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

IN THE MATTER OF APPLICATIONS FOR)	
PERMIT TO APPROPRIATE WATER NOS.)	
15-7273, 15-7274, AND 15-7275 IN THE)	
NAME OF M. J. DAVIS MEMORIAL)	ORDER DENYING
LIMITED PARTNERSHIP)	PETITION FOR
_____)	RECONSIDERATION

On December 16, 2005, M.J. Davis Memorial Limited Partnership ("MJ Davis") filed three applications for permit to appropriate water with the Idaho Department of Water Resources ("IDWR"). IDWR determined the applications were not complete, and returned them to MJ Davis. On January 4, 2006, MJ Davis refilled the applications with IDWR.

IDWR assigned water right numbers 15-7273, 15-7274, and 15-7275 to the applications. IDWR published notice of the applications. The applications were protested by Samaria Water and Irrigation Company ("Samaria Irrigation"), Dee's, Inc., the Samaria Recreation and Cemetery Districts, and several residents of the City of Samaria.

On November 14, 2006, IDWR conducted a hearing regarding the protests.

On May 3, 2007, IDWR issued a preliminary order approving application to appropriate water no. 15-7275, and denying applications to appropriate water nos. 15-7273 and 15-7274.

On May 16, 2007, MJ Davis timely filed a Petition for Reconsideration.

Appropriation from Private, Artificial Channels

The hearing officer denied applications nos. 15-7273 and 15-7274 because the applications "locate as proposed points of diversion a Samaria Irrigation delivery canal channel location" and "IDWR cannot approve a point of diversion from an existing canal." MJ Davis argues that the hearing officer should have conditionally approved the applications and allowed a period of time to obtain "access to the water source." The argument also implies that, at some point during duration of the permit development period, the permits would be amended to identify the Samaria Irrigation points of diversion from Rose Bud Creek and Dry Pine Creek as the permitted points of diversion.

Idaho Code § 42-101 states that "waters of the state, when flowing in their natural channels . . . are the property of the state" and that the "right to use the waters of the state for useful or beneficial purposes is recognized and confirmed."

SUPPORT DATA

In the case of *Rabido v. Furey*, 33 Idaho 56, 190 P. 73 (1920), Furey argued that the court should recognize a beneficial use water right perfected by diversion from an artificial channel constructed by Rabidos. In refusing to recognize the water right, the Idaho Supreme Court stated:

Whether or not appellant obtained any right to the water by his attempted appropriation depends upon whether the water was subject to appropriation at the place and in the manner in which he attempted to appropriate it. The [statutory language] indicates that water is subject to appropriation only when flowing in its natural channel and that it must be appropriated therefrom.

The specific question upon which we pass in this case is whether the water in question, which respondents caused to flow down the canyon and into the ditch which they had constructed, and from which appellant diverted it, was flowing in its natural channel and was diverted therefrom by appellant. In view of the evidence . . . we answer this question in the negative. . . . It is perfectly clear that the ditch out of which appellant diverted the water was not its natural channel.

MJ Davis was responsible for identifying a point of diversion in its applications on Dry Pine Creek and on Rose Bud Creek. The Department cannot authorize a point of diversion from the delivery canals of Samaria Irrigation.

Futile Call

Conclusions of Law nos. 12 and 13 stated the following regarding a possible futile call by Samaria Irrigation:

12. The hearing officer will not address the issue of futile call. The testimony established that water is available, at times, in the upper reaches of Thomas Davis Creek and would not reach the headgates of Samaria Irrigation. Nonetheless, the determination of a futile call is fact dependent. Futile call is determined during the administration of water rights not at the time of determining whether there is water available for appropriation.

13. There is not yet a water district created for administration of water from Thomas Davis Creek. As a result, a watermaster cannot regulate water based on principles of futile call. In this approval, the availability of water will be determined based on the actual surface water flow that is available or not available at the points of diversion. If Samaria Irrigation District cannot divert water at its point of diversion, then MJ Davis can divert the water, to the extent it can be beneficially used.

Both Conclusion no. 5 and Conclusion no. 12 use the plural phrase “points of diversion.” Use of the plural phrase “points of diversion” in Conclusion no. 5 reflects some uncertainty by the hearing officer whether Samaria Irrigation has a single point of diversion or more than one point of diversion from Thomas Davis Creek. The phrase “points of diversion” refers to Samaria

Irrigation's point or points of diversion from Thomas Davis Creek. In the conditions requiring Samaria Irrigation to install a measuring device and provide access, the requirement applies to all Samaria Irrigation points of diversion from Thomas Davis Creek.

In the order, the hearing officer wrote, as a condition of approval:

The water right holder may only divert water from Thomas Davis Creek when: (a) the flow of Thomas Davis Creek exceeds the flow rate claimed in Samaria Irrigation amended claim no. 15-4066 at Samaria Water and Irrigation Company's point of diversion; or (b) at any time Samaria Water and Irrigation Company is not diverting its full flow rate under amended claim no. 15-4066 and excess water is flowing past Samaria Water and Irrigation Company's point of diversion; or (c) **at any time Samaria Water and Irrigation Company cannot divert water at its point of diversion and the water right holder can divert and beneficially use the water in Thomas Davis Creek.** (Emphasis added).

The authorization for diversion by MJ Davis when "Samaria Water and Irrigation Company cannot divert water at its point of diversion and the water right holder can divert and beneficially use the water in Thomas Davis Creek" was a condition that addressed the issue of injury and sufficiency of the water supply. The phrase "point of diversion" refers to Samaria Irrigation points of diversion from Thomas Davis Creek. The condition was not intended to define how a futile call would be administered. The record did not contain sufficient facts for the hearing officer to determine in the preliminary order the locations where Samaria Irrigation could not beneficially use water. The hearing officer will not define in the preliminary order what constitutes a futile call. The preliminary order does not prevent MJ Davis from seeking a determination of a futile call in the future, however.

ORDER

IT IS HEREBY ORDERED that the Petition for Reconsideration filed by M.J. Davis Memorial Limited Partnership is **Denied**.

DATED this 6th day of June, 2007.



GARY SPACKMAN
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of June, 2007, a true and correct copy of the document(s) described below were served by placing the same in the United States mail, postage prepaid and properly addressed to the following:

Document(s) Served: Order Denying Petition for Reconsideration and Explanatory Information sheet

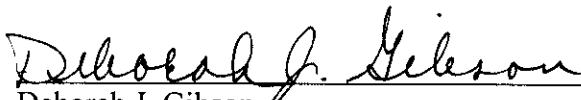
M J DAVIS MEM LTD PARTNERSHIP
C/O RANDALL C BUDGE
RACINE OLSON
PO BOX 1391
POCATELLO ID 83204-1391

SAMARIA WATER & IRRIGATION CO
C/O ROGER D LING
LING ROBINSON & WALKER
PO BOX 396
RUPERT ID 83350-0396

MICHAEL W OLSEN
DEE'S INCORPORATED
777 EAST 2100 SOUTH
SALT LAKE CITY UT 84106

SAMARIA RESIDENTS REC &
CEMETERY DISTRICTS
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Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR	)	
PERMIT TO APPROPRIATE WATER NOS.	)	PRELIMINARY ORDER
15-7273, 15-7274, AND 15-7275 IN THE	)	
NAME OF M. J. DAVIS MEMORIAL	)	
LIMITED PARTNERSHIP	)	
	)	

On December 16, 2005, M.J. Davis Memorial Limited Partnership ("MJ Davis") filed three applications for permit to appropriate water with the Idaho Department of Water Resources ("IDWR"). IDWR determined the applications were not complete, and returned them to MJ Davis. On January 4, 2006, MJ Davis refilled the applications with IDWR.

IDWR assigned water right numbers 15-7273, 15-7274, and 15-7275 to the applications. IDWR published notice of the applications. The applications were protested by Samaria Water and Irrigation Company ("Samaria Irrigation"), Dee's, Inc., the Samaria Recreation and Cemetery Districts, and several residents of the City of Samaria.

On November 14, 2006, IDWR conducted a hearing regarding the protests. Attorneys Randall Budge and Thomas Budge appeared on behalf of MJ Davis. Attorneys Roger Ling and Michael Tribe appeared on behalf of Samaria Irrigation. John Evans appeared as a representative of the Samaria Recreation District. The Samaria Cemetery District and other Samaria residents did not appear at the hearing.

The protests filed by Samaria Recreation District, Samaria Cemetery District, and Samaria residents only included one protest fee. As a result, the Department will consider John Evans, the spokesperson who appeared on behalf of the recreation district, as the spokesperson for the Samaria Cemetery District and other Samaria residents and will not issue a default order to these parties. Dee's, Inc. did not appear, and its non-appearance will be addressed in a separate notice of default.

After reviewing the evidence submitted at the hearing, the hearing officer finds, concludes, and orders as follows:

FINDINGS OF FACT

1. Application for permit to appropriate water no. 15-7273 proposes the following:

Source:		Rosebud Creek	
Flow rate:		0.25 cfs	
Purpose of Use:		Irrigation	
Priority:		January 4, 2006	
Period of Use:		4/1 to 11/1	
Points of Diversion:			
Township 15 South, Range 35 East		SWNE of Section 22	NWNW of Section 27
Place of Use:			Acres
Township 15 South, Range 35 East	Section 22	NENE	30
		NWNE	40
		SWNE	40
		SENE	22
	Section 27	NWNW	30
Total Acres Irrigated			162

2. Application for permit to appropriate water no. 15-7274 proposes the following:

Source:		Dry Pine Creek	
Flow rate:		0.75 cfs	
Purpose of Use:		Irrigation	
Priority:		January 4, 2006	
Period of Use:		4/1 to 11/1	
Points of Diversion:			
Township 15 South, Range 35 East		SWNE of Section 22	NWNW of Section 27
Place of Use:			Acres
Township 15 South, Range 35 East	Section 22	NENE	30
		NWNE	40
		SWNE	40
		SENE	22
	Section 27	NWNW	30
Total Acres Irrigated			162

3. Application for permit to appropriate water no. 15-7275 proposes the following:

Source:		Thomas Davis Creek	
Purposes of Use:		Flow rate:	
Irrigation		1.0 cfs	
Stockwater		0.02 cfs	
Recreation		1.0 cfs	
Asthetics		1.0 cfs	
Fire Protection		1.0 cfs	
Total Flow Rate Sought for Appropriation		1.02 cfs	
Priority:		January 4, 2006	
Period of Use:			
Irrigation		4/1 to 11/1	
Stockwater		4/1 to 11/1	
Recreation		1/1 to 12/31	
Asthetics		1/1 to 12/31	
Fire Protection		6/1 to 11/1	
Points of Diversion:			
Township 15 South, Range 35 East	Section 22	SWNE	
	Section 27	SWSW, SENW, NENW	
	Section 34	NWNW	
Irrigation Place of Use:			Acres
	Section 22	NENE	30
		NWNE	40
		SWNE	40
		SENE	22
	Section 27	NWNW	30
		NENW	40
		NWNW	40
		SENE	40
		SWNW	40
		NESE	40
		NWSE	40
		SESE	40
	Section 34	SWSW	40
		NENE	20
NWNE		15	
NENW		20	
NWNW		20	
Total Acres Irrigated			522

Place of Use of Other Proposed Beneficial Uses:

Township 15 South Range 35 East	Section 22	NENE	Stock
		SWNE	Stock
	Section 27	NENW	Stock, Recreation, Aesthetic, Fire
		NWNW	Stock, Recreation, Aesthetic, Fire
		SWNW	Stock, Recreation, Aesthetic, Fire
		NESW	Stock, Recreation, Aesthetic, Fire
		NWSW	Stock, Recreation, Aesthetic, Fire
		SESW	Stock, Recreation, Aesthetic, Fire
	Section 34	NENE	Stock, Recreation, Fire
		NWNE	Stock, Recreation, Fire
		NENW	Stock, Recreation, Fire
		NWNW	Stock, Recreation, Aesthetic, Fire

4. MJ Davis owns 565 acres west of the town site of the City of Samaria. The ownership is comprised of 320 acres of mountainous ground; 75 acres of land procured in a trade with Dee's, Inc.; 132 acres of farm land near the Samaria Cemetery; and 38 acres within the town site of the City of Samaria. MJ Davis owns the real property free and clear of financial encumbrances.

5. Jeff Davis is a general partner in MJ Davis and manages the property. Jeff Davis is an anesthesiologist and has monetary resources to complete the proposed projects.

6. The entire ownership is described in the place of use grid summary on page 2 of application to appropriate water no. 15-7275.

7. Presently only 38 acres of the entire 565 acres are planted to crops requiring irrigation. Approximately 95 acres of land previously cultivated is enrolled in the Conservation Reserve Program ("CRP"). Much of the remainder of the land has not been cultivated.

8. MJ Davis desires to appropriate water to irrigate the irrigable lands owned by the partnership. In addition, MJ Davis desires to irrigate trees and other growth to enhance habitat and riparian areas on the MJ Davis property.

9. Currently, MJ Davis has installed a drip system that delivers water from Thomas Davis Creek to approximately 400 trees on the MJ Davis property.

10. On December 19, 1980, Samaria Irrigation filed three claims to a water right under Idaho Code § 42-243. The claims assert perfection of water rights, through beneficial use, that were unrecorded prior to the filing of the claims. The claims assert the following components of water rights:

Claim No. 15-4066:

Source of water:	Thomas Davis Spring
Flow Rate:	0.90 cfs
Date of Priority:	November 1925

Claim No. 15-4067:

Source of water:	Rose Bud Spring
Flow Rate:	0.20 cfs
Date of Priority:	November 1925

Claim No. 15-4068:

Source of water:	Dry Pine Spring
Flow Rate:	0.90 cfs
Date of Priority:	November 1925

11. The place of use for the claims describes 845 acres purportedly within the Samaria Irrigation service area.

12. In preparation for this hearing, Samaria Irrigation researched the records of Oneida County. In searching the records, Samaria Irrigation found documents titled "Notice of Water Right," filed by James Thomas and others, recorded with Oneida County on July 5, 1893. These notices were purportedly posted at the points of diversion described and assert beneficial use of water beginning on July 3, 1893. The notice of water right from Thomas Davis Canyon generally described an approximate point of diversion and a quantity of 150 miner's inches of water. The notice of water right for "Rose Brush Canyon" generally described an approximate point of diversion and a flow rate of 50 miner's inches of water. The notice of water right for "Dry Pine Canyon" generally described an approximate point of diversion and a flow rate of 100 miner's inches of water.

13. In addition to the notices of water right, Samaria Irrigation also found documents that purport to convey the water rights described in the notices of water right to Samaria Irrigation. All of these documents are contained in Exhibit B.

14. In June 2006, Samaria Irrigation amended claim nos. 15-4066, 15-4067, and 15-4068 pursuant to Idaho Code § 42-244. The amended claims reflected the dates of first beneficial use of water as described in the notices of water right, and also reflected the quantity set forth in the notices as follows:

Claim No. 15-4066 (Thomas Davis Creek):	
Flow Rate:	3.0 cfs
Priority Date:	July 3, 1893

Claim No. 15-4067 (Rose Brush Creek):	
Flow Rate:	1.0 cfs
Priority Date:	July 3, 1893
Claim No. 15-4068 (Dry Pine Creek):	
Flow Rate:	2.0 cfs
Priority Date:	July 3, 1893

15. The place of use described by the amended claims is the same 845 acres described in the original claims.

16. The parties to this contested case agreed that Samaria Irrigation holds beneficial use water rights. The parties to this contested case dispute the quantities of water and the priority dates authorized by the beneficial use water rights.

17. Samaria Irrigation alleged that it has diverted "all of the water flowing in Thomas Davis Creek, Rose Bud Creek, and Dry Pine Creek." The reference to "all of the water" is probably not accurate, however, because, at times, it is likely there is water in excess of the flows claimed that discharges from the sources. In addition, Samaria Irrigation is limited to a diversion of 0.02 cfs for the acres listed as the place of use. A flow rate of 6.0 cfs of cumulative flow claimed by the three beneficial use claims is within the authorized limit for irrigation of 845 acres.

18. There is sufficient documentary evidence in the files for the hearing officer to determine that 6.0 cfs asserted as the cumulative flow component of the beneficial use water rights must be protected when considering new applications to appropriate water.

19. Although the period of use spans from April 1 through November 1 of each year, the beginning and ending of actual irrigation depends on weather conditions. During a dry year, diversions from the sources of water may begin very close to April 1. In a wet year, diversions may begin as late as June.

20. During the fall, diversions may cease at various times depending on the water supply and the precipitation in the fall.

21. During recent drought years, water flowed in the creek channels of Thomas Davis Creek, Rosebud Creek, and Dry Pine Creek in the mountains during the summer, but ceased flowing as the channels discharged onto the foothill benches for delivery to the arable land. During these periods of time, water was not available from Rosebud Creek, Dry Pine Creek, and Thomas Davis Creek to Samaria Irrigation for diversion and delivery to its patrons in its service area.

22. The proposed points of diversion identified by applications to appropriate water nos. 15-7273 (Rosebud Creek) and 15-7274 (Dry Pine Creek) do not locate the points of diversion on Rosebud Creek or Dry Pine Creek. The proposed points of diversion are located on a delivery canal that is controlled, maintained, and operated by Samaria Irrigation.

23. The recreation and aesthetic uses proposed by application no. 15-7275 are either uses that seek recognition of water flowing in Thomas Davis Creek, or recreation and aesthetics associated with the irrigation sought by the application. No separate recreational or aesthetic uses were identified as being associated with an off-stream diversion of water in addition to the irrigation use.

CONCLUSIONS OF LAW

1. Idaho Code § 42-203A states in pertinent part:

In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest as defined in section 42-202B, Idaho Code, or (f) that it is contrary to conservation of water resources within the state of Idaho, or (g) that it will 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; the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions.

2. The applicant bears the ultimate burden of proof regarding all the factors set forth in Idaho Code § 42-203A.

3. Idaho Code § 42-701 states as follows:

(1) The appropriators or users of any public waters of the state of Idaho shall maintain to the satisfaction of the director of the department of water resources suitable headgates and controlling works at the point where the water is diverted. Each device shall be of such construction that it can be locked and kept closed by the watermaster or other officer in charge, and shall also be of such construction as to regulate the flow of water at the diversion point. Each such appropriator shall construct and maintain, when required by the director of the department of water resources, a rating flume or other measuring device at such point as is most practical in such canal, ditch . . . from the stream . . . or other source of public water. Plans for such headgates, rating flumes, or other measuring devices shall be approved by the department of water resources.

4. Applications for permit to appropriate water nos. 15-7273 and 15-7274 propose appropriation of water from a described location at which neither the channel of Rosebud Creek

or Dry Pine Creek is located. Application nos. 14-7273 and 15-7274 locate as proposed points of diversion a Samaria Irrigation delivery canal channel location. IDWR cannot approve a point of diversion from an existing canal. As a result, application nos. 15-7273 and 15-7274 should be denied.

5. At times, there is additional water available for appropriation from Thomas Davis Creek. These times include the early irrigation season when small amounts of water are being diverted for irrigation and the flows may be large, late in the irrigation season when Samaria Irrigation discontinues delivery of water, and times during the summer when the flow of Thomas Davis Creek does not reach the points of diversion for Samaria Irrigation. There is sufficient water for at least the partial irrigation of trees, shrubs, and riparian areas near Thomas Davis Creek as proposed by MJ Davis.

6. The hearing officer is not determining the validity of claims to water right nos. 15-4066, 15-4067 and 15-4068 in this proceeding. However, IDWR must consider the beneficial use claims to water rights if there is sufficient evidence to support the claim of water right asserted. Based on the testimony presented and the evidence of record, the hearing officer determines that it is reasonably likely the claims could be recognized when adjudicated. The hearing officer also determines it is reasonably likely the quantities shown in the amended claims and the proposed priority dates could be recognized. As a result, the quantities of water claimed by Samaria Irrigation should be protected from injury that might occur as a result of a new appropriation of water.

7. During much of the irrigation season MJ Davis may not be entitled to divert any water. On the other hand, Samaria Irrigation must reasonably account for the water being diverted and used for beneficial purposes, and must not divert in excess of the quantity of water claimed.

8. Pursuant to Idaho Code § 42-701, Samaria Irrigation should be required to install a headgate and measuring device acceptable to IDWR at its point of diversion from Thomas Davis Creek. The controlling works are required to insure that water is delivered in accordance with Samaria Irrigation's claimed flow rate of 3.0 cfs. The headgate shall be under the control of Samaria Irrigation. Samaria Irrigation should provide for access by MJ Davis to the measuring device.

9. Anytime the flows of Thomas Davis Creek exceed the flow rate set forth in Samaria Irrigation's amended claim no. 15-4066 at Samaria Irrigation's point of diversion, or at any time Samaria Irrigation is not diverting its full flow rate under amended claim no. 15-4066 and excess water is flowing past Samaria Irrigation's point of diversion, MJ Davis is entitled to divert water from Thomas Davis Creek. This entitlement shall be conditioned upon fulfillment of other requirements discussed below.

10. MJ Davis does not presently have the right to divert water through the irrigation system owned by Samaria Irrigation. Idaho Code 42-1106 grants the authority of eminent domain to water users who want to have an easement in an existing irrigation system. This authority was confirmed by the Idaho Supreme Court in *Canyon View Irrigation Co. v. Twin*

Falls Canal Co., 101 Idaho 604, 619 P2d 122 (1980).

11. To the extent any diversion of water proposed by application no. 15-7275 must be delivered through Samaria Irrigation's water delivery system, MJ Davis must first obtain a right of way or other consent for delivery of water through the Samaria Irrigation system. This right can be obtained by agreement or by eminent domain.

12. The hearing officer will not address the issue of futile call. The testimony established that water is available, at times, in the upper reaches of Thomas Davis Creek and would not reach the headgates of Samaria Irrigation. Nonetheless, the determination of a futile call is fact dependent. Futile call is determined during the administration of water rights not at the time of determining whether there is water available for appropriation.

13. There is not yet a water district created for administration of water from Thomas Davis Creek. As a result, a watermaster cannot regulate water based on principles of futile call. In this approval, the availability of water will be determined based on the actual surface water flow that is available or not available at the points of diversion. If Samaria Irrigation District cannot divert water at its point of diversion, then MJ Davis can divert the water, to the extent it can be beneficially used.

14. MJ Davis has sufficient financial resources to complete the project.

15. The applications are not filed for the purposes of speculation, delay, or in bad faith.

16. The applications are in the local public interest, provided that the rights of Samaria Irrigation and the delivery of water to its patrons is protected.

