsideration of a recommended order or a preliminary order within fourteen (14) days of the issuance of that order. The presiding officer shall render a written order disposing of the petition.

2. Section 42-222, Idaho Code, provides in pertinent part as follows:

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-202B, Idaho Code, the change will not adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates, and the new use is a beneficial use, which in the case of a

municipal provider shall be satisfied if the water right is necessary to serve reasonably anticipated future needs as provided in this chapter. The director may consider consumptive use, as defined in section 42-202B, Idaho Code, as a factor in determining whether a proposed change would constitute an enlargement in use of the original water right.

3. Section 42-220, Idaho Code, provides in pertinent part as follows:

[A]ll rights to water confirmed under the provisions of this chapter, or by any decree of court, shall become appurtenant to, and shall pass with a conveyance of, the land for which the right of use is granted.

4. The Idaho Supreme Court has confirmed that a water right is an appurtenance to the land on which it is used and will pass with a conveyance of the land unless reserved in the deed:

[I]t is well established that a water right is an appurtenance to the land on which it has been used and will pass by conveyance of the land. A division of the land would divide the appurtenant water right in the same proportion as it divided the land. In this case the twenty acres of land was deeded *together with the appurtenances*. This conveyance would carry with it the water right appurtenant to the land at the time of the conveyance, unless it was specifically reserved in the deed or it could be clearly shown that it was known to both parties that the water right was not intended to be conveyed.

Silverstein v. Carlson, 118 Idaho 456, 460, 797 P.2d 856, 860 (1990) *quoting from Russell v. Irish*, 20 Idaho 194, 198-99, 118 P. 501, 502 (1911) (emphasis in original; citations omitted).

5. Absent actual knowledge or facts sufficient to place a party on inquiry notice, a third party purchaser is required to look no further than the record title to property with respect to real estate. *See Federal Land Bank of Spokane v. Union Cent. Life Ins.*, 54 Idaho 161, 168, 29 P.2d 1009, 1011 (1934). In the present matter, neither the undated and unrecorded statement by Providence Development, LLC, nor the applicant's filing of a water right transfer application with the Department would reasonably have put a third party purchaser on notice that the applicant had intended to reserve ownership of the appurtenant supplemental ground water right in a previous conveyance of the property.

6. In order for an instrument found outside of the record title to provide a third party purchaser with constructive notice, the recorded deed must suggest that a more complete description of the property exists outside the deed of title. *See Kalange v. Rencher*, 136 Idaho 192, 195-96, 30 P.3d 970, 973-74 (2001). Nothing on the face of the February 14, 2005, deed from the applicant Murgoitio to Charter Pointe Development, LLC suggests that documents outside the record need be consulted to ascertain the intent of the grantor and the grantee with respect to the conveyance or reservation of appurtenant water rights. The only constructive notice provided by the deed is that the lands as described in an attached exhibit were conveyed "with their appurtenances," which in this case included licensed water right no. 63-11291.

7. The applicant's argument that the statute of frauds did not prevent supplemental water right no. 63-11291 from being withheld from the conveyance due to the doctrine of partial performance or the mutual agreement of the parties is inapplicable. Here, one may concede that the seller Murgoitio and the purchaser Charter Pointe Development, LLC intended that water right 63-11291 be reserved from the conveyance. If those were the only two parties involved, the matter could be resolved now through a quitclaim deed from the purchaser to Murgoitio. Unfortunately, other interests now exist represented by the subsequent purchasers of the residential subdivision lots who were not given notice through the recorded deed that the water right was intended to be reserved.

8. A suit to ascertain, determine, and decree the extent and priority of a water right and appropriation partakes of the nature of an action to quiet title to real estate. In order to prevail in an action to quiet title, the person bringing the action "must establish such claim by evidence that is clear, satisfactory and convincing." *Erickson v. State*, 132 Idaho 208, 211, 970 P.2d 1, 4 (1998). "[A] quiet-title action is principally *in rem*. Jurisdiction lies where the property is located." *Brown's Tie & Lumber Co. v. Kirk*, 109 Idaho 589, 590, 710 P.2d 18, 19 (Ct. App. 1985). An action to quiet title may only be heard by a district court. *Rural Kootenai Organization, Inc. v. Board of Com'rs*, 133 Idaho 833, 842, 993 P.2d 596, 605 (1999); *Bonner Bldg. Supply, Inc. v. Standard Forest Products, Inc.*, 106 Idaho 682, 685, 682 P.2d 635, 638 (Ct. App. 1984).

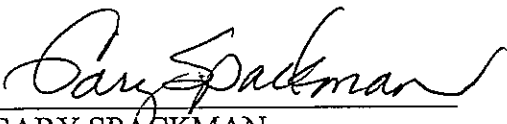
9. Because the land conveyance deed from Murgoitio to Charter Pointe Development, LLC did not reserve appurtenant water right no. 63-11291 to the grantor, the Department must presume for purposes of considering amended applications for transfer nos. 72515 and 72516 that the water right passed to the grantee under the deed and that a proportionate share of water right no. 63-11291 in turn passed by subsequent deed to the individual lot owners following development of the residential subdivision. The Department has not been furnished with a copy of the deed form provided to the individual lots owners.

10. The Department cannot fully consider the application for transfer without quitclaim deeds from the individual lot owners or a declaration from a civil court quieting title to water right no. 63-11291 in the name of the applicant.

ORDER

IT IS THEREFORE HEREBY ORDERED that the petition for reconsideration of the order denying Water Right Transfer Nos. 72515 and 72516 is DENIED pursuant to section 42-222, Idaho Code.

Dated this 26th day of September, 2006.

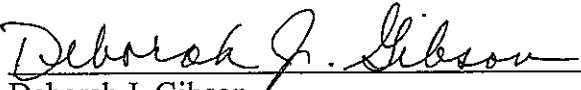

GARY SPACKMAN
Chief, Water Allocation Bureau

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of September, 2006, a true and correct copy of the document(s) described below were served by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Document(s) Served: Order Denying Petition for Reconsideration
Explanatory Information to Accompany a Preliminary Order without a hearing.

ALBERT P BARKER
BARKER ROSHOLT & SIMPSON LLP
PO BOX 2139
BOISE ID 83701-2139


Deborah J. Gibson
Administrative Assistant