17. The use of drip irrigation systems and the careful management of water will conserve the water resources of the state of Idaho.

ORDER

IT IS HEREBY ORDERED that applications for permit to appropriate water nos. 15-7273 and 15-7274 are **Denied**.

IT IS FURTHER ORDERED that application for permit to appropriate water no. 15-7275 is **Approved**, but the beneficial uses under permit no. 15-7275 are limited to irrigation and fire protection.

IT IS FURTHER ORDERED that application for permit to appropriate water no. 15-7275 is subject to the following conditions:

Proof of application of water to beneficial use shall be submitted on or before **May 01, 2012**.

Subject to all prior water rights.

Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.

Water shall not be diverted for fire protection use under this right except to fight or repel an existing fire.

This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the lands above.

After specific notification by the Department, the right holder shall install suitable measuring devices on all authorized points of diversion, record the quantity of water diverted, and annually report diversions of water and/or other pertinent hydrologic and system information as required by Section 42-701, Idaho Code.

The water right holder may only divert water from Thomas Davis Creek when: (a) the flow of Thomas Davis Creek exceeds the flow rate claimed in Samaria Irrigation amended claim no. 15-4066 at Samaria Water and Irrigation Company's point of diversion; or (b) at any time Samaria Water and Irrigation Company is not diverting its full flow rate under amended claim no. 15-4066 and excess water is flowing past Samaria Water and Irrigation Company's point of diversion; or (c) at any time Samaria Water and Irrigation Company cannot divert water at its point of diversion and the water right holder can divert and beneficially use the water in Thomas Davis Creek.

IT IS FURTHER ORDERED that Samaria Water and Irrigation Company shall install and maintain a controlling works and measuring device, acceptable to IDWR, for its point of diversion located on Thomas Davis Creek. The measuring device shall be installed within ten (10) days following the date this decision becomes final.

IT IS FURTHER ORDERED that Samaria Irrigation shall either (a) allow the water right holder access to the read the measuring device; or (b) upon written request from the water right holder, daily report to the water right holder the flow rate being diverted from Thomas Davis Creek.

IT IS FURTHER ORDERED that, if Samaria Water and Irrigation Company: (a) refuses to install the measuring device; or (b) refuses to allow the right holder access to its measuring device and also fails or refuses to daily report to the right holder after the right holder has requested daily reporting of the diversion from Thomas Davis Creek, the right holder may divert water from Thomas Davis Creek under right no. 15-7275 until Samaria Water and Irrigation Company allows access or daily reports its diversion rate from Thomas Davis Creek to the right holder.

IT IS FURTHER ORDERED that the following additional condition shall be added to permit no. 15-7275 to authorize diversion when the Samaria Water and Irrigation Company refuses or fails to allow access or report its diversions as described in this order:

Samaria Water and Irrigation Company is required by order to install and maintain a measuring device at its point of diversion from Thomas Davis Creek, allow the right holder access to the measuring device, or after refusing access, and upon written request from the right holder, daily report its diverted flow rate to the right holder. If Samaria Water and Irrigation Company: (a) refuses to install the measuring device; or (b) refuses to allow the right holder access to its measuring device and also fails or refuses to daily report to the right holder after the right holder has requested daily reporting of the diversion from Thomas Davis Creek, the right holder may divert water from Thomas Davis Creek under 15-7275 until Samaria Water and Irrigation Company installs the measuring device and allows access or daily reports its diversion rate from Thomas Davis Creek to the right holder as described above.

DATED this 2nd day of May, 2007.


GARY STACKMAN
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of May, 2007, a true and correct copy of the document(s) described below were served by placing the same in the United States mail, postage prepaid and properly addressed to the following:

Document(s) Served: Preliminary Order and Explanatory Information Sheet to
Accompany a Preliminary Order when a hearing has been held.

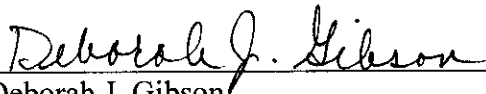
M J DAVIS MEM LTD PARTNERSHIP
C/O RANDALL C BUDGE
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PO BOX 1391
POCATELLO ID 83204-1391

SAMARIA WATER & IRRIGATION CO
C/O ROGER D LING
LING ROBINSON & WALKER
PO BOX 396
RUPERT ID 83350-0396

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SAMARIA RESIDENTS REC &
CEMETERY DISTRICTS
C/O JOHN EVANS
5071 S 4600 W
MALAD ID 83252

IDWR - EASTERN REGION
900 N SKYLINE DR STE A
IDAHO FALLS ID 83402-6105


Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

**STARTING
RIGHT
SIDE OF
FILE**



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Interim Director

June 7, 2007

RE: In the Matter of Applications for Permit to Appropriate Water Nos. 15-7273, 15-7274, and 15-7275 in the name of M.J. Davis Memorial Limited Partnership

Dear Parties:

I have enclosed a copy of the Order Denying Petition for Reconsideration issued in connection with the above referenced matter. Also enclosed is an explanatory information sheet that provides additional information pursuant to section 67-5243, Idaho Code.

If you have any questions, please contact either Gary Spackman or myself at (208) 287-4942.

Sincerely,

Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

Enclosure

C: IDWR - Region

EXPLANATORY INFORMATION

The accompanying order is an **Order Denying Petition for Reconsideration** of the "preliminary order" issued previously in this proceeding by the department pursuant to section 67-5243, Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after the service date of this denial of petition for reconsideration of the preliminary order, any party may in writing file exceptions to any part of the preliminary order and file a brief in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to the preliminary order, opposing parties shall have fourteen (14) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The Director retains the right to review the preliminary order on his own motion.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 302 and 303.

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) the petition for reconsideration is disposed of; or
- (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- I. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

LAW OFFICES OF

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May 16, 2007

Gary Spackman, Hearing Office
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098
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MAY 17 2007

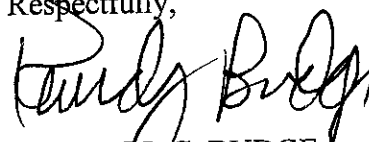
Department of Water Resources
Eastern Region

Re: *M.J. Davis Memorial Limited Partnership*
Application for Permit Nos. 15-7273, 15-7274 and 15-7275

Dear Mr. Spackman:

Enclosed please find Applicant's Petition for Reconsideration in the above-referenced matter.
Thank you for your consideration.

Respectfully,


RANDALL C. BUDGE

RCB:rr

Enclosure

cc: Jeff Davis/M.J. Davis Memorial Limited Partnership
Roger Ling, Mike Tribe

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MAY 17 2007

Department of Water Resources
Eastern Region

Randall C. Budge, ISB No. 1949
Thomas J. Budge, ISB No. 7465
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Attorneys for M.J. Davis Memorial Limited Partnership

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

IN THE MATTER OF APPLICATIONS)	
FOR PERMIT NOS. 15-7273, 15-7274)	APPLICANT'S PETITION
and 15-7275 IN THE NAME OF)	FOR RECONSIDERATION
M.J. DAVIS MEMORIAL LIMITED)	
<u>PARTNERSHIP</u>)	

Comes now the Applicant, M.J. Davis Memorial Limited Partnership, (hereinafter "Davis"), through counsel, and submits the following Petition for Reconsideration of the IDWR's Preliminary Order issued May 2, 2007. This Petition requests (1) conditional approval of permit application nos. 15-7273 and 15-7274, and (2) clarification of conclusions of law nos. 5 and 12 and paragraph 9 of the Order.

I.

**PERMIT APPLICATION NOS. 15-7273 AND 15-7274
SHOULD BE CONDITIONALLY APPROVED**

Idaho Code § 42-203A specifically defines seven enumerated criteria by which IDWR is authorized to deny an application for permit; namely, where the proposed use is such that:

- (a) that it will reduce the quantity of water under existing water rights, or
- (b) that the water supply itself is insufficient for the purpose for which it is sought to be

appropriated, or

(c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or

(d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or

(e) that it will conflict with the local public interest as defined in section 42-202B, Idaho Code, or

(f) that it is contrary to conservation of water resources within the state of Idaho, or

(g) that it will 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.

The Preliminary Order does not identify any of the above-described seven criteria as having been violated. Rather, the Order justifies its denial on the basis that the subject applications “locate as proposed points of diversion a Samaria Irrigation delivery canal channel location” and that “IDWR cannot approve a point of diversion from an existing canal.” Conclusion of Law No. 3, Preliminary Order at 8. No law or published regulation is cited in support of that conclusion. In addition, the “Instructions for Filing an Application for Permit” promulgated to IDWR do not explain that diversions cannot be made from ditches or canals. Davis does not contest that IDWR may follow internal policies which preclude the identification of a point of diversion from an existing canal. Any such policy, however, does not warrant denial of the application. Any such concerns form no basis for denial, but rather could properly be addressed as conditions for approved and issuance of a license.

In this case Davis’s identification of a point of diversion on the existing canal certainly amounts to nothing more than a technical deviation from any IDWR policy requiring that the identified point of diversion be located on a natural channel. Davis’ desired practice is in fact to divert the waters of both Rosebud Creek and Drip Pine Creek from the Samaria Irrigation ditch through which they flow. Thus, Davis’s identification of the point on the ditch from which he

intends to make such diversion is reasonable.

Further, as noted in the Preliminary Order, once a permit is obtained Davis has five years with which to develop the diversion, which may include obtaining permission from Samaria Irrigation Company to transport his water right or an eminent domain proceeding as necessary. However, Davis cannot reasonably take either action without first having a permit in hand. His circumstance is analogous to that of a groundwater applicant, who cannot drill a well to access the source until *after* he obtains a permit. Davis understands that the “proof of beneficial use” requirement could cause him to lose his permit if access to the source is not secured within five years. However, that Davis may yet need to secure access to the water source does not rightly preclude issuance of the permit.

Therefore, request is hereby made that application nos. 15-7273 and 15-7274 be approved conditional upon Davis obtaining access to the water source. In conjunction, if IDWR’s internal policies technically require a point of diversion on the natural channel we would request that any necessary technical amendment to Davis’s application to appropriate be granted.

I.

CONCLUSIONS OF LAW NOS. 5 AND 12 AND PARAGRAPH 9 OF THE ORDER SHOULD BE REVISED FOR CLARIFICATION PURPOSES

Davis appreciates the Hearing Officer’s refusal to address the issue of futile call which is a water right administration issue not relevant to the applied for permits. Conclusion of Law No. 12, Preliminary Order at 9. However, certain clarifications to the Preliminary Order should be implemented for the purpose of avoiding confusion and/or disputes at the time the inevitable futile call determination arrives.

Conclusion of law no. 5 provides that Davis shall be entitled to divert from Thomas Davis Creek under various circumstances, including “times of during the summer when the flow of Thomas Davis Creek does not reach the points of diversion for Samaria Irrigation.”

Preliminary Order at 8. Conclusion of law no. 8 states, “Samaria Irrigation should be required to install a headgate and measuring device acceptable to IDWR at its point of diversion from Thomas Davis Creek.” Although both of the foregoing conclusions cite to Samaria Irrigation’s points of diversion, they certainly refer to different points of diversion, which distinction should be clarified in the Preliminary Order as follows.

The “point of diversion” in conclusion no. 8 clearly refers to the point at which Samaria Irrigation diverts Thomas Davis Creek into the Company ditch. In contrast, the “points of diversion” in conclusion no. 5 refers to the headgates of Samaria Irrigation shareholders which are located far downstream. Therefore, a suggested clarification of conclusion 5 would read: “...times during the summer when the flow of Thomas Davis Creek does not *reach the headgates of Samaria Irrigation shareholders in sufficient quantities as can be put to beneficial use.*” Conclusion no. 12 should likewise be clarified, such as: “...would not reach the headgates of Samaria Irrigation *shareholders downstream in sufficient quantities as can be put to beneficial use.*” In addition, paragraph 9 of the Order should be clarified, such as: “(c) at any time Samaria Water and Irrigation Company cannot divert water at its point of diversion *which will reach its shareholders headgates downstream in sufficient quantities as can be put to beneficial use.*”

CONCLUSION

The evidence presented at trial clearly and convincingly established that none of the criteria defined in I.C. § 42-203A authorize denial of Davis’s application for per permit nos. 15-

7273 and 15-7274. If IDWR policies require a technical correction to the subject application we would request that they be so made, and that the applications be approved conditional upon Davis securing access to the water sources. In addition, the above-described clarifications are consistent with the Preliminary Order and are necessary to avoid future disputes regarding the administration of Thomas Davis Creek.

RESPECTFULLY SUBMITTED this 16th day of May, 2007.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: Randall C. Budge
RANDALL C. BUDGE

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 16th day of May, 2007, I mailed a true and complete copy of Appellant's Reply Brief, postage prepaid, to the following:

Roger Ling
Michael P. Tribe
Attorneys for Samaria Water & Irr. Co.
P.O. Box 396
Rupert, Idaho 83350

Idaho Department of Water Resources
Eastern Region
900 N. Skyline Drive, Suite A
Idaho Falls, Idaho 83402

Randall C. Budge
RANDALL C. BUDGE

LAW OFFICES OF

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Department of Water Resources

Attorneys for M.J. Davis Memorial Limited Partnership

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IN THE MATTER OF APPLICATIONS)	
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RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: Randall C. Budge
RANDALL C. BUDGE

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Rupert, Idaho 83350

Idaho Department of Water Resources
Eastern Region
900 N. Skyline Drive, Suite A
Idaho Falls, Idaho 83402

Randall C. Budge
RANDALL C. BUDGE



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Interim Director

May 2, 2007

Re: In the matter of Applications for Permit to Appropriate Water Nos. 15-7273, 15-7274, and 15-7275, in the name of M.J. Davis Memorial Limited Partnership

Dear Parties:

The Department of Water Resources (Department) has issued the enclosed Preliminary Order in the above-referenced matter. Pursuant to section 67-5243, Idaho Code, **the enclosed order can and will become a final order without further action of the Department unless a party petitions for reconsideration, requests a hearing, or files an exception and/or brief as described in the enclosed information sheet.**

Please note that water right owners are required to report any change of water right ownership and/or change of mailing address to the department within 120 days of the change. Contact any office of the department or visit our homepage on the Internet to obtain the proper reporting form.

If you have any questions, please call me at (208) 287-4942.

Sincerely,

Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

Enclosures

RESPONDING TO PRELIMINARY ORDERS ISSUED BY THE IDAHO DEPARTMENT OF WATER RESOURCES

The accompanying order is a **Preliminary Order** issued by the Idaho Department of Water Resources (Department) pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department unless a party petitions for reconsideration within fourteen (14) days after issuance as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the hearing officer within fourteen (14) days of the service date of the order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The hearing officer will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding to the Director. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have fourteen (14) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The Director retains the right to review the preliminary order on his own motion.

ORAL ARGUMENT

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CERTIFICATE OF SERVICE

All exceptions, briefs, request for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 302 and 303.

FINAL ORDER

The Department will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The Department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) the petition for reconsideration is disposed of; or
- (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

BRENT T. ROBINSON
JASON D. WALKER

KELLY ARTHUR ANTHON
BRIAN J. COFFEY

ROGER D. LING, OF COUNSEL

LING, ROBINSON & WALKER

ATTORNEYS AT LAW
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AREA CODE 208
TELEPHONE 436-4717
FAX 436-6804

December 29, 2006

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DEPARTMENT OF
WATER RESOURCES

Mr. Gary Spackman
Hearing Officer
Idaho Department of Water Resources
P. O. Box 83720
Boise, Idaho 83720-0098

RE: **In the Matter of Applications for Permit Nos. 15-7273, 15-7274, and
15-7275 in the Name of M. J. Davis Memorial Limited Partnership**

Dear Mr. Spackman:

I have enclosed our *Responses to Applicant's Opening Brief* in the above matter, prepared on behalf of the protestant Samaria Water and Irrigation Company. Please feel free to call if you have any questions or concerns with regard to this matter.

Very truly yours,



Michael P. Tribe

jb

enc

RECEIVED

DEPT. OF WATER RESOURCES
RUPERT, IDAHO

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Samaria Water and Irrigation Company

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

IN THE MATTER OF APPLICATIONS FOR) **RESPONSE TO APPLICANT'S**
PERMIT NOS. 15-7273, 15-7274, AND) **OPENING BRIEF IN SUPPORT**
15-7275 IN THE NAME OF M. J. DAVIS) **OF APPLICATIONS FOR PERMITS**
MEMORIAL LIMITED PARTNERSHIP)

TO: GARY SPACKMAN, HEARING OFFICER OF
THE IDAHO DEPARTMENT OF WATER RESOURCES

COMES NOW the Protestant, Samaria Water and Irrigation Company, by and through its attorneys of record, Roger D. Ling and Michael P. Tribe of the firm Ling, Robinson & Walker, and submits its *Response to Applicant's Opening Brief* in the Matter of Applications for Permit Nos. 15-7273, 15-7274 and 15-7275 in the Name of M. J. Davis Memorial Limited Partnership.

I. Introduction

Samaria Water and Irrigation Company's (hereinafter "the Company") claims exist as more than just a mere "flag in the sand" as the Applicant asserts at page two (2) of its *Opening Brief*. As discussed in Protestant's *Post-Hearing Brief In Opposition to Applications*

RESPONSE TO APPLICANT'S OPENING BRIEF - 1

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3 *for Permits*, the claims are valid constitutional method appropriations, which retain a senior
4 priority date over the three applications for permits filed by the Applicant.

5 The Applicant spends a significant portion of the beginning of his *Opening Brief*
6 discussing issues outside the scope of this hearing and subsequent briefing. Any questions
7 regarding the Applicant's additional disputes with the Company are not at issue, should not be
8 considered and are not properly before the Hearing Officer at this time. For example the FERC
9 application and the service area of the Company will be resolved in another venue at another
10 time.
11

12 The Applicant has made a point of discussing that, in its opinion, the Company's protest
13 would have been avoided and "should have been avoided had the Company simply amended its
14 -243 claims as suggested by the Department to allow Davis to use a portion of his shares on the
15 property in the mountain area, rather than be forced to divert all of his water from the Big Ditch."
16 *Applicant's Opening Brief*, at 4. The Company is not required to amend its "-243 claims as
17 suggested by the Department to allow Davis to use a portion of his shares on the property in the
18 mountain area, rather than be forced to divert all of his water from the Big Ditch." Where an
19 irrigation company's service area is located is not a decision to be made by the Department of
20 Water Resources or by a single shareholder, nor can the Department dictate how the Company
21 manages the shares of the Company that are issued to its members. That is for the Board of
22 Directors of the Company to determine.
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25 IV. Standards

26 The Supreme Court of Idaho "has uniformly adhered to the principle, announced both in
27 the Constitution and by...statute, that the first appropriator has the first right; and it would take
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3 more than a theory, and in fact clear and convincing evidence, in any given case, showing that
4 the prior appropriator would not be injured or affected by the diversion of a subsequent
5 appropriator, before [they] would depart from a rule so just and equitable in its application, and
6 so generally and uniformly applied by the courts". *Moe v. Harger*. 10 Idaho 302, 303-04, 77 P.
7 645, 646-47 (1904). Therefore, based on case law and statute the Applicant must show by clear
8 and convincing evidence that the Protestant would not be injured or affected by the diversion of
9 the Applicant or the applications must fail.
10

11 II. Criteria for Approval

12 The Applicant believes that "[i]t is significant to note that the Company's protest does not
13 assert that the water supply is insufficient nor challenge any other of the criteria for approval
14 under I.C. 42-203". *Applicant's Opening Brief*, at 4. The Applicant is correct that the Company
15 originally protested only on two grounds alleging that the permits would; 1) reduce the quantity
16 of water available to existing rights; and 2) conflict with the local public interest. However, it
17 was clear from the testimony presented by both parties at the hearing that there is not enough
18 water for both the Company to take its full diversion of water from the three streams and for the
19 Applicant to have any water for his separate use. If there were sufficient water for both parties
20 these permits would not be at issue. Whether the Company timely raised the issue of an
21 insufficient water supply is immaterial because the Hearing Officer must consider that issue
22 along with all other criteria listed in Idaho Code § 42-203 on his own. Section 42-203A(5)
23 states:
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25

26 In all applications whether protested or not protested, where the
27 proposed use is such (a) that it will reduce the quantity of water
28 under existing water rights, or (b) that the water supply itself is

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3 insufficient for the purpose for which it is sought to be
4 appropriated, or (c) where it appears to the satisfaction of the
5 director that such application is not made in good faith, is made for
6 delay or speculative purposes, or (d) that the applicant has not
7 sufficient financial resources with which to complete the work
8 involved therein, or (e) that it will conflict with the local public
9 interest as defined in section 42-202B, Idaho Code, or (f) that it is
10 contrary to conservation of water resources within the state of
11 Idaho, or (g) that it will adversely affect the local economy of the
12 watershed or local area within which the source of water for the
13 proposed use originates, in the case where the place of use is
14 outside of the watershed or local area where the source of water
15 originates; the director of the department of water resources may
16 reject such application and refuse issuance of a permit therefor, or
17 may partially approve and grant a permit for a smaller quantity of
18 water than applied for, or may grant a permit upon conditions.
19 (*Emphasis added*).

20 The Department of Water Resources, through its hearing officer, must review all criteria found in
21 section five (5) of 42-203(A) in all applications. Therefore, it is not significant to note that the
22 Company's written protest filed in January of 2006, only asserts that the applications did not
23 meet criteria (a) and (e) of the statute. What is relevant is the testimony at the hearing and the
24 applicable standards by which the hearing officer must weigh the evidence.

25 **a. The Company Uses All Available Water from Thomas Davis,**
26 **Rosebud and Dry Pine Creek**

27 The main reason the Company filed its 2006 Amended Claims was the discovery of three
28 recorded Water Right Claim Notices from July 3, 1893. The priority date and diversion rate
were established by an indenture made between South West Mountain Water and Irrigating
Company and Samaria Water and Irrigation Company in 1893. The Applicant claims that the
Company failed to present any evidence of beneficial use or otherwise to support the increase in
the quantity of water claimed. This misstates the testimony of John Evans, Dough Thorpe and

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3 David Reel who each testified that the Company used all available water from the combined
4 three streams. The only exception to the Company taking all the available water was when the
5 Applicant was diverting it without permission. The Amended Claims contain the Notices to
6 Claims for a combined diversion rate of 300 inches or 6.0 cfs. There are presently no stream
7 measurements that give exact measurements of the amount of water the Company historically
8 diverted but there is the combined testimony of John Evans, Doug Thorpe and David Reel that
9 the Company always diverted all the water available. There was no contrary testimony. The
10 reasons for why the Company's 1980 claims were for the lesser-claimed amount are unclear and
11 no testimony was presented as to why the 1980 claims were for the requested amounts. Any
12 speculation as to that and whether then president, Deverl John was an honest man are immaterial
13 and irrelevant to this proceeding. The fact remains that the Company has the right to divert the
14 higher amount based upon the indenture from South West Mountain Water and Irrigating
15 Company and have always diverted the full amount of the combined stream flows.
16
17

18 The nefarious purpose attributed to the Company for filing the Amended Claims are
19 without merit. The truth of the matter is that the Company never would have researched their
20 claims but for the Applicant's applications for permits. Such applications caused a flurry of
21 activity at the Company in an attempt to protect their historical beneficial use of the three
22 streams and to protect its shareholders. It is not the Company's burden to produce flow record or
23 other measurements. The Company's amended claims are not before the Department in this
24 hearing and as such the Company is not required to prove up their claims. What is before the
25 Department is whether the Company's current rights would be diminished by the three
26 applications for permit and the answer is clearly yes.
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4 **b. Samaria Water and Irrigation Company Does Not Operate**
5 **Delivery of the “Mountain Water” Like it Does the Canal**
6 **Water**

7 Company Delivery of the mountain streams is not the exclusive opportunity for the
8 Company Shareholders to use the water. The Applicant desires to take the mountain water
9 whenever he claims the water is not needed by the Company and cannot be made available to the
10 Company’s shareholders. “In essence, this means the water will be available to Davis early in the
11 irrigation season before the Company begins to irrigate, at the end of the irrigation season after
12 the Company has ceased delivery, and during the irrigation season in times of futile call when
13 the curtailment of Davis’s use would not result in any water making it to the Samaria Townsite
14 or to the “Big Ditch” for delivery to shareholders.” *Applicant’s Opening Brief*, at 7.

15 What the Applicant does not understand is that the Company does not operate the waters
16 from the three mountain streams like it does the water in the canals: the mountain shares are not
17 on the regular rotation early and late in the irrigation season. Shareholders who irrigate with the
18 mountain shares begin and continue diverting the water from the three mountain streams when it
19 is available; early in the season and late in the season. Therefore the testimony that the Company
20 begins delivering water around May 15 and ceases delivering water around September 15 is not
21 entirely accurate nor are the other dates given in regards to dry and wet years.

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23
24 Therefore, the historical time when most shareholders use the Company’s canal water is
25 not historically the same as those shareholders who use the mountain water. In short, whenever
26 water is available from the mountain streams there are users who take such water because it does
27

not have to be turned out by the Company and who would be injured if the Applicant took the water at any time during the year.

c. The Applicant's Proposed Use is Not in the Local Public or Economic Interest

The economy of Samaria is based upon agriculture. Water is the lifeblood of agriculture. The Applicant claims that his proposed use of irrigation water to raise crops and wildlife habitat can only enhance and in no way injure the local economy. *Applicant's Opening Brief*, at 11. Applicant further asserts "[w]ildlife habitat increases wildlife, providing recreation opportunities, with well known economic benefits." *Id.* The only recreation opportunities that would be created appear to be for the Applicant's family, while preventing needed irrigation water to the community of Samaria and potentially preventing future economic development. It is difficult to imagine what economic benefits would benefit the community of Samaria if the Applicant were granted its permits but it is not hard to imagine what a loss of water would do to the agricultural based economy of Samaria and the surrounding communities. A loss of a significant supply of water could injure crop production as well as harm cattlemen who water their cattle from the Company's canals and ditches.

As discussed in Protestant's *Post-Hearing Brief In Opposition to Applications for Permits*, the legislatively created local public interest should be construed to ensure the greatest possible benefit from the public waters. Commingling of the fresh mountain streams with the saltier water from the Company's water from hot springs, the continued saturation of the Company's ditches and canals as well as the future development of hydropower translates into the greatest possible benefit from the waters of the mountain streams. Continued use of the three

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3 streams by the Company clearly guarantees a greater possible benefit of the public waters when
4 balanced against the diversion and application of the water by one person to improve wildlife
5 habitat that will benefit only a select few.

6 The Applicant has already installed a drip irrigation system in violation of the Company's
7 directives. Based upon the testimony of Jeff Davis, the Applicant has already planted riparian
8 habitat. One cannot gain a water right through trespass or illegal appropriation. The drip system
9 has been operated with water that the Applicant has no right to and which was used despite the
10 instructions from the Company. The Company has the right to enter the Applicant's property
11 and maintain its ditches or streams that convey water for irrigation and stockwater purposes. If
12 the applications for permit are granted, the Company must be assured that the riparian habitat
13 will not prevent or interfere with its ability to continue the required maintenance of its canals and
14 its use of the existing natural channels running through the Applicant's land.
15

16 **III. Injury Resulting From Early Season Diversion**

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18 At page thirteen (13) of *Applicant's Opening Brief*, the Applicant claims that any injury
19 resulting from his early season diversion is hypothetical. "Diminishment of irrigation season
20 flows to the Company resulting from any early-season diversion by Davis is speculation only,
21 based upon hypothetical facts." *Id.* The Applicant also claims that there was no testimony or
22 evidence presented concerning hydrology or underlying geology of the Samaria Creek drainage.
23 However, it is the Applicant's burden to show that neither the surface nor underflow of a stream,
24 if uninterrupted, would reach the point of diversion of the senior appropriators. *Gilbert v. Smith*,
25 97 Idaho 735, 739, 552 P.2d 1220 (1976). It does not take a hydrologist to comprehend that if
26 the Applicant takes water early in the season there will be less water for the Protestants later in
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3 the irrigation season. The early season water makes it possible for water to reach the Protestants
4 as it wets the ditch and prevents subsequent ditch loss. It is the Applicant's burden to show that
5 the surface or underflow of the three streams if uninterrupted would reach the point of diversion
6 of the Protestant.

7 8 IV. Conclusion

9 The testimony and evidence presented at the hearing did not clearly and convincingly
10 establish that the Applicant met all of the criteria for issuance of a permit based on the evidence
11 that the Company would be injured or affected by the desired diversion and application of the
12 water by the Applicant. Any use of water from Rosebud, Thomas Davis or Dry Pine Creeks by
13 the Applicant would reduce the quantity of water available under the Company's existing rights
14 because the Company has always used all available water from the three Mountain Streams.
15 Any diversion by the Applicant would prevent water from reaching the Protestant's points of
16 diversion and would be contrary to the local public interest.
17

18
19 DATED this 29th day of December, 2006.

20 LING, ROBINSON & WALKER

21
22 By: 
23 Roger D. Ling
24 Michael P. Tribe
25 Attorneys for Protestant,
26 Samaria Water and Irrigation Company
27

CERTIFICATE OF MAILING

I hereby certify that on the 29th day of December, 2006, I served the original/ true and correct copies of the foregoing ***Post Hearing Reply Brief in Opposition to Applications for Permits***, by the method indicated below, and addressed to the following:

Original to:	Gary Spackman, Hearing Officer Idaho Department of Water Resources P. O. Box 83720 Boise, Idaho 83720-0098	☒ U. S. Mail ☐ Hand Delivery ☐ Facsimile Transmission ☐ E-mail
Copies to:	Michael W. Olson, President Brent Clark Dee's Incorporated 777 E. 2100 S. Salt Lake City, Utah 84106	☒ U. S. Mail ☐ Hand Delivery ☐ Facsimile Transmission ☐ E-mail
	Idaho Department of Water Resources Eastern Region 900 N. Skyline Drive, Suite A Idaho Falls, Idaho 83402	☒ U. S. Mail ☐ Hand Delivery ☐ Facsimile Transmission ☐ E-mail
	Willard J. Higley Samaria Recreation District Samaria Cemetery District Samaria Residents 4010 S. Samaria Road Malad, Idaho 83252	☒ U. S. Mail ☐ Hand Delivery ☐ Facsimile Transmission ☐ E-mail
	Randall C. Budge Racine, Olson, Nye, Budge & Bailey, Chtd. P. O. Box 1391 Pocatello, Idaho 83204-1391 208-232-6109	☒ U. S. Mail ☐ Hand Delivery ☒ Facsimile Transmission ☐ E-mail rcb@racinelaw.net

by depositing said original and copies in the U.S. Mail, postage prepaid, in envelopes addressed to said parties at the foregoing addresses.



Michael P. Tribe

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‡ALSO MEMBER IL BAR
‡‡ALSO MEMBER WA BAR

December 28, 2006

Gary Spackman, Hearing Office
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

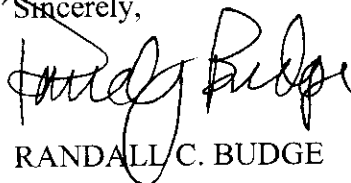
Re: *M.J. Davis Memorial Limited Partnership*
Application for Permit Nos. 15-7273, 15-7274 and 15-7275

Dear Mr. Spackman:

Enclosed please find Applicant's Reply Brief. We now consider this matter fully submitted to you for decision.

Any efforts that could be made to expedite a decision would be appreciated since the approval of pending habitat development projects is dependent upon the permits being granted so the work can commence in the spring.

Sincerely,


RANDALL C. BUDGE

RCB:rr

Enclosures

cc: Roger Ling/Michael Tribe
Jeff Davis

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

IN THE MATTER OF APPLICATIONS) FOR PERMIT NOS. 15-7273, 15-7274) and 15-7275 IN THE NAME OF) M.J. DAVIS MEMORIAL LIMITED) <u>PARTNERSHIP</u>)	APPLICANT'S REPLY BRIEF
---	--------------------------------

Comes now Applicant M.J. Davis Memorial Limited Partnership, (hereinafter "Davis"), through counsel, and submits the following Reply Brief in support of approval of the pending Applications. The relevant issues and Davis's position are amply addressed in his Opening Brief and need not be reiterated. This Reply Brief is made to address certain arguments presented by Protestant Samaria Irrigation Company ("the Company") in its Post-Hearing Brief.

1. CRITERIA FOR APPROVAL

The criteria for approval of the Applications is specifically identified and exclusively set forth in I.C. §42-203. Of the six enumerated criteria specified in this statute, the Protestant Company only raised challenge with respect to (a) and (e) alleging that the permits would reduce the quantity of water available to existing rights and conflict with the local public interest.

Notwithstanding, the Company in its Brief presents arguments and attempts to raise issues and present arguments that are entirely irrelevant and to support them by allegations of facts supported in the record. The Company repeated attempts to represent two basic arguments which have no support within the confines of the criteria set forth in I.C. §42-203, could be appropriately labeled as “red herrings” and should be disregarded.

First, the Company repeatedly speculates about potential future difficulties in the administration and delivery of water between Davis and the Company. For example, the Company states on page 16 of its Post-Hearing Brief that “the day-to-day management of the Applicant’s permit makes them impractical.” The Company devotes pages 9 through 12 of its Brief to discuss the “futile call” doctrine, fretting on page 9 that “this permit would create a foothold for the applicant to make use of the futile call doctrine.” The company even goes so far as alleging that the Applicant “has in essence requested a permit for the diversion of waters of Thomas Davis Creek based upon the concept of riparian rights.” The concept of riparian rights has never been asserted and does not even exist as a legal concept for irrigation water rights in Idaho.

Speculating about perceived water administration and delivery problems is not a part of the statutory criteria for approval of the Applications, and has no relevance in addressing the applications. Regardless, there are no facts in the record to support any assertion that the administration and delivery of water between the parties will be of any legitimate concern in the future if his permits are granted. Furthermore, based on the testimony of Davis any such concerns have no legal basis. This is because Davis has repeatedly acknowledged in his testimony and Opening Brief at page 7 that the Company’s rights have priority and agrees to shut

off his junior rights whenever the water is needed by the Company and can be made available to the Company's other shareholders. Based upon the undisputed testimony of all witnesses, there will always be water available to Davis early in the irrigation season before the Company begins to irrigate and at the end of the irrigation season after the Company has ceased delivery. The administrative doctrine of futile call will only become applicable during the irrigation season when Davis is curtailed and no water makes it to the Samaria townsite or the Big Ditch for delivery to shareholders. That point in time will be clearly known and readily observable by everyone involved. After it has been observed for a reasonable period of time that no water from Samaria Creek reaches the Company's downstream shareholders, Davis's is lawfully entitled to resume use under the futile call doctrine, a well established principle of water administration. The undisputed evidence in the record indicates that Samaria Creek and the mountain streams, like virtually every perennial stream, have flows which are highest during spring snowmelt runoff, then are continually reduced and diminished over time throughout the course of the irrigation season. There was absolutely no evidence presented that once the flows dry up and disappear that they reappear further downstream or later in the season. To the contrary, the testimony presented by Jeff Davis on cross-examination from Mr. Ling was uncontroverted that once the flow shrinks and disappears it never reappears downstream.

Second, the Company incorrectly argues that the exact design, location and feasibility of the diversion and delivery facilities must be established by the Applicant before a permit can be issued. That is simply incorrect and not a part of the statutory criteria. After a permit is issued an Applicant has five years within which to design and construct a system to divert, deliver and apply the water to beneficial use. If the Company is going to be obstinate and uncooperative in

allowing Davis to use the Company's ditch to deliver water from Rosebud and Dry Pine Creeks, Davis certainly is entitled to pursue alternatives. These could include running a pipe to feed his irrigation system from a point of delivery in each stream upstream from the Company's existing ditch diversion by making arrangements with the landowner. Exercising the private right of eminent domain to secure a right to deliver water to his property is also a recognized legal option. The right of eminent domain is well established under I.C. §42-1106 which provides as follows:

42-1106. Right of Eminent Domain. – In case of the refusal of the owners or claimants of any lands, through which any ditch, canal or conduit is proposed to be made or constructed, to allow passage thereof, the person or persons desiring the right-of-way may proceed as in the law of eminent domain.

See also, White v. Marty, 97 Idaho 85, 540 P.2d 270 (1975), *Carr v. Magistrate Court*, 108 Idaho 576, 700 P.2d 949 (1985), *Canyonview Irrigation Company v. Twin Falls Canal Company*, 101 Idaho 604, 619 P.2d 122 (1980).

2. APPLICANT'S PROPOSED USES WILL NOT REDUCE THE QUANTITY OF WATER UNDER EXISTING RIGHTS

The Company repeatedly argues that the issuance of Davis's permits will somehow reduce the water available under the Company's water rights. Repetitious arguments to that effect do not create or establish facts. There was simply no evidence presented by the Company that it would reduce water available to the Company under its rights.

First and foremost, Davis acknowledges that the Company's rights have an earlier priority date; further that his junior right will not be supplied whenever the water is actually needed and available for the Company to deliver to its other downstream shareholders. It is impossible and absurd to argue that water use by Davis from April 1 until the Company begins

delivery to its shareholders, typically in mid-May, can in any way interfere with the Company's water rights. Similarly, later in the summer when the Company ceases delivery, a resumption of use by Davis and continued use through November 1 has no effect whatsoever on the Company's rights. Since the Company has historically not used or applied any water to beneficial use early in the irrigation season and at the end of the irrigation season, Davis's proposed use during those times cannot and will not reduce the quantity of water available to the Company as a matter of law.

Without any supporting evidence in the record, the Company argues on the bottom of page 6 that "the Company will and has always been able to use all of the diverted water of the streams", and at the bottom of page 7 that "any diversion by the Applicant will diminish the availability of water for such purposes." The Company's argument would have merit only if the facts demonstrated that the Company used 100 percent of the water 100 percent of the time from April 1 through November 1. Other than a stretch of imagination, there is absolutely no evidence whatsoever presented to support such an argument.

The Company presents arguments, again unsupported by any facts in the record, that the proposed use by Davis would deprive it of water it needs and uses to saturate the ditch. There was no evidence presented at all that the Company turns water into its ditches early in order to saturate them before the delivery of water is needed by its shareholders. All of the testimony presented is to the contrary and that the water is turned into the ditch mid-May when it is needed. While the Company could have had water in the ditch from April 1 to mid-May for saturation purposes if needed, its present practice is not to do so thus indicating there must be no such need.

3. THE PROPOSED USE WILL NOT CONFLICT WITH THE LOCAL PUBLIC INTERESTS

Davis's proposed use of water for irrigation purposes is in complete harmony with the local public interests since the local use of water is entirely for irrigated agricultural purposes. The well-established policy of the State of Idaho regarding water use is to promote maximum beneficial use and full economic development. It is the Company that is attempting to frustrate this by depriving Davis of the right to use water available under his shares in the mountain areas. The result of the Company's conduct is to waste water. This is because no benefit results to anyone in those times when water available to Davis in the upper reach simply evaporates or sinks into the ground without reappearing at any location downstream.

On pages 6 and 8 of its Brief, the Company talks about its purported need to mix water from the mountain streams to dilute the warmer, saltier water from the hot springs, then attempts to bootstrap that into an argument that Davis' use would somehow violate the "public interests". This is a specious argument at best since whenever the Company is actually delivering water to its shareholders, it will always have the benefit of any water actually being contributed from the mountain streams. This is because Davis will not be diverting any water from the mountain streams at the time it is needed and available to the Company to the extent of the quantity limits of the Company's rights. It is significant to note that the Company's new-found concept of mixing water was never mentioned in its 1980 Claims, nor the 1893 Water Right Claim Notices attached to its 2006 Claims. See Exhibit A, B. To the contrary, the 1893 document states in paragraph II as follows:

"That the special purpose for which said water is to be used, is to irrigate the lands of the appropriators herein and for domestic and culinary purposes. That the place of intended use, is on the lands of the appropriators herein, situated north

and northeast from said point of diversion and situated along the ditch conducting the water mentioned herein.”

The concept of dilution was first raised in the Company’s Amended Claims filed June 28, 2006, long after Davis’s Applications were filed.

4. OTHER UNFOUNDED COMPANY ARGUMENTS

While the Company’s plans to develop a pipeline to eliminate ditch loss and obtain a hydro-electric permit discussed on page 9 of its Brief are of interest and underscore the real reason the Company is objecting to Davis’s Applications, they are simply of no relevance whatsoever in applying the criteria for approval of Davis’s Applications. Davis’s Applications were filed well prior to the Company’s Application for a FERC permit and any water rights for power generation. The Company’s protests of the Davis Applications and its 2006 Claims were quite obviously made in an attempt to undermine Davis’s Applications while enhancing its own FERC Application. Not only do Davis’s Applications have priority, but his proposed use for agricultural purpose also has a constitutional preference over the Company’s proposed use for hydro generation purposes under Article XV, Section 3 of the Idaho Constitution cited on page 13 of the Company’s Brief.

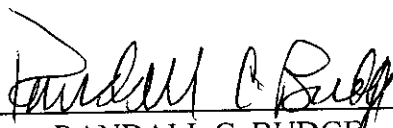
CONCLUSION

The evidence clearly and convincingly establishes that Davis has met all criteria for issuance of the permits under I.C. §42-203. The Company has failed to present any contrary evidence. The Company failed to meet its burden of proving that the permits would reduce the quantity of water available under the Company’s rights or that the Applications are contrary to the local public interests. The evidence is undisputed that there is water available for Davis’s proposed use early in the season before the Company begins irrigation, and after delivery is

ceased at the end of the season. Concerns and arguments presented by the Company relating to the construction of the delivery system and future water administration are entirely irrelevant to approval of the Applications, and based on nothing more than speculation.

RESPECTFULLY SUBMITTED this 28th day of December, 2006.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By _____
RANDALL C. BUDGE

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 28th day of December, 2006, I mailed a true and complete copy of Appellant's Reply Brief, postage prepaid, to the following:

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Michael P. Tribe
Attorneys for Samaria Water & Irr. Co.
P.O. Box 396
Rupert, Idaho 83350

Idaho Department of Water Resources
Eastern Region
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DEC 18 2006

DEPARTMENT OF
WATER RESOURCES

Mr. Gary Spackman
Hearing Officer
Idaho Department of Water Resources
P. O. Box 83720
Boise, Idaho 83720-0098

RE: **In the Matter of Applications for Permit Nos. 15-7273, 15-7274, and
15-7275 in the Name of M. J. Davis Memorial Limited Partnership**

Dear Mr. Spackman:

I have enclosed our *Post-Hearing Brief in Opposition to Applications for Permits* in the above matter, prepared on behalf of the protestant Samaria Water and Irrigation Company. Please feel free to call if you have any questions or concerns with regard to this matter.

Very truly yours,


Roger D. Ling

jb

enc

1
2
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12 Samaria Water and Irrigation Company

13
14 **BEFORE THE DEPARTMENT OF WATER RESOURCES**
15 **OF THE STATE OF IDAHO**

16 IN THE MATTER OF APPLICATIONS FOR)
17 PERMIT NOS. 15-7273, 15-7274, AND) **POST-HEARING BRIEF IN OPPOSITION**
18 15-7275 IN THE NAME OF M. J. DAVIS) **TO APPLICATIONS FOR PERMITS**
19 **MEMORIAL LIMITED PARTNERSHIP**)

20 TO: GARY SPACKMAN, HEARING OFFICER OF
21 THE IDAHO DEPARTMENT OF WATER RESOURCES

22 COMES NOW the Protestant, Samaria Water and Irrigation Company, by and through its
23 attorneys of record, Roger D. Ling and Michael P. Tribe of the firm Ling, Robinson & Walker,
24 and submits its Post-Hearing Brief in the *Matter of Applications for Permit Nos. 15-7273, 15-*
25 *7274 and 15-7275 in the Name of M. J. Davis Memorial Limited Partnership.*

26 **I. Introduction**

27 The Samaria Water and Irrigation Company is an Idaho corporation duly and regularly
28 organized under the laws of the State of Idaho, with its office in Samaria, Idaho. The purpose of
the company's formation was to:

POST-HEARING BRIEF IN OPPOSITION TO APPLICATIONS FOR PERMITS - 1

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3 [C]onvey the waters of Big Malad River from a point about two
4 miles below the head thereof, and also the waters of Sulphur
5 Springs otherwise known as Farm Springs; and also the waters of
6 Thomas Davis, Rose Bush (aka Rosebud) and Dry Pine streams,
7 located North and South and West of Samaria, Oneida County,
8 Idaho, by ditches, canals and aqueducts; or other means of
9 conveying waters, to the lands in and about Samaria in the valley
10 of Malad in said Oneida County, Idaho, for the purpose of
11 irrigating said lands, and for the further purposes that this
12 corporation may require; to establish reservoir sites; to build, erect
13 and maintain reservoirs for the impounding of water for
14 agricultural purposes, and to buy, own, sell and acquire real estate
necessary for the uses and requirements of this corporation: to
apply for, acquire and obtain permits for the appropriation and
distribution of waters for agricultural and irrigation purposes, and
to retain all its acquired rights to waters, reservoir sites, ditch and
canal rights of way, now owned or claimed and belonging to it,
however evidenced and, to do all things necessary for the property
operation and management of this company for its properties in
Malad Valley, Oneida County, Idaho. (Protestant's Exhibit D)

15 Currently, Samaria Water and Irrigation Company has a beneficial use claim, by way of the
16 constitutional method of appropriation in the waters of Thomas Davis, Rosebud, and Dry Pine
17 Creeks. (Protestant's Exhibits A and B) The claimed priority date for each of those streams is
18 currently 1893. The priority date and diversion rate are established by an indenture made
19 between South West Mountain Water and Irrigating Company and Samaria Water and Irrigation
20 Company in 1893. (Protestant's Exhibit B to attachment.)

21
22 Samaria Water and Irrigation Company originally filed a beneficial use claim in 1980 for
23 a priority date of 1925 with a combined rate of diversion of approximately 2.0 cubic feet per
24 second ("cfs") in the combined streams. (Protestant's Exhibit A) As discussed by John Evans at
25 the hearing of November 14, 2006, members of Samaria Water and Irrigation Company found
26 the 1893 indenture while searching the Oneida County recorder's office for further evidence of
27

II. Legal Analyses

a. Samaria Water And Irrigation Company's Beneficial Use Claims Are Senior To Any Claim Made By The M.J. Davis Memorial Limited Partnership.

In general, an appropriator, whose right is based upon a valid, although unadjudicated, constitutional method of appropriation, retains a senior claim in relation to a person holding a later issued permit. It is the long-standing rule in Idaho that, as between competing appropriators of water, "the first in time is first in right." I.C. § 42-106. The right to divert and use the unappropriated water of any natural stream is guaranteed by the Idaho Constitution in article 15, section 3. Until the law was changed in 1971, a person desiring to appropriate the water of a stream could do so either by actually diverting the water and applying it to a beneficial use or by pursuing the statutory method, which entailed an application to the Idaho Department of Water Resources for a permit and then fulfilling the requirements of the permit. *Cantlin v. Carter*, 88 Idaho 179, 397 P.2d 761 (1964). Nonetheless, any rights acquired by the so-called constitutional method prior to 1971 are still valid. As a result, an appropriator whose right is based upon a valid, although unadjudicated, constitutional method of appropriation, retains a senior claim in relation to a person holding a later issued permit. See generally *Nahas v. Hulet*, 114 Idaho 23, 752 P.2d 625, 628 (1998). The Applicant, M.J Davis Memorial Limited Partnership, through Mr. Jeff Davis acknowledged at the November 14 hearing that their use would be junior to the 1980 statutory claims of Samaria Water and Irrigation Company.

b. Criteria for Granting a Permit to Appropriate Water

Pursuant to Idaho Code § 42-203A, the Director of the Department of Water Resources may reject any application for permit if, after review, the criteria found in I.C. § 42-203A(5) are

not met. Subsection 5 reads in relevant part:

The director of the department of water resources shall find and determine from the evidence presented to what use or uses the water sought to be appropriated can be and are intended to be applied. In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest as defined in section 42-202B, Idaho Code, or (f) that it is contrary to conservation of water resources within the state of Idaho, or (g) that it will 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; the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions.

The relevant criteria denying for the Applicant's permit applications are found in subsection (a); that the appropriation will reduce the quantity of water under existing water rights and subsection (e); that the appropriation will conflict with the local public interest.

i. Any Use of Water From Rosebud, Pine Creek or Thomas Davis Creeks Will Reduce the Quantity of Water Under Existing Water Rights.

The Applicant acknowledged, through Mr. Davis, that any right that it could gain as a result of the three permits would be junior to Samaria Water and Irrigation Company's beneficial use rights. There was testimony from the Protestant that the Company has always used all the available water from the three streams. There was no contradicting testimony on that point.

There was no evidence submitted that determined the average annual flows of the three streams

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3 or the capacity of the Company's conveyance ditches. There was conflicting testimony about
4 how often the flows of the streams reached what was described as the Company's "Big Ditch"
5 which mixes the water from the Mountain streams with the Company's water from certain warm
6 springs, and then delivers it to the Company's shareholders. There was testimony from all three
7 of Protestant's witnesses, Doug Thorpe, Dale Evans and David Reel that while they were unsure
8 of the annual rate of diversion, they were certain that Samaria Water and Irrigation Company
9 always diverted and used the full amount of water available from the three streams and that had
10 been the practice since the Company's inception.
11

12 Doug Thorpe, a past president of the Company, stated that generally none of the waters
13 of the three streams could make it to the Company's users without the combined "head" of the
14 three streams at issue. Therefore, any amount appropriated by the Applicant would limit the
15 amount of water the Company would be able to put to beneficial use. There was clear testimony
16 from the Company's witnesses that the Company has never encountered a time when there was
17 more water than it could use under its three beneficial use rights under either the 1925 claim or
18 the 2006 amended claims that have a claimed 1893 priority date.
19

20 The Protestant is planning to replace part of its conveyance ditches with a pipeline that
21 would convey the combined water of the three streams to the Company's users, thereby avoiding
22 most of the ditch or conveyance loss. This project, when completed, will conserve water but will
23 not make excess water available to fill the proposed diversion under the applications of the
24 Applicant. The Company will and has always been able to use all of the diverted water of the
25 streams.
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Under Idaho Code § 42-203A, “any application to appropriate water in Idaho is subject to the local public interest standard”. *Hardy v. Higginson*, 123 Idaho 485, 849 P.2d 946 (1993). Citing the New Mexico Supreme, the Idaho Supreme Court has stated that, “the ‘public interest’ should be read broadly in order to “secure the greatest possible benefit from [the public] waters for the public” *Shokal v. Dunn*, 109 Idaho 330, 228 707 P.2d 441, 449, (1987), *citing Young & Norton v. Hinderlider*, 15 N.M. 666, 110 P. 1045, 1050 (N.M. 1910).

By using the general term “the public interest,” the legislature intended to include any locally important factor impacted by proposed appropriations.” *Shokal v. Dunn*, 109 Idaho at 228-29, 707 P.2d at 449-50. Those applying for permits and those challenging the application bear the burden of demonstrating which elements of the public interest are impacted and to what degree. This burden of production lies with the party that has knowledge peculiar to himself. However, regarding the burden of proof in all cases as to where the public interest lies, as the district court ruled in *Shokal*:

[I]t is not [the] protestant's burden of proof to establish that the project is not in the local public interest. The burden of proof is upon the applicant to show that the project is either in the local public interest or that there are factors that outweigh the local public interest in favor of the project. The determination of what elements of the public interest are impacted, and what the public interest requires, is committed to Water Resources' sound discretion.

At the hearing, Samaria Water and Irrigation Company presented testimony that the water from the three streams provide water to the irrigation users and that such water further dilutes the warmer saltier water from the Hot Springs. Such commingling of water improves the quality of the water for irrigation and other uses. The application of water to the natural

streambeds and the Company's ditches saturates these conveyances so that the water can be more easily delivered to the Company's users. As discussed above, the Company has plans to develop a pipeline to eliminate any ditch loss. The Company has also begun the process of obtaining a hydroelectric permit which would produce power from the water in the three streams that the Applicant has filed for permits on. In addition there are users who are at elevations above the Company's canal who have property that can only be irrigated by the combined flow of the mountain streams. These combined factors are in the local public interest of Samaria. The Applicant has the burden of proof to establish that the project is not in the local public interest. The Applicant has not established that and has also not shown that there are factors that outweigh the local public interest in favor of the project.

iii. Futile Call

Testimony was given by the Applicant that it intends to only divert water when it is not available to be put to a beneficial use by Samaria Water and Irrigation Company. The Applicant provided some testimony that in certain years the water of the three creeks did not make it to where it believed the Company could use the water. Presumably, if the applicant was granted a permit, it would only divert the water when water could not reach the Company's point of diversion to its shareholders. In other words, this permit would create a foothold for the Applicant to make use of the futile call doctrine.

It is the junior right holder's burden to show that neither the surface nor underflow of a stream, if uninterrupted, would reach the point of diversion of the senior appropriators. *Gilbert v. Smith*, 97 Idaho 735, 739, 552 P.2d 1220 (1976).

As a rule, the law of water rights in this state embodies a policy against the waste of irrigation water. *Ward v. Kidd*, 87 Idaho 216, 392 P.2d 183 (1964). Such policy is not to be construed, however, so as to permit an upstream junior appropriator to interfere with the water right of a downstream senior appropriator so long as the water flowing in its natural channels would reach the point of downstream diversion. *Martiny v. Wells*, 91 Idaho 215, 219, 419 P.2d 470 (1966). We agree that if due to seepage, evaporation, channel absorption or other conditions beyond the control of the appropriators the water in the stream will not reach the point of the prior appropriator in sufficient quantity for him to apply it to beneficial use, then a junior appropriator whose diversion point is higher on the stream little more than may divert the water. (citations omitted). Nevertheless, it was appellants' burden here to show that neither the surface or underflow...if uninterrupted, would reach the point of diversion of the respondents, as senior appropriators. (emphasis added.)

The Applicant in this case presented no evidence regarding whether the underflow of the three streams, if uninterrupted would reach the Company's points of diversion or place of use. In fact, Mr. Davis admitted that he seeks to divert water from the Company's ditch which is below its point of diversion. Mr. Davis, testifying in behalf of the Applicant, testified that there is no effect to the Company if he diverted during dry years. But the dry portion he has observed or has personal knowledge of regards only whether the surface water is dry, not whether there exists an underflow that reappears along the course of the streams or delivery ditch of Company. The three streams in Applicant's permits have been characterized as the mountain streams or as producing mountain water. The Idaho Supreme Court has found that even if evidence exists that the water sinks at times in the bed of the creek some distance above the appointed diversion point "as is usually the case with mountain streams, it [may] flow beneath the surface, following the course of the stream and thus reaching" the intended point of diversion. *Jackson v. Cowan*, 33 Idaho 525, 196 P.2d 216 (1921). The Court also held that the burden of proving that it did not

POST-HEARING BRIEF IN OPPOSITION TO APPLICATIONS FOR PERMITS - 10

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3 reach the reservoir was upon the party claiming that the water does not reach its intended point
4 of diversion and place of use, not the senior user.

5 The facts in *Jackson v. Cowan* are somewhat similar to the current applications before the
6 Hearing Officer in this case. In *Jackson*, the moving party filed an action to determine priorities
7 on a mountain stream. The respondent, J. G. Watts ("Watts"), operated a reservoir below the
8 point of appropriation of the moving part. In their answer the moving party claimed that between
9 its points of diversion and those of the respondent's reservoir, "the stream flows over a tortuous,
10 sandy, gravelly bed, in which great quantities of the water of said stream are lost. That none of
11 the waters of said stream will reach the said reservoir of...Watts after the extreme heavy flood
12 waters of the early spring have subsided, and that they usually subside before the irrigation
13 season of each and every year; and that after the commencement of the irrigation season of each
14 year, if all the waters of said stream were turned into the channel of said stream and permitted to
15 flow down the same, they would not reach the said reservoir of said plaintiff, but would be
16 wasted and lost. *Jackson v. Cowan*, 33 Idaho 525, 526, 196 P.2d 216, 217. The question thus
17 arose as to whether, after a flood season, the waters of the creek would reach the reservoir. *Id.*
18 The Court then ruled: "[w]hile there is evidence that the water sinks at times in the bed of the
19 creek some distance above the reservoir, there is evidence that, as is usually the case with
20 mountain streams, it then flows beneath the surface, following the course of the stream and thus
21 reaching the reservoir. The burden of proving that it did not reach the reservoir was upon the
22 appellants...and this they fail to do." *Id.* Therefore, the Applicant, must put forth evidence that
23 the waters of the three streams don't reach part of the Company's place of use before it can claim
24 the water does not reach the Company's shareholder's.
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3 The burden of proving that a stream will not reach the senior appropriator's point of
4 diversion is squarely on the junior appropriator. *Martiny v. Wells*, 91 Idaho 215 419 P.2d 470
5 (1966). In *Martiny*, the Court citing a Colorado case, stated the following:

6 It is probably safe to say that it is a matter of no moment whether water reaches a
7 certain point by percolation through the soil, by a subterranean channel, or by an
8 obvious surface channel. If by any of these natural methods it reaches the point,
9 and is there appropriated in accordance with law, the appropriator has a property
10 in it which cannot be diverted by the wrongful diversion by another, nor can there
11 be any substantial diminution. To hold otherwise would be to concede to superior
owners of land the right to all sources of supply that go to create a stream,
regardless of the rights of those who previously acquired the right to the use of the
water from the stream below.

12 *McLellan v. Hurdle*, 3 Colo. 430-434, 33 P. 280, 282, (1893). In the case of the Applicant, he
13 seeks to divert from the Protestant's ditch, not the stream or streams.

14 It is obvious that observations of whether water reaches a senior appropriator's point of
15 diversion includes more factors than merely surface appearance. Such considerations must
16 include whether any subterranean channels or percolation exist. It is not clear if such exist but
17 the Applicant's witness, James Hill, testified that the stream bed of each of the three streams (or
18 ditches in which the streams are diverted) could be dry during some days in the summer but fill
19 with water during the cooling hours of the day, this indicating some type of subsurface
20 conveyance. Therefore, the fact that water does not always reach the Company's place of use by
21 surface water does not automatically imply that the permits should be granted based upon the
22 claim that the Company cannot always use the water.
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25 iv. Riparian Rights

26 The Applicant, has in essence requested a permit for the diversion of the waters of Thomas
27 Davis Creek based on the concept of riparian rights. Because the creek runs through a portion of
28 POST-HEARING BRIEF IN OPPOSITION TO APPLICATIONS FOR PERMITS - 12

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3 its property, in Section 34 and 27, the Applicant has made it clear that it believes it is entitled to
4 the use of such water for "esthetics," which essentially are for the growth of trees and other
5 shrubbery. The application for permit on Thomas Davis Creek lists "esthetics related to riparian
6 buffer areas and wildlife habitat". In addition, Mr. Davis testified that the irrigation use would
7 be to improve the riparian area around the three streams for wildlife habitat.

8
9 The basic concept of riparian rights is that an owner of land abutting a waterbody has the
10 right to have the water continue to flow across or stand on the land. *Waters and Water Rights*,
11 Robert E. Beck, Editor-in-Chief § 7-01 (1991). It is well-established law that in Idaho, the law
12 for appropriation of water is based upon prior appropriation and such principle is ingrained in
13 Article XV Section 3 of the Idaho Constitution which reads:

14 The right to divert and appropriate the unappropriated waters of
15 any natural stream to beneficial uses, shall never be denied, except
16 that the state may regulate and limit the use thereof for power
17 purposes. Priority of appropriation shall give the better right as
18 between those using the water; but when the waters of any natural
19 stream are not sufficient for the service of all those desiring the use
20 of the same, those using the water for domestic purposes shall
(subject to such limitations as may be prescribed by law) have the
preference over those claiming for any other purpose; and those
using the water for agricultural purposes shall have preference over
those using the same for manufacturing purposes.

21 The Applicant has no right to divert the waters of Thomas Davis Creek simply because the
22 stream flows across its property. Any concern it has that the Company may some day maximum
23 the efficiency of its conveyance methods through a pipe cannot be alleviated by the reliance
24 upon the riparian right system of water allocation. Samaria Water and Irrigation Company has
25 diverted all available water from the Creek and its early priority date allows it to put the water to
26 a beneficial use.

III. Issues Raised at Hearing

a. Applicant's Points of Diversion Are From Samaria Water and Irrigation Company's Ditches

The applicant Davis has no means to deliver or divert the waters of Rosebud and Dry Pine except by way of Samaria's ditches. The lower point of diversion for Thomas Davis Creek also requires the use of the Company's ditches to convey and divert water from its requested diversion point in Section 22. The Company's Board of Directors have never given the Applicant permission to use or to divert water out of its ditches. The Applicant's use of the Company's ditches has been by trespass. "It is quite generally held that a water right initiated by trespass is void. That is to say, one who diverts water and puts it to a beneficial use by aid of a trespass does not, pursuant to such trespass, acquire a water right. Any claim of right thus initiated is void." *Bassett v. Swenson*, 51 Idaho 256, 5 P.2d 722 (1931).

As the Hearing Officer accurately described at the end of the hearing, there has been no claim of condemnation from the Applicant to use the ditches of Samaria Water and Irrigation Company. It is respectfully submitted that the applications for permits must fail, if for no other reason than there is no existing means or means that could be reasonably constructed that would allow the conveyance and diversion of the water claimed by the Applicant. Even if a right to use the Company's ditches was to be obtained, which has not occurred, it could not interfere with the Company's water flowing therein.

b. Non-irrigation Uses listed in Davis' application

i. Esthetics

The Application claims five different purposes or uses on the three permit applications.

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3 The applications for Dry Pine and Rosebud request only use for irrigation. One of these claimed
4 purposes in the Thomas Davis permit was for esthetics. In the application, the Applicant stated
5 that the year round use for esthetics was non-consumptive. However, at the hearing Mr. Davis,
6 while testifying in behalf of the Applicant, stated the esthetic use was to establish the growth of
7 trees, which is a consumptive use of water. The trees are to be watered with a drip system. The
8 applicant provided no evidence of how much consumptive use would be expended through this
9 claimed use. Therefore, the Thomas Davis application should be denied for the Applicant's
10 failure to provide an accurate amount of water that will diverted and consumed by the applicant.
11 It is illogical to make the statement that watering of trees or other brush is a not a consumptive
12 use of water. The consumptive use could be quantified through existing methods utilized by
13 IDWR. It would appear that Applicant believes that water diverted for esthetic purposes will
14 eventually return to the stream or the Company's ditches. This supports a finding that no water
15 is lost by its diversion by the Company.
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18 **ii. Stockwater/Recreation**

19 In the application for permit for Thomas Davis Creek, the Applicants requests .02 cfs for
20 stock water. Mr. Davis testified that he does not own cattle but desired to acquire a right to use
21 any available water for stock water purposes and then lease it to others. Again, there is no
22 excess water available to the Applicant. The Company has always used all available water
23 available from Thomas Davis Creek. Even if the Company has not begun sending water to its
24 shareholders early in the irrigation season, there are users higher up in elevation whose use of the
25 waters of Thomas Davis, Rosebud and Dry Pine Creeks is thee only means of watering their land
26 because it is above the Company's large canals. When water is available, the water serves the
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3 local public interest by serving the most people when it is used as irrigation water for pasture and
4 crops in and around the Samaria Townsite. Water may not be appropriated for speculation
5 purposes and any Application for a Permit for such purposes should be denied.

6 Idaho Court decisions and water right licenses issued by IDWR have approved fish and
7 wildlife habitat, esthetics and recreation as beneficial uses in Idaho. However, they should not
8 be able to usurp an established use established for irrigation and stockwater. The Company's use
9 for irrigation benefits several users whereas a license for habitat improvement, esthetics and
10 recreation for a limited few cannot be considered a better and higher purpose that would allow
11 the Applicant to acquire a license at the expense of a senior appropriator.

12
13 **c. Management of Applicant's Claim Will be Impractical**

14 The day-to-day management of the Applicant's permits makes them impracticable. The
15 Applicant desires to use the water from the three streams early in the irrigation season, later in
16 the season and anytime when it determines the water isn't reaching the Company's big ditch.
17 This subjective period of use is unmanageable. To accommodate the Applicant's desired right,
18 the Company would have to constantly have their paid water master or board members available
19 to inspect the flows of the streams whenever the Applicant wanted to use the water. Someone
20 other than the Applicant would have to confirm that the water was not reaching and would not
21 reach the Company's service area.
22

23 There are several problems with the Applicant's proposed use. First, as was presented at
24 the hearing, the flows of water fluctuate. They fluctuate with the season, temperature and other
25 weather related events. It is undisputed that the availability of the water depends upon the
26 season and temperature. Rick Higley testified for the Applicant that the water fluctuates year to
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3 year and Doug Thorpe testified that the water can fluctuate daily especially during the summer
4 months. If the Hearing Officer decided that the Applicant was entitled to appropriate the early
5 and late season flows, then either IDWR, the Applicant and Samaria Water and Irrigation
6 Company would have to provide a way to determine when the water of the three streams was not
7 reaching and could not reach any of the Company's stockholders. An additional hearing would
8 then have to be held to determine whether a call by the Company would be futile.
9

10 Furthermore, there are water users who take water before the water enters the "Big
11 Ditch". At the hearing, John Evans testified that Alvin Williams was one such water user.
12 Those stockholders who use their Samaria Water and Irrigation Company water directly from the
13 combined streams of Rosebud, Dry Pine and Thomas Davis Creeks use what is known locally as
14 mountain shares. These users have historically taken water under their shares in Company early
15 and late in the season because the water is often available before the Company fills its canals and
16 ditches. These Samaria Water and Irrigation Company shareholders would be injured by any
17 early or late season use by the Applicant.
18

19 In addition, the Applicant, as part of its water delivery system, plans to add collection
20 ponds to create pressure for its irrigation practices. Applicant argued that since the collection
21 ponds could be filled within twenty-four hours that such storage right does not have to be
22 included in its water permit. There does exist authority for storage ponds with the Department of
23 Water Resources. In an *Administrator's Memorandum* dated February 28, 2003, from Norman
24 C. Young to the Water Management Division, guidance was given regarding the permitting
25 requirements for impounding and using water in a pond. At page three (3) of that Memorandum
26 Young wrote that, "[a] water right permit is not required to construct and use a pond or ponds
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3 that are a part of a system used to distribute and use water in accordance with a valid water right
4 if the pond or ponds do not impound a larger volume of water than authorized for diversion
5 within a 24-hour period under the water right or rights associated with the project.” However,
6 the use of a pond must be a beneficial use. There was no showing by Applicant that it would be
7 a beneficial use. Again, the cost to the Company to monitor this project or the Idaho Department
8 of Water Resources to ensure that the ponds are not storing more than their maximum stored
9 allowance is another reason the permits should not be granted. There has been no credible
10 testimony offered that the ponds can be filled in a twenty-four hour period. It is the Applicant’s
11 burden to establish that the permits are in compliance with IDWR rules and it has not done such.

12
13 **d. Early Season Delivery Will Limit Later Season Delivery**

14 One concern the Hearing Officer expressed at the conclusion of the hearing was the
15 concept and concern of the Company that any early season delivery to the Applicant would limit
16 the delivery to Samaria Water and Irrigation Company later in the season.

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18 Mr. Davis, testifying in behalf of the Applicant testified that there is no effect to the
19 Company if he diverted during dry years. But the dry portion he has observed or has personal
20 knowledge of regards whether the surface water is dry. A major benefit of water running in the
21 streambeds and in the Company’s ditches is to keep the ditches wet when water is available. For
22 example, if .2 cfs made it down most of the streambed and ditches, then when additional water is
23 available the previous .2 cfs would prevent additional ditch loss as the ground will be more
24 saturated and prevent a certain level of ditch loss. Water will not instantly be available on the
25 first day of the permissible irrigation season. The early season water takes time to work its way
26 the several miles to the Company’s users. The Applicant should not be able to divert this early

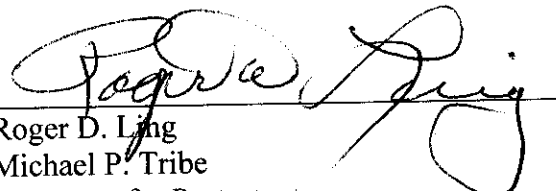
water for its benefit at the detriment of the Company and its shareholders.

IV. Conclusion

Based on the above, the three applications for permit filed by the M.J. Davis Memorial Limited Partnership should be denied. The applications for permit, if granted, would reduce the quantity of water under the existing rights of the Company and the applications will conflict with the local public interest. The applications are defective on their face as the Applicant has not established where it could convey and divert water it would receive a permit for; the Applicant has never received permission to convey and divert water from Samaria Water and Irrigation Company's ditches. The Company is controlled by a Board of Directors and this body has the sole authority to carry out the function of the Company. And finally, certain consumptive uses which are listed as non-consumptive in the application, are not.

DATED this 15th day of December, 2006.

LING, ROBINSON & WALKER

By: 

Roger D. Ling

Michael P. Tribe

Attorneys for Protestant,

Samaria Water and Irrigation Company

CERTIFICATE OF MAILING

I hereby certify that on the 15th day of December, 2006, I served the original/ true and correct copies of the foregoing ***Post Hearing Brief in Opposition to Applications for Permits***, by the method indicated below, and addressed to the following:

Original to: Gary Spackman, Hearing Officer
Idaho Department of Water Resources
P. O. Box 83720
Boise, Idaho 83720-0098

☒ U. S. Mail
☐ Hand Delivery
☐ Facsimile Transmission
☐ E-mail

Copies to: Michael W. Olson, President
Brent Clark
Dee's Incorporated
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Salt Lake City, Utah 84106

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☐ Facsimile Transmission
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☐ E-mail

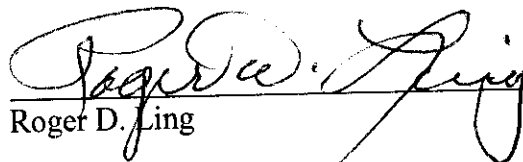
Willard J. Higley
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by depositing said original and copies in the U.S. Mail, postage prepaid, in envelopes addressed to said parties at the foregoing addresses.


Roger D. Ling

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DEC 18 2006

DEPARTMENT OF
WATER RESOURCES

December 14, 2006

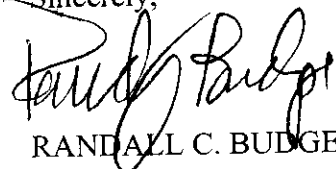
Gary Spackman, Hearing Office
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

Re: *M.J. Davis Memorial Limited Partnership*
Application for Permit Nos. 15-7273, 15-7274 and 15-7275

Dear Mr. Spackman:

Enclosed please find Applicant's Opening Brief. I understand any Reply Briefs that may be desired are due December 31. After reviewing the Protestant's Brief and discussing the matter with opposing counsel, we will advise if Reply Briefs will be submitted. Thank you for your consideration.

Sincerely,


RANDALL C. BUDGE

RCB:rr

Enclosures

cc: Roger Ling/Michael Tribe
Jeff Davis

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Attorney for M.J. Davis Memorial Limited Partnership

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

**IN THE MATTER OF APPLICATIONS)
FOR PERMIT NOS. 15-7273, 15-7274) **APPLICANT'S OPENING BRIEF**
and 15-7275 IN THE NAME OF)
M.J. DAVIS MEMORIAL LIMITED)
PARTNERSHIP)**

Comes now Applicant M.J. Davis Memorial Limited Partnership, (hereinafter "Davis"),
through counsel, and submits the following brief in support of approval of the pending
Applications.

1. BACKGROUND:

There are three fundamental issues in dispute between Davis and Protestant Samaria
Irrigation Company (hereinafter "the Company"), the place of use of the Company's shares, the
proposed hydro electric development and the pending new Applications.

The first issue relates to the place of use of the Company's water rights in Thomas Davis
Creek, Rose Bud Creek and Dry Pine Creek, commonly referred to as the "mountain streams"
which arise southwest of the townsite of Samaria. Davis contends he has a right to use water

available based upon his shares to irrigate his property in the area of the mountain streams in accordance with historic use and practices. The Company contends he cannot. Unfortunately, the Company's water rights in the mountain streams have never been established by permit, license or decree. Accordingly, the quantity and place of use of the Company's rights in the mountain streams is undetermined. The Company's I.C. 42-243 Claims constitute nothing more than a "flag in the sand" providing notice of an un-adjudicated claim which provides no basis of resolving the place of use or administration disputes.

Davis acknowledges that the Company has prior existing water rights in the mountain streams established constitutionally by diversion and application to beneficial use. However, Davis maintains that the place of use includes his property and that the amounts of the Company's prior rights should not exceed those set forth by the Company in its 1980 Claims, Exhibit "A". This dispute is not the subject of the pending proceedings and will not be resolved until the Company's rights are adjudicated in a separate proceeding. Accordingly, Davis presented only a brief overview and discussion of the historic use of water on his property.

The second issue is the Company's Application for Preliminary Permit to FERC for a proposed hydro to determine project feasibility, Exhibit 6. Davis filed a Motion to Intervene and Protest, Exhibit 7, to protect his rights in the mountain streams. The hydro project proposed to divert all water from the streams at a higher elevation on BLM land to the south which would de-water the natural channels and circumvent the Davis property altogether. The Company has yet to file a water right application for their proposed hydro plant and any such permit would be subject to Davis' prior rights as well as likely protest on the basis of adverse effects on stream side habitat and wildlife.

The third issue is the approval of Davis' pending Applications to secure new water right permits in each of the mountain streams. These Applications were filed to secure a source of water for irrigation purposes only after the Company refused delivery of water based on Davis' shares. The approval of these Applications is the only issued properly before the Department for decision at this time.

Davis negotiated a settlement agreement with the Company's Board of Directors resolving all of these issues which was subject to shareholder approval. Shareholder approval was not obtained leaving all issues unresolved and necessitating the November 14th administrative hearing in Malad.¹ It is hopeful and expected that resolution of the pending permit Applications will enable the parties to pursue further efforts to resolve the remaining issues. If that is unsuccessful adjudication of the Company's water rights will be necessary to establish the elements of their rights necessary for administration. It is noteworthy that the entire dispute could and should have been avoided had the Company simply amended its -243 claims as suggested by the Department to allow Davis to use a portion of his shares on the property in the mountain area, rather than be forced to divert all of his water from the Big Ditch.

2. INTRODUCTION:

On December 15, 2005 Davis filed (3) Applications for Permit, No. 15-7273, 15-7274 and 15-7275 ("the Applications") seeking to appropriate water for irrigation purposes in Rosebud, Dry Pine and Thomas-Davis creeks, respectively. The purpose as stated in the

¹Despite entering into a Settlement Agreement and agreeing therein to support approval before the shareholders, most of the individual Board Members instead voted all of their own shares and proxies they solicited against the settlement, causing it to be defeated at the shareholder meeting.

Applications and the testimony of Jeff Davis is to secure water to irrigate farm crops and also trees, shrubs, grasses and small grains to provide wildlife habitat. Drip systems would be utilized where feasible to maximize efficiency. The Thomas-Davis Creek water would utilize the existing drip system constructed in 2004 shown on Exhibit 8 which would be expanded. Water available from Rose Bud and Dry Pine would be used in the same fashion.

The Applications were protested by the Company, Dee's Inc., the Samaria Recreation and Cemetery Districts and certain Samaria Residents. Only the Company and the Recreation District (through John Evans) appeared at the hearing and presented evidence. The Company protested on only two grounds alleging that the permits would (1) "reduce the quantity of water available to existing rights;" and (2) "conflict with the local public interest." It is significant to note that the Company's protest does not assert that the the water supply is insufficient nor challenge any of the other criteria for approval under I.C. 42-203.

3. CRITERIA FOR APPROVAL:

Pursuant to I.C. 42-203 the director "shall find and determine from the evidence presented" whether the application is protested or not whether the proposed use:

- (a) will reduce the quantity of water under existing rights, or
- (b) that the water supply itself is insufficient for the purpose intended, or
- (c) that such application is not made in good faith, is made for delay or speculative purposes, or
- (d) that the applicant has not sufficient financial resources with which to complete the work involved, or
- (e) that it will conflict with the local public interest as defined in section 42-202B, or

- (f) that it will adversely effect the local economy of the watershed or local areas within which the source of water for the proposed use originates.

It is significant to note that the Company's written protest filed January 25th, 2006 asserted only that the applications did not meet criteria (a) and (e).

Under the clearly stated statutory criteria it is simply not relevant for purposes of this proceeding to address future administration issues that may or may not arise after the permits are issued. Similarly, how Davis goes about with his development and applying water to beneficial use under the permits is not a relevant factor for permit approval, once he has established that he has sufficient financial resources and is pursuing the applications in good faith and not for delay or speculative purposes.

4. STATEMENT OF POSITION:

A. The Applications Will Not Reduce the Quantity of Water Under Existing Rights.

It is undisputed that the Company's rights do not exist pursuant to any permit, license or decree. For each of the mountain streams the Company has filed a "Claim to a Water Right" under I.C. §42-243. These claims merely give notice that the Company claims a water right by diversion and application to beneficial use. Accordingly, the quantity, place of use and all other elements of the Company's claimed water rights are undetermined and will not be established or known until they are adjudicated.

The Company's claims under Section 42-243, Idaho Code, were initially filed December 16, 1980 and designated as Claim Nos. 15-4066 (Thomas Davis Spring), 15-4067 (Rosebud Springs), and 15-4068 (Dry Pine Springs) (hereinafter "1980 Claims"), Exhibit A. The 1980 Claims were for a total of 2.0 cfs consisting of 0.90 cfs in Thomas Davis, 0.2 cfs in Rosebud and

0.9 cfs in Dry Pine.

In late June 2006 the Company filed Amended Claims (hereinafter “2006 Claims”), Exhibit B. The 2006 Claims purported to change the priority date from 1925 to 1893 and tripled the quantity claimed from 2.0 cfs to 6.0 cfs, consisting of 3.0 cfs in Thomas Davis, 1.0 cfs in Rosebud and 2.0 cfs in Dry Pine. On cross-examination, Company board member John Evans and President David Reel each readily admitted that the sole basis for filing the 2006 Claims was the discovery of recorded Water Right Claim Notices dated July 3, 1893, copies of which are attached to the 2006 Claims. Neither witness asserted and the Company presented no evidence of beneficial use or otherwise to support the increase in the quantity claimed. The 1980 claims were signed by then-president DeVerl John, who swore under oath “that the matters and facts therein are true to the best of the affiant’s knowledge”. John Evans further testified on cross-examination that he personally knew DeVerl John, believed him to be an honest man, and had no reason to doubt whatsoever that the information set forth in the 1980 Claims was true and accurate.

The Company’s real purpose in filing the 2006 claims is thinly veiled. Since there are no other water rights on the stream, the earlier priority date claimed is of no significance. However, by tripling the quantity, the Company obviously was attempting to undermine and gain advantage over the Davis Applications. The Company produced no flow records nor measurements of any water flowing or delivered in the mountain streams or any of its other sources. The fact that the Company’s 2006 Claims were filed some 26 years after the 1980 Claims, after the original hearing date on the Davis Applications, which was continued at the Company’s request, and after the Company’s Application for Preliminary Permit to FERC for a

hydro project (Exhibit 6), all clearly demonstrate that the 2006 Claims are not supported by or based upon any actual diversion and use of water. The filing of the 2006 Claims under the above circumstances indicates bad faith by the Company.

Even though the Company's rights in the mountain streams have never been established, Davis acknowledges that the Company does in fact have prior rights established by beneficial use. Davis acknowledges the quantities claimed in the Company's 1980 Claims and in his Notice of Exception thereto, Exhibit 4, only takes exception to the extent that his land is not included in the designated place of use. Davis's Notice of Exception to the 2006 Claims, Exhibit 26, takes exception to the increased quantity and the exclusion of his land from the place of use.

The use of water by Davis under his proposed permits will not reduce the quantity of water available to the Company under its existing rights. This is because Davis acknowledges the Company's rights have priority and agrees to shut off his junior rights whenever the water is needed by the Company and can be made available to the Company's other shareholders. In essence, this means that water will be available to Davis early in the irrigation season before the Company begins to irrigate, at the end of the irrigation season after the Company has ceased delivery, and during the irrigation season in times of futile call when the curtailment of Davis's use would not result in any water making it to the Samaria townsite or to the "Big Ditch" for delivery to shareholders.

The Company failed to produce any competent evidence that the proposed use by Davis would in any way reduce the quantity available under the Company's rights and therefore has failed to meet its burden of proof.

B. The Water Supply Is Sufficient for the Purpose Intended by Davis.

Davis's knowledge of the property and the flows from the mountain streams goes back as far as 1965 as a young boy assisting his father with irrigation and farm work. With the exception of two years, 1978 to 1980, Davis has been on the property regularly during the irrigation season from 1965 to present, and has been the owner/operator since 1999. Davis, like all other witnesses, testified that the flows from the mountain streams fluctuate annually and seasonally with varying water conditions. All witnesses were nearly in unanimous agreement concerning when the Company delivers irrigation water. All testified that on average the Company begins delivering water around May 15 and ceases delivering water around September 15. During dry years delivery began as early as late April and in wet years as late as June 1. Similarly, depending on water conditions, delivery at the end of the irrigation season has ended as early as late August and as late as early October.

The evidence from Davis and other witnesses is undisputed that in all water years water would be available for Davis to use early in the season from April 1 until the Company begin irrigating, and late in the season after the Company ceased deliveries. In good water years when there is ample water available and the Company is not delivering on turns, there is water available to supply the Company's rights and Davis's proposed use during most of the irrigation season. The evidence is further undisputed from the testimony of all of the witnesses that during drought years water from the mountain streams often never makes it to the townsite at all. In those years the doctrine of futile call would apply and Davis would be able to use during much of the irrigation season. The available flows as described above to supply Davis's proposed use was substantiated by the testimony of Applicant's witnesses Jeff Davis, Rick Higley and Jim

Hill, and was admitted on cross-examination by Company witnesses John Evans and David Reel. In any event, the Company presented no contrary evidence that the supply was not sufficient.

Davis testified that the proposed use was to irrigate farm crops as well as trees, shrubs and bushes, native grasses, forbs, herbs and small grains to establish food plots to provide wildlife habitat and prevent erosion. Davis testified he is working with the Farm Service Agency with respect to the enrollment of the property in the Continuous CRP Program, the design of the habitat areas and the drip systems to provide irrigation water. The Company presented no evidence whatsoever to question or rebut Davis's testimony that the water supply delivered through the proposed drip irrigation system would provide sufficient irrigation for the proposed uses. Davis's testimony was not questioned or rebutted that irrigating early in the spring and in the fall would be sufficient to sustain the proposed habitat even if he were called out by the Company and no water available during the middle of the summer. This is because drought-tolerant grasses and trees and shrubs would be planted that would survive in the area climate, as well as fall wheat and/or spring barley and wheat, which can produce sufficiently for crops and food plots with minimal fall and spring irrigation.

Davis has clearly met his burden of proving that the water supply is sufficient for the use he intends. No contrary evidence was presented by the Company.

C. Davis's Application is Made in Good Faith and Not for Delay or Speculative Purposes.

Davis has been the exclusive owner and operator of the property since 1999. He has already planted riparian habitat and installed a drip irrigation system. He testified how both will be designed, expanded and installed once the permits are granted. His testimony that he is proceeding in good faith and not for delay or speculative purposes was not questioned or rebutted

by the Company.

D. Davis Has Sufficient Financial Resources to Complete the Work Involved.

Davis is employed fulltime as an anesthesiologist earning regular income. His farm is unencumbered and also generates income from CRP payments and crop sales. Additionally Davis anticipates cost-share funding from the Farm Service Agency under available Farm Bill programs. Regardless, Davis testified he has sufficient financial resources to complete the project, which he estimates will cost an additional \$25,000 per project segment. Davis's testimony in this regard was not questioned and was unrebutted.

E. The Proposed Use Will Not Conflict With The Local Public Interests.

The local economy and the local use of water is almost entirely for irrigated agricultural purposes. Davis's proposed use of water for irrigation purposes is in complete harmony with the local public interests as defined by I.C. §42-202(B). The protestant Company presented no contrary evidence.

Witness John Evans suggested that Davis's proposed use of water from the mountain streams might somehow adversely affect the Samaria Recreation District or a possible fire system in the area. However, Evans admitted on cross-examination that no water rights existed or had been applied for, nor had there even been any engineering or planning whatsoever by the Recreation District or relating to any fire system. In fact, Evans' testimony was speculation at best and little more than a rather specious attempt to claim the local public interest might somehow be adversely affected by Davis's proposed use of water. Having presented no competent evidence to the contrary, it is clear that the proposed use by Davis for irrigation purposes is clearly consistent with the local public interests.

F. The Proposed Use Will Not Adversely Affect the Local Economy.

Davis's proposed use of irrigation water to raise crops and wildlife habitat can only enhance and in no way injure the local economy. Wildlife habitat increases wildlife, providing recreation opportunities, with well known economic benefits. There was no contrary evidence presented that the proposed use by Davis would have any adverse affect on the local economy.

Having met all of the criteria under I.C. §42-203(A)(5), the Applications for Permit must be granted.

5. OTHER ISSUES RAISED BY THE HEARING OFFICER:

At the conclusion of the hearing the Hearing Officer asked the parties to address in their post-hearing briefs four additional questions, each of which will be addressed.

(1) Diversion facilities on Dry Pine and Rosebud.

Davis submits that it is not a statutory requirement and therefore premature to require the exact design and details of diversion structures in advance of the issuance of the permit. These are matters to be pursued once the permits are issued in order to divert and apply water to beneficial use so that the permits inure into licensed water rights.

Davis contemplates diverting the water from Rosebud and Dry Pine from the Company's ditch utilizing a headgate to divert into a collection devise and then into a drip or sprinkler irrigation system. This is not expected to be a problem during the regular irrigation season when the Company water is the ditch anyway, or during the end of the irrigation season when the Company has historically had water in the ditch to provide stock watering for downstream shareholders. It would require the Company's cooperation in running the water into the ditch early before the Company starts to irrigate, but this would help the Company by soaking the

ditch from the Company's point of diversion to the Davis point of diversion prior to the time the Company normally begins diversion. Davis anticipates the Company would cooperate with respect to these needs, just as he has and will continue to cooperate with the Company with respect to their needs to go upon his property to conduct ditch maintenance and to turn the water in and out of the natural channel. If problems with the Company are encountered, Davis would contemplate running the pipe feeding his irrigation system to a point of diversion in each stream upstream from the Company's existing ditch diversion by making necessary arrangements for an easement with the landowner. Should that fail, Davis will consider amending his permits to change the point of diversion downstream and utilizing a portable pump.

(2) Uses Incidental to Irrigation Under Application 15-7275.

The Hearing Officer suggested that Application 15-7275 was principally for irrigation with the other named uses, i.e., recreation, esthetics, and fire protection simply "incidental" uses. Davis agrees. The primary purpose of Application 15-7275 is in fact for irrigation, with the corresponding recreation and esthetic benefits considered merely incidental to the irrigation purpose. Davis would concur that this Application be issued for irrigation purposes. The additional uses filed upon for fire protection, aesthetics and recreation were intended to prevent exclusion by the Company of these incidental benefits.

(3) Irrigation System Storage.

Davis's irrigation system would divert water into a small holding tank or reservoir to remove sediment and supply the system. It is not contemplated that there would be any water stored and held in the storage reservoir for more than 24 hours. All water would flow through the reservoir on a continuous basis, with any storage for flow regulation only and of short

duration, less than 24 hours.

The minimal and short-term storage for the drip system perhaps became confused with Davis's testimony referring to his unrelated Water Right License No. 15-07032, Exhibit 3. This stock water right in a separate spring is contained in a small pond located in the SE NE NE of Section 23, adjacent to the west of Thomas Davis Creek as shown on the map, Exhibit 8.

(4) Hypothetical Injury Resulting From Early Season Diversion.

The Hearing Officer raised a question based upon hypothetical facts that if Davis used water early in the irrigation season before the Company turned on, that such use might somehow adversely impact Samaria Creek flows available to the Company later in the season. There was no testimony or evidence presented concerning the hydrology or underlying geology of the Samaria Creek drainage. The protestants have the burden of presenting competent evidence of injury, but failed to present any evidence whatsoever. Diminishment of irrigation season flows to the Company resulting from any early-season diversion by Davis is speculation only, based upon hypothetical facts and not the record established at the hearing. This issue was not properly presented to the Hearing Officer based upon actual facts of the record. If such an injury could be established, the appropriate time to raise it would be based on actual facts presented in an administrative proceeding arising out of a delivery call. Furthermore, the Company itself turns water from the ditch to the natural channel in the fall and returns it to the ditch about one week prior to the beginning of the irrigation system indicating it has no real concern about loss in their ditch resulting from early season diversion.

6. CONCLUSION:

The testimony and evidence presented at the hearing clearly and convincingly established

that the Applicant Davis has presented clear and convincing evidence that all criteria for issuance of the applied for permits under I.C. §42-203 have been met. The protestant Company and Recreation District utterly failed to present any competent contrary evidence. Davis's proposed permits will not reduce the quantity of water under existing rights because Davis's rights are junior and will shut off during the Company's normal irrigation season when the water from the mountain streams is needed and in fact can be delivered to other shareholders to meet their irrigation requirements. The water supply is sufficient for Davis's proposed use because he will use water early in the irrigation season before the Company begins delivery, after the Company ceases delivery at the end of the irrigation season, and during the irrigation season when the doctrine of futile call applies. The testimony and evidence presented by Davis that his Applications are made in good faith and not for speculative purposes and that he has sufficient financial resources to complete the work involved was completely un rebutted. The proposed use of water for irrigation purposes is entirely in accord with the local public interests.

Based on the foregoing, it is respectfully submitted that Davis's Applications for Permit should be granted as applied for.

DATED this 14th day of December, 2006.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By 
RANDALL C. BUDGE

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 14th day of December, 2006, I mailed a true and complete copy of Appellant's Opening Brief, postage prepaid, to the following:

Roger Ling
Michael P. Tribe
Attorneys for Samaria Water & Irr. Co.
P.O. Box 396
Rupert, Idaho 83350

Idaho Department of Water Resources
Eastern Region
900 N. Skyline Drive, Suite A
Idaho Falls, Idaho 83402



RANDALL C. BUDGE

HEARING ROSTER OF ATTENDANCE

2

IN THE MATTER OF APPLICATION FOR)
 PERMIT TO APPROPRIATE WATER NOS.)
 15-7273, 15-7274, AND 15-7275 IN THE NAME)
 OF M. J. DAVIS MEMORIAL LIMITED)
 PARTNERSHIP)

November 15th, 2006
 Hearing Officer: Gary Spackman

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Kevin Chambers	4985 S 4500 W Malad	Jeff Davis
Kevin Chambers	" " "	Jeff Davis
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Barney L. Lamm	5550 W 3000 W	SW & L
Blaine Farris	4491 W 4700 S	SW & L
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T.J. Budge	" "	" "
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NAME

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REPRESENTING

Quik L High

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Self

TESTIMONY LOG

IN THE MATTER OF APPLICATION FOR)
 PERMIT TO APPROPRIATE WATER NOS.)
 15-7273, 15-7274, AND 15-7275 IN THE NAME)
 OF M. J. DAVIS MEMORIAL LIMITED)
 PARTNERSHIP)

November 13th & 14th, 2006
 Hearing Officer: Gary Spackman

TAPE NUMBER _____

TAPE	LOCATION	TESTIMONY DESCRIPTION
TO	FROM	
91		Opening, by G Spackman.
~200	250	Introductions
300		R. Budge Beginning - Testimony of Jeff Davis
	400	Davis foundation - Education
400	470	Partnership foundation
	540	Davis Locations
		acquisition of Lands
1000		Introduction of exhibit 1
1375		1. 2. Stock Certificates
1475		1. 3. Licenses 15-7032
	1750	Discussion of Stock Certificates and water right
1750		Davis' story - why the filing?
1900		conversation w. David Bell
2000		Installation of Drip Irrigation
2032		Letter from Dept. rec'd.
	2300	243 Claim discussion
	2400	
2500		Exhibit A - Somers' claims
2750		Exception to claims
2900		New Application (3 total).
3100		CRP discussion
3300		discussion of intended use of water.
3500		Argument Foundation of knowledge of streamflows.
3700		Discussion of fluctuation of flows.
3830		Delivery of Somers water.

TAPE TO	LOCATION FROM	TESTIMONY DESCRIPTION
3900		Use of water when Sonoma not using water
4000		flows of Sonoma Creek (obs. Application map)
4200		Discussion of when water did <u>not</u> make it to Bitter
4500		- Broken flows, Partial flow
4550		2006 irrigation season
4650	4760	Speculative? Costs? End Break.
4800		X-exam by R. Ling. (Jeff Davis testimony)
5280	5400	use of lands in Ag use.
5400		- complaint rec'd; Authority to use water.
5500		- use of water, when started,
6600		Consumptive use?
6900		Ditch ↔ Creek where trees are planted.
7200		How water would be distributed.
7450		objection by budge.
		Questions about "recreation" beneficial use
8000		measurement of water
8100		- Evap from pond?
8200		Water losses from stream.
8500		Question about use of water this year.
8600		objection S
8875		Water was used in '29, Parents used also.
New tape		
30	tape 2	
300		discussion of topo map.
550		diversion from all three streams.
	800	Points of diversion discussion
900	960	Pipeline Questions -
1000		Other Shareholders using water before townsites?
1200	1320	discussion of POP, Pipeline for 1000' of Cemetery ground
1320	1320	Silence
1320		John Evans Question (X-exam of Jeff Davis)
1890		- Enter the property to clean ditch?
2000		exhibit 3 questions - tributary to Creek?

TAPE TO	LOCATION FROM	TESTIMONY DESCRIPTION
2100		Questions about Spring water right.
2240		Terry Blau. visit - fire fighting.
	2400	discussion of claim
	2650	affect of Permit on Sonoma
	2776	End of John Evans ~~testimony~~ ^{Cross exam.}
2850		redirect Budge for Jeff Davis
3700		- FERC Application
4000		Physical exhibit 6 and 7 into evidence
4100		Locked gate issue
4270		Luke Witham access request ^{stream channel} ~~issue~~
4425		Ditch used yearround
4650		Creek diversion - Poor headgate location ^{erosion}
4790		Permission sought for maintenance - cut fence.
4885	5215	exam by R King.
5300		Q's by Spackmore.
5500		exhibit 8
		Explanation of Davis Irrigation system
	New	Tape 3
60		
175		Location of Natural Channel ^{confluence} ~~of two streams~~
650		Location of Thomas Davis Ditch.
875		Applications (3) ^{POD locations}
1130		15-7275 (exhibit 5)
1284	1375	Intention - Application ^{intended to mean} ~~40-acre parcels~~
1390	1890	Aesthetics, Recreation
1940		~~Jack~~ Hopley Witness
		- foundation
2300		testimony relevant to flows in creeks
2520		X-exam by King
2780	2950	X-exam by John Evans.
2950	3005	Budge X
3060		Jim Hill witness
		- foundation

TAPE TO	LOCATION FROM	TESTIMONY DESCRIPTION
	3562	Jim Hill witness - Adequacy of water
3562	3835	X-exam by King - end of Jim Hill testimony
4190		Witness Doug Thorne
4600	4953	- Summarize use of three streams.
4953		- X-exam by Budge
5050		- No measurements of flows.
5200	5250	87-89 - No water to Big Ditch.
	5500	Redirect - Trike - End of Thorne testimony
5572		John Evans Testimony
5880		could take water before Big ditch.
6080		- Piping water down for fire protection
6370		Exhibit B
6530		"Rosebud vs "Rosebush"
6720		Amount of Cfs in claims
7200		new say objection
7600		FERC Permit discussion
7900		Use of water by Cemetery & Rec District.
8250	8675	"Economics" objection
8675	8132	X-exam by Budge.
	Tape 4	
30		Normal Season of Use.
350		Exhibit A and Exhibit B.
475		Claim discussion
700		Exhibit B - ↑ water for amended claim
	1100	Basis for filing amended claim
1100		Injury?
1450		Julie Call ISSU discussed.
1600		FERC Application discussion
1750		Proposed location of pipeline
2400		fire protection?

EXHIBIT NUMBER	EXHIBIT DESCRIPTION	STATUS OF	EVIDENCE
		INTRODUCED	ADMITTED

NOTES:

To	From	Budge & from Edina Testimony
2200		Lease for Rec District ?
2300		What happened to other users on Maundain shores.
2490		Watermaster Compensation (by bid)
	2840	Tribe redirecd of John Evans.
	3111	
3120		Recross by Budge.
3250		Location of Place of use.
3560	3610	Poll description ?
3610		Spickman Questions about Warm Springs
4125		New witness <u>David Reed</u>
4290		transfer shares w/o Board approval
4400		water rights held by company
4520		Why Probst Apps.
4550		
		New App 2 - 5
30	474	Somaria Operation Plans. Warm water v Cold Water
474	595	x by Budge.
	670	redirecd by ~~the~~ Tribe
670		Gary's Musings

HEARING EXHIBIT LIST

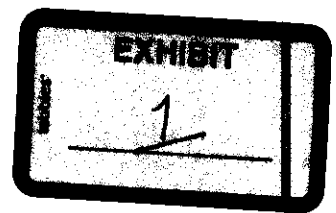
IN THE MATTER OF APPLICATION FOR)
 PERMIT TO APPROPRIATE WATER NOS.)
 15-7273, 15-7274, AND 15-7275 IN THE NAME)
 OF M. J. DAVIS MEMORIAL LIMITED)
 PARTNERSHIP)

November 13th & 14th, 2006
 Hearing Officer: Gary Spackman

EXHIBIT NUMBER	EXHIBIT DESCRIPTION	STATUS OF EVIDENCE	
		INTRODUCED	ADMITTED
1	Package - Guarantee Deed affidavit, W. Deed, Artellain Deed.	✓	✓ Stipulate
2	Stock Certificates	✓	Ⓢ Ship
3	License 15-7032	✓	✓
A	Protest Exhibit of Claims of WR	✓	✓
4	Notice of Exception	✓	✓
5	Davis Application	✓	✓
6	Somerville's FERE Application	✓	✓
7	Protest of FERE Application	✓	✓
8	Copy of Topo map	✓	✓
B	Amended Claims	✓	✓
C	Somerville By Laws	✓	✓
D	Somerville Articles of Incorporation	✓	✓

RECORDED AT THE REQUEST OF,
AND WHEN RECORDED RETURN TO:

Harold L. Reiser, Esq.
JARDINE LINEBAUGH & DUNN
A Professional Corporation
370 East South Temple, Suite 400
Salt Lake City, Utah 84111-1290



Quitclaim Deed

FOR VALUE RECEIVED, E. LOUISE DAVIS does hereby CONVEY, RELEASE, REMISE and FOREVER QUITCLAIM unto M.J. DAVIS MEMORIAL FAMILY LIMITED PARTNERSHIP, a Colorado limited partnership, whose current address is 2525 Himalaya Court, Colorado Springs, Colorado 80919, an undivided two-thirds (2/3) interest in the following tract of land located in Oneida County, Idaho:

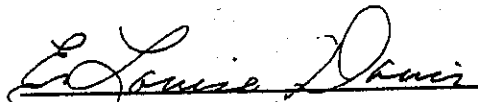
Township 15 South, Range 35 East, Boise Meridian:

Section 22: W $\frac{1}{2}$ NE $\frac{1}{4}$; ALSO, all the NE $\frac{1}{4}$ NE $\frac{1}{4}$ EXCEPT:

Commencing at a stake situated 39 rods 4 $\frac{1}{2}$ feet West of the Northeast Corner of Section 22, thence running South 0°25' West 27 rods 12 $\frac{1}{2}$ feet; thence South 62°25' West 44 rods 1 foot to a point due South 0°25' West of the Northwest Corner of said tract; thence North 0°25' East 53 rods 2 feet; thence North 89°75' East 38 rods 14 feet to the point of beginning.

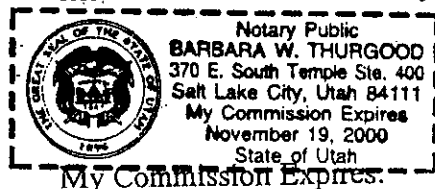
Together with appurtenances.

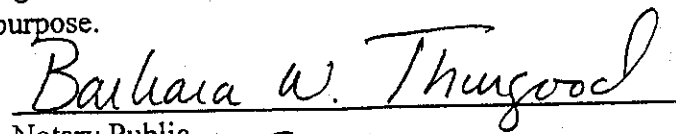
DATED this 19 day of June, 1998.


E. LOUISE DAVIS

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On the 19 day of June, 1998, personally appeared before me E. LOUISE DAVIS, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is signed on the preceding document, who duly acknowledged to me that she executed the same voluntarily for its stated purpose.




Notary Public
Residing in: SL Co., UT

RECORDED AT THE REQUEST OF
AND AFTER RECORDING RETURN TO:

Harold L. Reiser
JARDINE LINEBAUGH & DUNN
370 East South Temple, Suite 400
Salt Lake City, Utah 84111

Affidavit of Heirship

STATE OF UTAH)
 :SS
COUNTY OF SALT LAKE)

E. LOUISE DAVIS, Affiant, being duly sworn, deposes and says:

1. That Affiant is of legal age, a resident of Samaria, Oneida County, State of Idaho, and competent to make this affidavit.

2. That Affiant is the surviving spouse of **MELVIN J. DAVIS**, deceased, who died intestate on August 2, 1993, and is the same person as the decedent named in a certified copy of Certificate of Death, which is attached hereto and designated as State File Number 93-04770.

3. That the ultimate time limit for probate or appointment proceedings pursuant to IDAHO CODE § 15-3-108 has expired without the appointment of a personal representative.

4. That Affiant and **MELVIN J. DAVIS**, deceased, appear as owners of record of an undivided two-thirds (2/3) interest in certain community real property located in Oneida County, Idaho, described on a Deed which was recorded May 8, 1987, as Instrument Number 112862 on the records of the Oneida County Recorder, and more particularly described as follows:

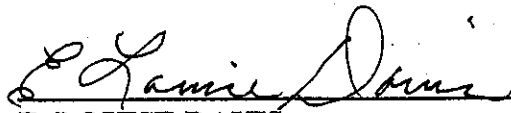
Township 15 South, Range 35 East, Boise Meridian:

Section 22: W½NE¼; ALSO, all the NE¼NE¼ EXCEPT:

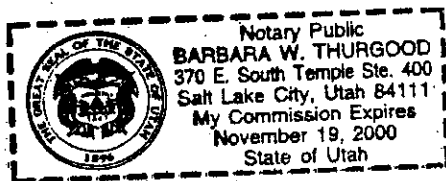
Commencing at a stake situated 39 rods 4½ feet West of the Northeast Corner of Section 22, thence running South 0°25' West 27 rods 12½ feet; thence South 62°25' West 44 rods 1 foot to a point due South 0°25' West of the Northwest Corner of said tract; thence North 0°25' East 53 rods 2 feet; thence North 89°75' East 38 rods 14 feet to the point of beginning.

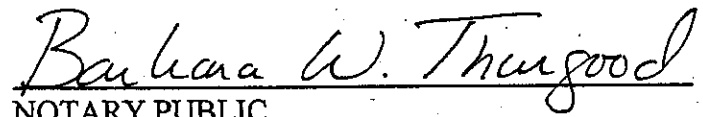
5. That Affiant and **MELVIN J. DAVIS**, deceased, acquired their interest in the real property described in paragraph 4 above from their joint efforts and while living together as husband and wife in the State of Idaho, and that no part of said property was acquired by Affiant or the decedent prior to their marriage or was acquired by gift, devise or as an heir at law of any person and that the same was community property of Affiant and the decedent.

6. That Affiant, as the surviving spouse of the decedent, is entitled to receive the intestate share of decedent, **MELVIN J. DAVIS**, in the community real property described in paragraph 4 above pursuant to IDAHO CODE § 15-2-102(b).


E. LOUISE DAVIS

On this 19 day of June, in the year of 1998, before me personally appeared **E LOUISE DAVIS**, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.




NOTARY PUBLIC
Residing in: SL Co., UT

My Commission Expires:

11-19-00

SRS/E/146

Microfilm No. 1128
8 Day May 19 87
At 4:35 O'clock P M
James H. Henderson
Oneida Co. Recorder
Fee 2.00 Deputy
Recorded at Request of
E. H. Smith

D E E D

THE FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC),
a Corporation organized and existing under an Act of Congress,
acting in its capacity as Liquidator for First Bank and Trust
of Idaho, does hereby GRANT, BARGAIN, SELL and CONVEY unto
MELVIN J. DAVIS or E. LOUISE DAVIS, his wife, or M. JEFF
DAVIS, of Route #1, Malad City, Idaho, 83252, the following
described premises in Oneida County, State of Idaho, to-wit:

Township 15 South, Range 35 East, Boise Meridian;
Section 22: ~~W1/4NE1/4~~; ALSO, all the ~~NE1/4NE1/4~~ EXCEPT:
Commencing at a stake situated 39 rods 4 1/2 feet
West of the Northeast Corner of Section 22;
then running South 0°25' West 27 rods 12 1/2 feet;
thence South 62°25' West 44 rods 1 foot to a
point due South 0°25' West of the Northwest
Corner of said tract; thence North 0°25' East
53 rods 2 feet; thence North 89°75' East 38
rods 14 feet to the point of beginning,

TO HAVE AND TO HOLD the said premises, with their
appurtenances, unto the said Grantees, their heirs and assigns
forever.

IN WITNESS WHEREOF, the Federal Deposit Insurance
Corporation (FDIC) has hereunto set its hand and seal the 29th
day of October, 1986.

FEDERAL DEPOSIT INSURANCE CORPORATION

BY: James H. Howard
Bank Liquidation Specialist

STATE OF OREGON)
COUNTY OF Mult) ss.

On this 6th day of November, 1986, personally
appeared before me, a Notary public in and for said State, JAMES
W. HOWARD, known to me to be the Bank Liquidation Specialist of
the Federal Deposit Insurance Corporation, and acknowledged to
me that he executed the foregoing instrument on behalf of said
corporation and acknowledged to me that such corporation executed
the same.

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

James W. Howard
Notary Public for Oregon
Residing at: Prineville
Commission Expires: 8.31.88

Microfilm No. 137998
08 Day September 1985
At 3:55 O'clock P M
Deane Hudson
Oneida Co. Recorder
Fee \$ 6.00 Deputy
Recorded at Request of
Spotts Land Title Co.

WARRANTY DEED

For value received, **DEE'S INC.**, a Utah Corporation, as Grantor, does hereby Grant, Bargain, Sell, and Convey unto **M. J. DAVIS MEMORIAL LIMITED PARTNERSHIP**, a Colorado Limited Partnership, the Grantee, whose address is 2525 Himalaya Ct., Colorado Springs, CO, 80919, the following described premises in Oneida County, Idaho, to-wit:

A parcel of land located in Section 34, Township 15 South, Range 35 East, Boise Meridian, Oneida County, Idaho and further described as follows:

All of the North-Half of the North-Half of said Section 34 lying south and west of the following described fence line:

Beginning at the Northeast corner of said Section 34 from which the North quarter corner of Section 34 bears North 89° 57' 49" West 2651.18 feet; Thence South 43.00 feet along the east line of said Section 34 to the intersection of a fence line, the True Point of Beginning; Thence along said fence line the following ten courses:

Thence South 56° 17' 41" West 1592.50 feet to a 5/8" rebar with cap labeled, "A.A. Hudson, PLS 4735"; South 76° 25' 56" West 451.46 feet to a 5/8" rebar with cap; South 82° 45' 08" West 248.13 feet to a 5/8" rebar with cap; South 89° 16' 53" West 278.55 feet to a 5/8" rebar with cap; North 81° 19' 32" West 677.95 feet to a 5/8" rebar with cap; North 76° 56' 02" West 261.30 feet to a 5/8" rebar with cap; North 77° 12' 37" West 696.81 feet to a 5/8" rebar with cap; North 77° 54' 03" West 843.70 feet to a 5/8" rebar with cap; North 77° 02' 25" West 418.80 feet to a 5/8" rebar with cap; North 12° 00' 44" East 493.73 feet to a 5/8" rebar with cap set on the north line of said Section 34; Thence North 89° 59' 50" West 274.82 feet along said north line to the Northwest corner of Section 34.

TOGETHER WITH a right of way described as follows: Beginning at the point an existing roadway (which runs through the property owned by M.J. Davis Memorial Limited Partnership) intersects the Southerly Section line of Section 27 and the Northerly Section line of Section 34, Township 15 South, Range 35 East, Boise Meridian; thence running in a South-

easterly direction along said existing roadway to the Northeast property line (and an existing fence line) of the above described property; thence following said roadway and existing fence line to the Northeast Corner of Section 34, Township 15 South, Range 35 East, Boise Meridian.

Said easement may be modified by the above parties by mutual agreement.

TOGETHER WITH Sellers' interest in all oil, gas, mineral and geothermal rights.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee and to its successors and assigns forever, and the said Grantor does hereby covenant to and with the said Grantee that it is the owner in fee simple of said premises; that they are free from all encumbrances and he will Warrant and Defend the same from all lawful claims.

Dated: August 5, 2005.

DEE'S INC.

BY: Michael W. Olsen

MIKE Olsen, President

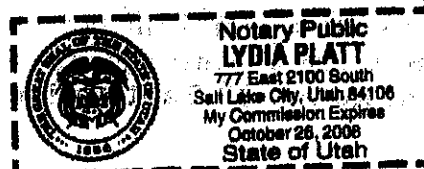
STATE OF UTAH
COUNTY OF SALT LAKE

ss. SEPTEMBER

On this 6th day of August, 2005, before me, a Notary Public in and for said State, personally appeared MIKE OLSEN, known to me to be the President of DEE'S INC., a Utah Corporation and the person who subscribed his name to the within instrument as President of said corporation and acknowledged to me that said corporation executed the same.

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

Lydia Platt
Notary Public for Utah
Residing at: Exc, UT
My Commission Expires: 10/26/08



RECORDED AT THE REQUEST OF,
AND WHEN RECORDED RETURN TO:

Harold L. Reiser, Esq.
JARDINE LINEBAUGH & DUNN
A Professional Corporation
370 East South Temple, Suite 400
Salt Lake City, Utah 84111-1290

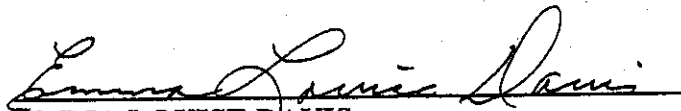
Quitclaim Deed

FOR VALUE RECEIVED, **EMMA LOUISE DAVIS** does hereby **CONVEY, RELEASE, REMISE and FOREVER QUITCLAIM** unto **M.J. DAVIS MEMORIAL FAMILY LIMITED PARTNERSHIP**, a Colorado limited partnership, whose current address is 2525 Himalaya Court, Colorado Springs, Colorado 80919, the following tract of land located in Oneida County, Idaho:

West Half (W ½) of Section 27, township Fifteen (15) South
Range Thirty-five (35) East of the Boise Meridian, containing
three Hundred and Twenty acres.

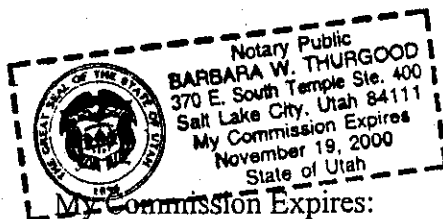
Together with appurtenances.

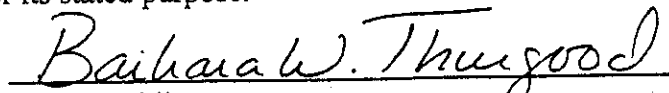
DATED this 19 day of June, 1998.


EMMA LOUISE DAVIS

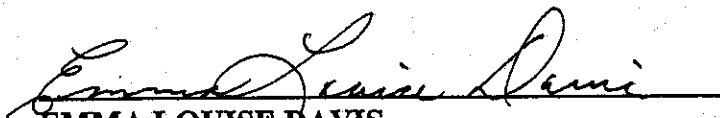
STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On the 19 day of June, 1998, personally appeared before me **EMMA LOUISE DAVIS**, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is signed on the preceding document, who duly acknowledged to me that she executed the same voluntarily for its stated purpose.

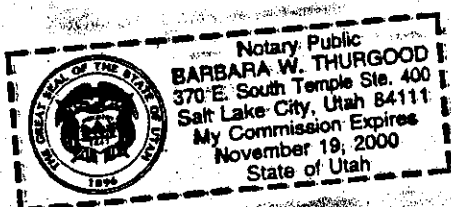



Notary Public
Residing in: SL Co., UT

intestate share of decedent, MELVIN J. DAVIS, in the community real property described in paragraph 4 above pursuant to IDAHO CODE § 15-2-102(b).


EMMA LOUISE DAVIS

On this 19 day of June, in the year of 1998, before me personally appeared EMMA LOUISE DAVIS, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.




NOTARY PUBLIC
Residing in: S.L.C., UT

My Commission Expires:

11-19-00

SRS\EI44

RECORDED AT THE REQUEST OF
AND AFTER RECORDING RETURN TO:

Harold L. Reiser
JARDINE LINEBAUGH & DUNN
370 East South Temple, Suite 400
Salt Lake City, Utah 84111

Affidavit of Heirship

STATE OF UTAH)

:SS

COUNTY OF SALT LAKE)

EMMA LOUISE DAVIS, Affiant, being duly sworn, deposes and says:

1. That Affiant is of legal age, a resident of Samaria, Oneida County, State of Idaho, and competent to make this affidavit.

2. That Affiant is the surviving spouse of **MELVIN J. DAVIS**, deceased, who died intestate on August 2, 1993, and is the same person as the decedent named in a certified copy of Certificate of Death, which is attached hereto and designated as State File Number 93-04770.

3. That the ultimate time limit for probate or appointment proceedings pursuant to IDAHO CODE § 15-3-108 has expired without the appointment of a personal representative.

4. That Affiant and **MELVIN J. DAVIS**, deceased, appear as owners of record of certain community real property located in Oneida County, Idaho, described on a Warranty Deed which was recorded December 30, 1983, as Instrument Number 107245 on the records of the Oneida County Recorder, and more particularly described as follows:

West Half (W ½) of Section 27, Township Fifteen (15) South
Range Thirty-five (35) East of the Boise Meridian, containing
three Hundred and Twenty acres.

5. That Affiant and **MELVIN J. DAVIS**, deceased, acquired the real property described in paragraph 4 above from their joint efforts and while living together as husband and wife in the State of Idaho, and that no part of said property was acquired by Affiant or the decedent prior to their marriage or was acquired by gift, devise or as an heir at law of any person and that the same was community property of Affiant and the decedent.

6. That Affiant, as the surviving spouse of the decedent, is entitled to receive the

INCORPORATED UNDER THE LAWS OF

(State of Idaho)

NUMBER

588

SHARES

25

Samaria Water & Irrigation Company

Capital Stock \$20,000.00

Share \$20.00 each

TO BE PAID TO THE ORDER OF

Michael J. Power is the owner of
Two and One Half Shares of the Capital Stock of

Samaria Water & Irrigation Company

transferable only on the Books of the Corporation on surrender
of this Certificate properly endorsed

In Witness Whereof, the said Corporation has caused this Certificate to be
signed by its duly authorized officers and its corporate seal to be hereunto
affixed

May 12

day of February A.D. 1958

Leo H. Brown

President

Robert H. Clabach

Secretary

EXHIBIT

2

tabbles

INCORPORATED UNDER THE LAWS OF

State Idaho

NUMBER

599

SHARES

Samaria Water & Irrigation Company

Capital Stock \$20,000.00

Share \$20.00 each

Circumference

Walter J. Davis

is the owner of

Samaria Water & Irrigation Company

*transferrable only on the books of the corporation on surrender
of this certificate properly endorsed*

*In Witness Whereof the said corporation has caused this certificate to be
signed by its duly authorized officers and its corporate seal to be hereunto
affixed*

the 17th

day of December A.D. 1908

Walter J. Davis

President

Secretary

2

INCORPORATED UNDER THE LAWS OF

State of Idaho

NUMBER

539

SHARES

One

Samaria Water & Irrigation Company

Capital Stock \$20,000.00

Share \$20.00 each

One & 1/2
One & 1/2

Walter J. Davis

is the owner of

Shares of the Capital Stock of

Samaria Water & Irrigation Company

*transferable only on the Books of the Corporation on surrender
of this Certificate properly endorsed*

*In Witness Whereof the said Corporation has caused this Certificate to be
signed by its duly authorized officers and its Corporate Seal to be hereunto
affixed*

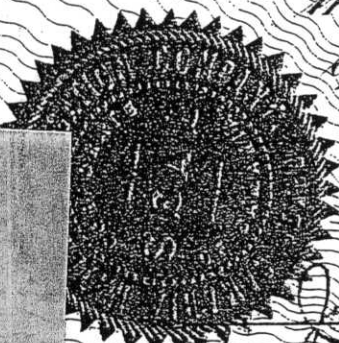
Mar 25

day of Feb

A.D. 1907

John J. Roderick
President

Charles V. Price
Secretary



2

INCORPORATED UNDER THE LAWS OF

State of Idaho

NUMBER

536

SHARES

Samaria Water & Irrigation Company

Capital Stock \$20,000.00

Share \$20.00 each

CERTIFICATE

Meber J. Davis

is the owner of

Samaria Water & Irrigation Company

*transferable only on the Books of the Corporation on surrender
of this Certificate properly endorsed*

*In Witness Whereof the said Corporation has caused this Certificate to be
signed by its duly authorized officers and its corporate seal to be hereunto
affixed*

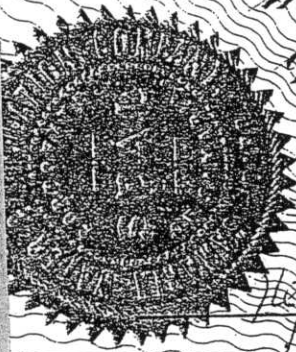
May 19

day of May

A.D. 1900

Edgar R. Haver
President

Edwin V. Price
Secretary



WATER #1

See Doc #3

Melvin J. or Louise

INCORPORATED UNDER THE LAWS OF

No 717

State of Idaho

Shares 1/4

Samaria Water & Irrigation Company

Capital Stock \$20,000.00 Share \$20.00 each

THIS CERTIFIES THAT *Melvin J. Davis or Louise Davis* is the owner of
One and one-fourth Shares of each of the Capital Stock of

Samaria Water & Irrigation Company

transferable only on the books of the Corporation
hereof in person or by Attorney upon written
properly endorsed.

In Witness Whereof, the said Corporation has
signed by its duly authorized officers and is sealed with
this 27 day of

Douglas Thorpe
President

Ruth

SHARES

EACH

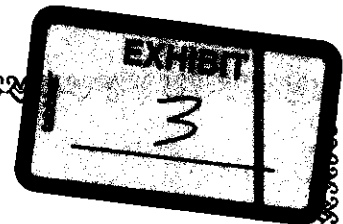
- This Pick*
- (1-1) 1/4 share SWIC
 - (2) 1 share SWIC
 - (3) 2 1/2 shares SWIC
 - (4) 1 share SWIC
 - (5) 1 share SWIC

All in

2-5 in MJD's Name only

(1-1) in MJD or Louise Davis as JTs.

State of Idaho
Department of Water Resources



WATER RIGHT LICENSE

WATER RIGHT NO. 15-07032

Priority: July 20, 1976

Maximum Diversion Rate:
Maximum Diversion Volume:¹

0.01 CFS
0.4 AF

This is to certify, that MELVIN J. DAVIS
RT. 1 BOX 44A
MALAD, ID 83252

has complied with the terms and conditions
of the permit, issued pursuant to Application for Permit dated July 20, 1976; and
has submitted Proof of Beneficial Use on October 23, 1985. An examination indicates
that the works have a diversion capacity of .010 cfs of water from:

SPRING tributary to SINKS

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>
STOCKWATER	01/01 to 12/31	0.01 CFS	0.4 AF

LOCATION OF POINT(S) OF DIVERSION: SENENE , Sec. 33, Township 15S, Range 35E
ONEIDA County

PLACE OF USE: STOCKWATER

TWN RGE SEC

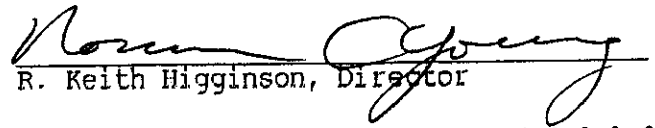
15S 35E 27 SWSW

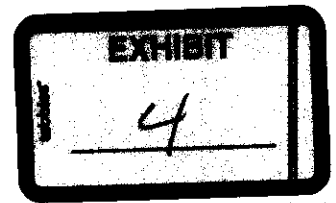
PLACE OF USE: MUNICIPAL, same as STOCKWATER use

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 which 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.

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 13TH
day of FEBRUARY, 1990.

Acting for  R. Keith Higginson, Director



BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Samaria Water & Irrigation Company, I.C. 42-243
Notice of Statutory Claim Re Water Right No. 15-4066

NOTICE OF EXCEPTION

RECEIVED

DEC 16 2005

Department of Water Resources
Eastern Region

NOTICE IS HEREBY GIVEN that the undersigned Jeff Davis hereby files this Notice of Exception with the Idaho Department of Water Resources ("IDWR") pursuant to Idaho Code §42-244 for the purpose of taking exception to the Place of Use set forth by Samaria Water & Irrigation Company (hereinafter the "Company") in its Statutory Claim pursuant to Idaho Code §42-243 to water in Thomas Davis Creek, Water Right No. 15-4066. The following is provided in support of this exception, to-wit:

1. Jeff Davis is the general partner and with his wife the owners of M.J. Davis Memorial Limited Partnership (hereinafter "Davis"). Davis owns a residential home located at 5054 S. 4600 W., Samaria, Idaho, together with farmland in and around Samaria. The Davis property was acquired in approximately 1999 from Melvin Joseph Davis and Louise Davis, husband and wife, the parents of Jeff Davis. The property was owned by Jeff's parents from approximately 1965 until sold to Jeff Davis in 1999. It was previously owned from approximately 1943 to 1965 by Melvin Martin Davis, the grandfather of Jeff Davis and father of Melvin Joseph Davis.

2. The water rights owned by Davis consist of 11.125 shares of water stock in Samaria Water & Irrigation Company and IDWR Water Right License No. 15-07032.

3. The Davis property includes the W1/2 of Section 27, Township 15 South, Range 35 E., B.M., Oneida County, containing 320 acres, together with the appurtenant water rights which includes 11.125 shares of water stock in the Company. Pursuant to these shares, Davis has a lawful right to utilize his proportionate share of available water in Thomas Davis Springs to irrigate said property. Water from Thomas Davis Springs has been used pursuant to the Company's shares by Davis's predecessors in interest, his grandfather Melvin Martin Davis during the period 1943 to 1965, his predecessor Daniel Campbell and his predecessor Edward

Receipt
6031503

Daniel Campbell dated October 9, 1928, Oneida County Instrument No. 46003, which reflects that one-half share of stock in the Company is appurtenant to the W1/2 of Section 27. In recent years, water from Thomas Davis Springs has not been used on the W1/2 of Section 27 pursuant to the Company's shares for the reason that the property has been enrolled in the CRP program since the early 1980s.

4. Continuously since sometime prior to 1928, all water from Thomas Davis Springs has been diverted out of the natural channel into an artificial ditch located to the east of the natural channel. The ditch follows the contour of the hill through the Davis property in the W1/2 of Section 27. The ditch is believed to have been constructed for the sole purpose of delivering irrigation water to the Davis property in the W1/2 of Section 27 as it would serve no other purpose.

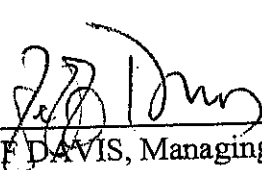
5. Based on the foregoing, Davis takes exception to the Company's statutory claim to the extent that it does not include the Davis property in the W1/2 of Section 27 in the designated place of use. Davis submits that his property in the W1/2 of Section 27, Township 15 South, Range 35 East should be included in the place of use of the Company with respect to Water Right No. 15-4066.

6. This Notice of Exception is being filed with IDWR pursuant to Idaho Code §42-244 and a copy of this Notice of Exception has been mailed to the Claimant Company in accordance with the attached certificate of mailing.

DATED this 8th day of ~~October~~ December, 2005.

M.J. DAVIS MEMORIAL PARTNERSHIP

By


JEFF DAVIS, Managing Partner/Owner

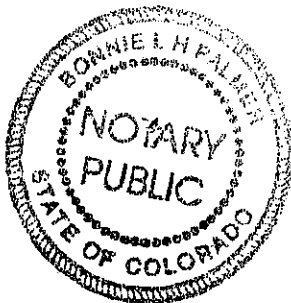
STATE OF Colorado)
 : SS
COUNTY OF El Paso)

Jeff Davis, being first duly sworn under oath, deposes and states that the foregoing is true and correct to the best of his knowledge, information and belief.

Dated this 8th December day of October, 2005.

Jeff Davis
JEFF DAVIS, Managing Partner/Owner

SUBSCRIBED AND SWORN TO before me this 8th day of October, 2005.
December



Bonnie L. H. Palmer
NOTARY PUBLIC FOR: PST/Centura
Residing at: 3205 N. Academy
My Commission Expires: _____

MY COMMISSION EXPIRES
01/06/2009

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 8th day of October, 2005, I mailed a true and complete copy of the foregoing instrument, postage prepaid, to the following:

Samaria Water & Irrigation Company
Board of Directors
c/o David Reel, President
5176 S. 4400 W.
Malad, Idaho 83252

Kent Foster
Holden, Kidwell, Hahn & Crapo
P.O. Box 50130
Idaho Falls, ID 83405-0130

Idaho Department of Water Resources
Eastern Region
900 N. Skyline Drive, Suite A
Idaho Falls, Idaho 83402

Randall C. Bodey

THIS INDENTURE, Made this 9th day of October in the year of our Lord one thousand nine hundred and Twenty-eight between Edward Martin and his wife Emma Martin

of Samaria County of Oneida State of Idaho the parties of the first part, and Daniel Campbell

of Malad County of Oneida State of Idaho the party of the second part,

WITNESSETH: That the said parties of the first part, for and in consideration of the sum of

Three Thousand and no/100----- Dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain, sell, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all the following described real estate situated in Oneida County, State of Idaho, to-wit:

The West half of Section Twenty-Seven(27) in Township Fifteen South, Range Thirty-Five(35) East of the Boise Meridian, in Idaho, containing 320 acres; together with all improvements located thereon and all acquired rights of roadway leading to and from the above described premises to the main highway.

Also One-Half share of the Capital Stock of the Samaria Water and Irrigation Company, an Idaho Corporation

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all estates, right, title and interest in and to the said property, as well in law as in equity, of the said parties of the first part.

TO HAVE AND TO HOLD, All and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever. And the said parties of the first part, and their heirs, the said premises in a quiet and peaceable possession of the said party of the second part, his heirs and assigns, against the said parties of the first part, and their heirs and against all and every person and persons whomsoever lawfully claiming or to claim the same shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered in the Presence of

S.T. Jeppsen

Edward Martin

(SEAL)

Emma Martin

(SEAL)

(SEAL)

(SEAL)

Ident. No. 15-1273

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho
Jeff Davis, Mgr, M.J. Davis Memorial

Phone 719-290-2988

1. Name of Applicant Limited Partnership
Mailing address 2525 Himalaya Ct., Colorado Springs, CO 80919
2. Source of water supply Rosebud Creek which is a tributary of Samaria Creek
3. Location of point of diversion is Township 15S Range 35E Sec. 27, in the NW $\frac{1}{4}$, NW $\frac{1}{4}$, Govt. Lot _____, B.M., _____ County;
additional points of diversion if any: 15S 35E: Sec 22: SW1/4, NE1/4

4. Water will be used for the following purposes:

- Amount 0.25 for irrigation purposes from 4/1 to 11/1 (both dates inclusive)
(cfs or acre-feet per annum)
- Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
- Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
- Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
- Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
- Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

5. Total quantity to be appropriated is (a) 0.25 and/or (b) _____
cubic feet per second acre feet per annum

6. Proposed diverting works:

a. Describe type and size of devices used to divert water from the source earthen dam into collection box and pipeline

b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet

c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet

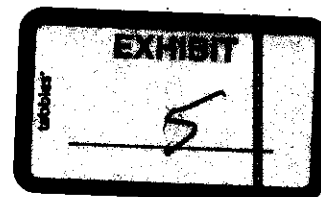
d. Is ground water with a temperature of greater than 85°F being sought? _____

e. If well is already drilled, when? _____; Drilling firm _____; Drilling Permit No. _____
Well was drilled for (well owner) _____

7. Time required for completion of works and application of water to proposed beneficial use is _____ years (minimum 1 year)

8. Description of proposed uses (If irrigation only, go to item 9):

- a. Hydropower; show total feet of head and proposed capacity in kW. _____
- b. Stockwatering; list number and kind of livestock. _____
- c. Municipal; show name of municipality. _____
- d. Domestic; show number of households. _____
- e. Other; describe fully. _____



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3. Description of place of use:

- a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
 b. If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
15S	35E	22	30	40	40	22													132
15S	35E	27					30												30

Total number of acres to be irrigated 1620

10. Describe any other water rights used for the same purposes as described above. Samaria Water & Irrigation Company stock

11. a. Who owns the property at the point of diversion? Applicant
 b. Who owns the land to be irrigated or place of use? Applicant
 c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: _____

12. Remarks: _____

13. MAP OF PROPOSED PROJECT REQUIRED - Attach an 8 1/2" x 11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

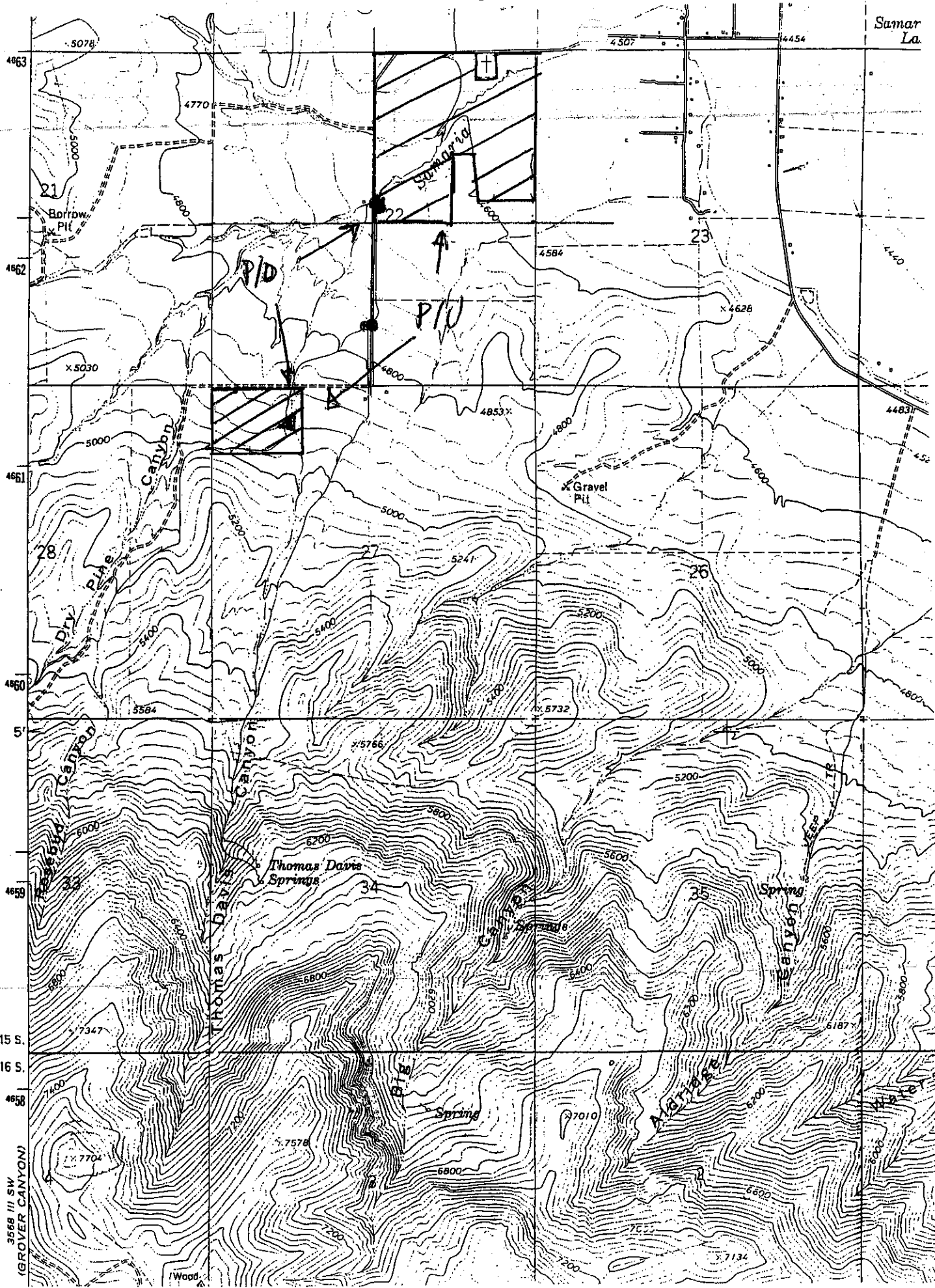
BE IT KNOWN that the undersigned hereby makes this application for permit to appropriate the public waters of the State of Idaho as herein set forth.

M.J. Davis Memorial Limited Partnership

By [Signature]
 Signature of Applicant (and title, if applicable)
Jeff Davis, Managing Partner

Received by _____ Date _____
 Fee \$ 250 Recd by SC Date _____
 Publication prepared by _____ Date _____
 Publication approved _____ Date _____
 Preliminary check by _____ Date 12/16/08
 # ED31503
 Published In _____

Samar La.



T. 15 S.

T. 16 S.

3568 III SW
(GROVER CANYON)

Ident. No. 15-1274

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

Jeff Davis, Mgr, M.J. Davis Memorial Phone 719-290-2988

1. Name of Applicant Limited Partnership
Mailing address 2525 Himalaya Ct., Colorado Springs, CO 80919
2. Source of water supply Dry Pine Creek which is a tributary of Samaria Creek
3. Location of point of diversion is Township 15 S Range 35E Sec. 27, in the NW $\frac{1}{4}$,
NW $\frac{1}{4}$, Govt. Lot _____, B.M., _____ County;
additional points of diversion if any: 15S, 35E, Sec 22: SW1/4, NE1/4

4. Water will be used for the following purposes:

Amount 0.75 cfs for irrigation purposes from 4/1 to 11/1 (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

5. Total quantity to be appropriated is (a) 0.75 and/or (b) _____
cubic feet per second acre feet per annum

6. Proposed diverting works:

a. Describe type and size of devices used to divert water from the source earthen dam into
collection box and pipeline

b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total
reservoir capacity _____ acre-feet

c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet

d. Is ground water with a temperature of greater than 85°F being sought? _____

e. If well is already drilled, when? _____; Drilling firm _____
Well was drilled for (well owner) _____; Drilling Permit No. _____

7. Time required for completion of works and application of water to proposed beneficial use is _____ years (minimum 1 year)

8. Description of proposed uses (if irrigation only, go to item 9):

a. Hydropower; show total feet of head and proposed capacity in kW. _____
b. Stockwatering; list number and kind of livestock. _____
c. Municipal; show name of municipality. _____
d. Domestic; show number of households. _____
e. Other; describe fully. _____

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Department of Water Resources
Eastern Region

3. Description of place of use:

- a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
b. If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
15S	35E	22	30	40	40	22													132
15S	35E	27					30												30

Total number of acres to be irrigated 162

10. Describe any other water rights used for the same purposes as described above. Samaria Water & Irrigation Company stock

11. a. Who owns the property at the point of diversion? Applicant

b. Who owns the land to be irrigated or place of use? Applicant

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: _____

12. Remarks: _____

13. MAP OF PROPOSED PROJECT REQUIRED - Attach an 8 1/2"x11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

BE IT KNOWN that the undersigned hereby makes this application for permit to appropriate the public waters of the State of Idaho as herein set forth.

M.J. Davis Memorial Limited Partnership

By [Signature]
Signature of Applicant (and title, if applicable)
Jeff Davis, Managing Partner

Received by 286 Date Time Preliminary check by Date 12/1/05
Fee \$ Received by # 663503
Publication prepared by Date Published in
Publication approved Date

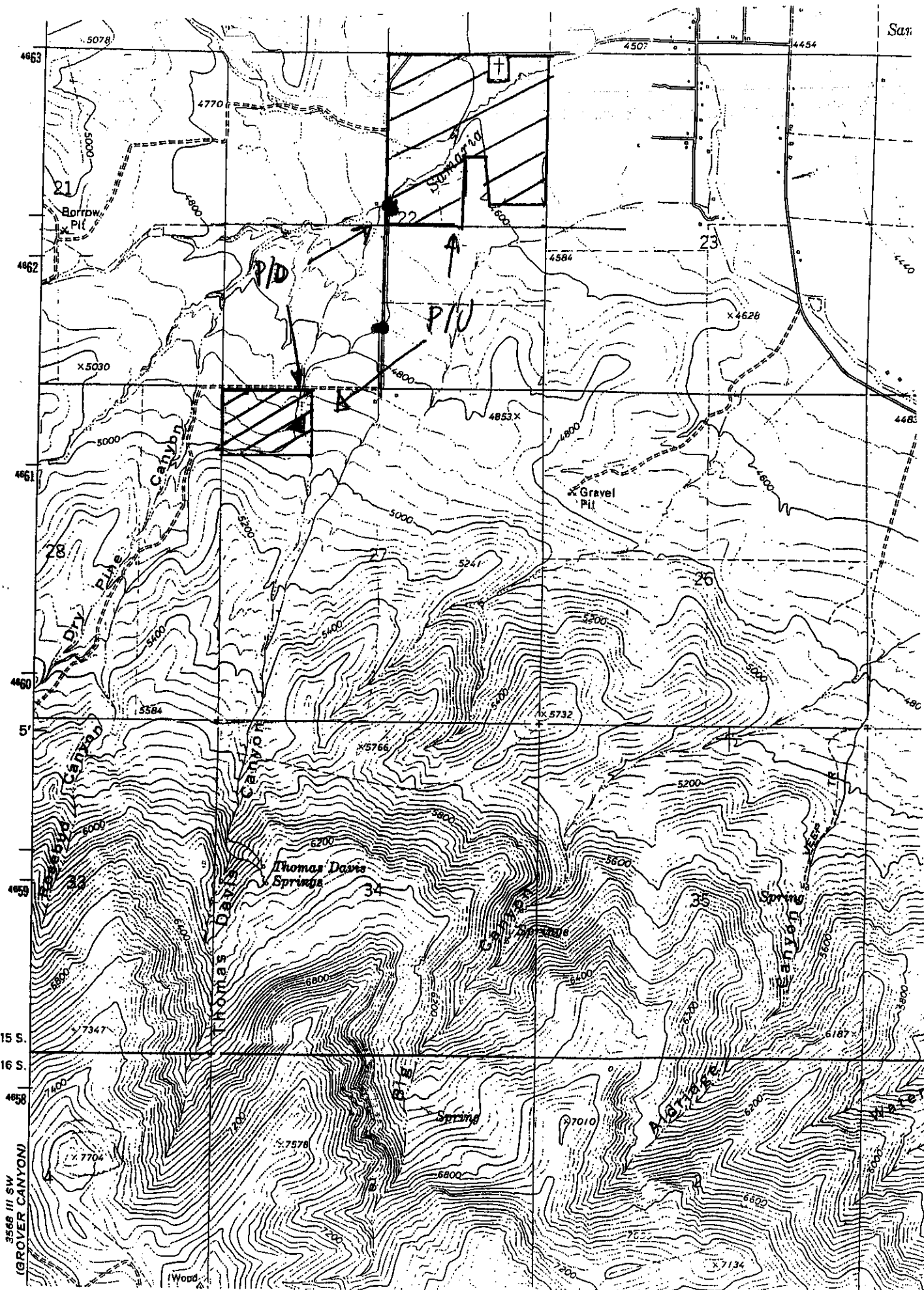
T.15.S

T. 15 S.

T. 16 S.

3566 III SW

(GROVER CANYON)



Ident. No. 15-7275

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

Jeff Davis, Mgr, MJ Davis Memorial Phone **719-290-2988**

1. Name of Applicant Limited Partnership
Mailing address 2525 Himalaya Ct., Colorado Springs, CO 80919
2. Source of water supply Thomas Davis Creek which is a tributary of Samaria Creek
3. Location of point of diversion is Township 15S Range 35E Sec. 34, in the NW $\frac{1}{4}$,
NW $\frac{1}{4}$, $\frac{1}{4}$, Govt. Lot _____, B.M., _____ County;
additional points of diversion if any: 15S, 35E; Sec 27 SW1/4, SW1/4; SE1/4, NW1/4; NE1/4
NW1/4; Sec 22: SW1/4 NE1/4
4. Water will be used for the following purposes:
Amount 1.0 cfs for irrigation purposes from 4/1 to 11/1 (both dates inclusive)
(cfs or acre-feet per annum)
Amount 0.02 cfs for stock water purposes from 4/1 to 11/1 (both dates inclusive)
(cfs or acre-feet per annum)
Amount 1.0 cfs* for recreation purposes from 1/1 to 12/31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount 1.0 cfs* for esthetics purposes from 1/1 to 12/31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount 1.0 cfs** for fire protection purposes from 6/1 to 11/1 (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum) ***non-consumptive **emergency only**
5. Total quantity to be appropriated is (a) 1.02 cfs and/or (b) _____
cubic feet per second acre feet per annum
6. Proposed diverting works:
a. Describe type and size of devices used to divert water from the source earthen dam into
collection box and pipeline
b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total
reservoir capacity _____ acre-feet
c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet
d. Is ground water with a temperature of greater than 85°F being sought? _____
e. If well is already drilled, when? _____; Drilling firm _____
Well was drilled for (well owner) _____; Drilling Permit No. _____
7. Time required for completion of works and application of water to proposed beneficial use is _____ years (minimum 1 year)
8. Description of proposed uses (if irrigation only, go to item 9):
a. Hydropower; show total feet of head and proposed capacity in kW. _____
b. Stockwatering; list number and kind of livestock 100 beef cattle @ 0.00002 cfs per head
c. Municipal; show name of municipality. _____
d. Domestic; show number of households. _____
e. Other; describe fully. recreation for fishing and hunting; emergency fire
protection from range and forest fires; esthetics related to
riparian buffer areas and wildlife habitat.

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DEC 16 2005

Department of Water Resources
Eastern Region

7. Description of place or use:

- a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
 b. If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
15S	35E	22	30	40	40	22													1.12
15S	35E	27					40	40	40	40	40	40	40	35					3.15
15S	35E	34	20	15			20	20											.75
15S	35E	22	6		S		SR	SR			SR	SR	SR	SR					
15S	35E	27					SR	SR											
15S	35E	34	SR	SR			SR	SR											

Total number of acres to be irrigated 522

10. Describe any other water rights used for the same purposes as described above. Samaria Water II
Irrigation Company stock

11. a. Who owns the property at the point of diversion? Applicant
 b. Who owns the land to be irrigated or place of use? Applicant
 c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: _____

12. Remarks: _____

13. MAP OF PROPOSED PROJECT REQUIRED - Attach an 8 1/2"x11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

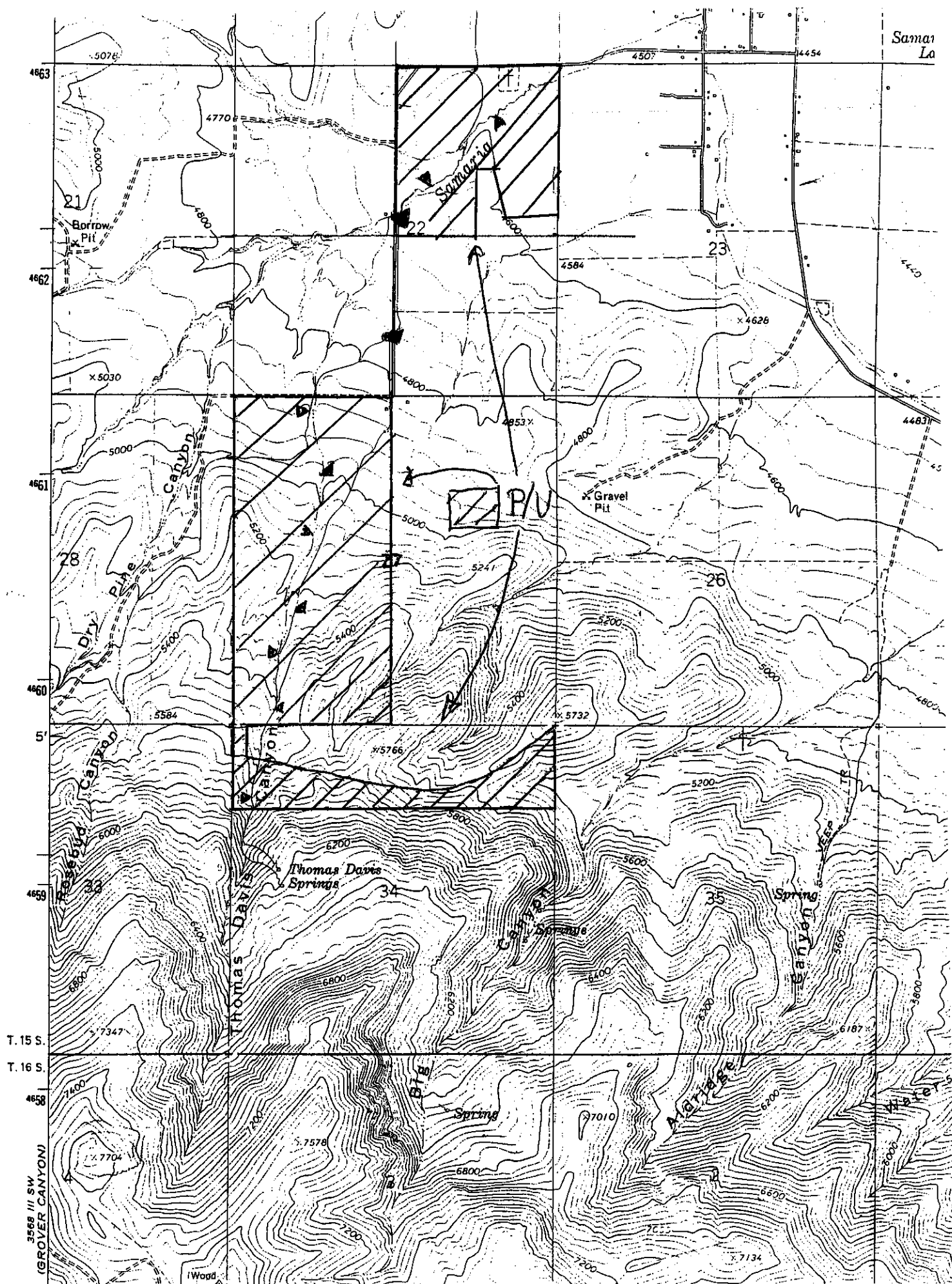
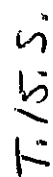
BE IT KNOWN that the undersigned hereby makes this application for permit to appropriate the public waters of the State of Idaho as herein set forth.

M.J. Davis Memorial Limited Partnership
 By Jeff Davis
 Signature of Applicant (and title, if applicable)
Jeff Davis, General Partner

Received by SC Date _____ Time _____ Preliminary check by _____ Date 12/16/05
 Fee \$ 225 Received by SC Published in _____ Date _____
 Publication prepared by _____
 Publication approved _____

Owens 6500

Samar
La



ORIGINAL

APPLICATION FOR

PRELIMINARY PERMIT

PROJECT #

P-12656--000

FILED
OFFICE OF THE
SECRETARY
2008 FEB 22 P 3:45
FEDERAL ENERGY
REGULATORY COMMISSION

INITIAL STATEMENT:

1. Samaria Water and Irrigation Co. APPLIES TO THE Federal Energy Regulatory Commission for a preliminary permit for the proposed Samaria Hydro, as described in the attached exhibits. This application is made in order that the applicant may secure and maintain priority of application for a license for the project under Part I of the Federal Power Act while obtaining the data and performing the acts required to determine the feasibility of the project and to support an application for a license.

2. Location of the facility is:

State or Territory: Idaho

County: Oneida

Township or nearby Town: Samaria, Idaho Township 15 South, Range 35 East

Stream or body of water : Dry Pine Canyon and Rose Bud Canyon and Thomas Davis Canyon
Tributary to Samaria Creek.

3. The exact name and business address of the applicant is:

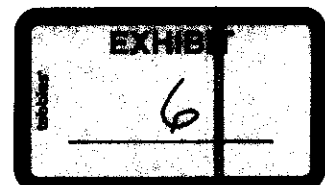
David Reel drd@atcnet.net
Samaria Water and Irrigation Company
5176 South 4400 West
Malad, ID 83252
(208) 766-2808

4. The exact name and business address of each person authorized to act as agent for the applicant in this application are:

Ted Sorenson, P.E. (208)522-8069
Sorenson Engineering
5203 South 11th East
Idaho Falls, Idaho 83404
ted@tsorenson.net

John J. Evans (208) 766-2758
5071 South 4600 West
Samaria, Idaho 83252
buelingo@yahoo.com

5. The proposed term of the request permit is 36 months.



6. The project will make use of the natural drop in the Dry Pine Canyon.
7. The project is located in Oneida County, Oneida County Courthouse, Malad, Idaho 83252
8. The project would not utilize any Federal Facilities.
9. No town with 5,000 or more people is located within 15 miles of the proposed project.
10. Any association of citizens, domestic corporation, municipality or state that has any proprietary right necessary to construct, operate or maintain the project and any entity owning proprietary rights as an applicant:
 - a. Land owners
 - Dees Inc. dba Cold Water Ranches % Mike Olsen, 777 E. 2100 S. Salt Lake City, UT 84106
 - Doyle C. Waldron 4645 S 4500 W , Malad, ID 83252
 - Revere Chambers 4895 S 4500 W, Malad, ID 83252
 - Blanche Williams (Alvin Williams Estate) 5184 S 4600 W, Malad, ID 83252
11. Every other political subdivision likely to be interested in the project:

Bureau of Land Management 4350 Cliff Drive Pocatello, ID 83204	State of Idaho Department of Lands 954 W Jefferson Boise, ID 83702
Oneida County 10 Court St. Malad City, ID 83252	Samaria Recreation District % John J Evans 5071 S 4600 W Samaria, ID 83252
12. Name and address of agencies that administer public lands within the project boundary:

Bureau of Land Management 4350 Cliff Drive Pocatello, ID 83204	State of Idaho Department of Lands 954 W Jefferson
--	--

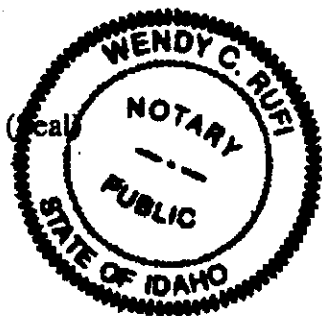
VERIFICATION

State of Idaho)
) ss.
Oneida County)

David Reel, being first duly sworn, deposes and says that: He is President of Samaria Water and Irrigation Co., the applicant, that he has read the foregoing application and knows the contents thereof: and that the same are true to the best of his knowledge and belief.

David Reel
David Reel
President
Samaria Water and Irrigation Co.

Subscribed and sworn to before me, a notary public of the State of Idaho this 13 day
of Feb, 2006.



Wendy C. Ruffi
Notary Public
For the State of Idaho
My Commission Expires on 2-28-2011
Residing: Mald City, ID

VERIFICATION

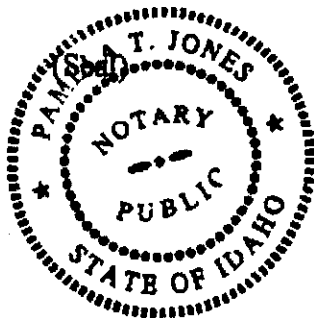
State of Idaho)
) ss.
Bonneville County)

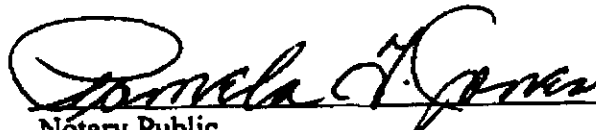
Ted S. Sorenson, P.E. being first duly sworn, deposes and says that: He is principal of Sorenson Engineering, the applicant, that he has read the foregoing application and knows the contents thereof: and that the same are true to the best of his knowledge and belief.



Ted S. Sorenson
Principal
SORENSEN ENGINEERING

Subscribed and sworn to before me, a notary public of the State of Idaho this 6th day
of February, 2006.





Notary Public
For the State of Idaho
My Commission Expires on 11/01/2006

EXHIBIT 1

1. Samaria Hydro proposes to replace the existing drop, direct the flows from Dry Pine Canyon, Rose Bud Canyon and Thomas Davis Canyon through approximately 9,000 feet of 12-inch diameter pipe, into a common 15 to 18 inch diameter penstock approximated 13,300 feet in length to feed power plant. Water would then be returned to Samaria Creek and/or downstream irrigation rights in the tail race canal 0.1 miles to Samaria Creek.

Approximately 1000 feet of new 12.5 KV three-phase transmission line would be required to connect to the existing grid.

2. Existing and future generating units: None
Proposed generating units: One
Proposed generating output capacity: 350 kw Total
Type of turbine: Pelton
Power plant operation:

(i)	Average annual generation:	1,200,000 kw-hrs
(ii)	Power plant design head:	1290 feet
	Average head:	1200 feet
(iii)	Turbine hydraulic capacity:	4 cfs

3. The project will utilize public lands of the United States located in the following:

SWNW S 34 T 15 S R 35 E, also NWE, NENW, NENE SENE, S 33 T 15 S R 35
4. Utilization and conservation of water resources.

The proposed project utilizes as undeveloped and renewable resource that could be an important contribution to the power needs of the Pacific Northwest.

EXHIBIT 2

DESCRIPTION OF STUDIES, TESTS, AND SURVEYS TO BE CONDUCTED

v. STUDY PLAN

Samaria Hydro study plan will focus on three major study areas. The first will consider technical aspects of the proposed project; the second will analyze the environmental impacts; the third major area will consider the legal considerations including state, local statutes relating to hydroelectric development, and water rights.

Samaria Water and Irrigation Co. will carry out the work under this permit in three phases:

- Phase I:** A preliminary reconnaissance study for a brief technical and economic feasibility analysis.
- Phase II:** A detailed feasibility study including all aspects of the study summary as shown in Exhibit 2 (i) (1).
- Phase III:** If the results indicate a viable project, we will prepare necessary documents and drawings for construction purposes and file a license application, if required.

The above approach will allow the applicant to determine economic feasibility before implementation of the detailed feasibility study plan.

The following outline indicates the first phase of the reconnaissance plan proposed by the applicant in order to determine preliminary feasibility.

SITE DESCRIPTION

- i. Location**
- ii. Watershed characteristics**

- v. Water rights, downstream requirements
- vi. Photographs
- vii. Maps

II. BUSINESS DATA

- A. Method of transmitting the power
- B. Estimated power value details

III. ENVIRONMENTAL, INSTITUTIONAL, AND SAFETY

A. Environmental

- 1. River or stream classification
- 2. Site location
 - i) Wildlife preserve
 - ii) Recreational aspects
 - iii) National or state parks
 - iv) Historical perspective
 - v) Restricted activity
 - vi) Fire Protection
- 3. Wilderness area
- 4. Rare and/or endangered species
- 5. Migratory fish, fish ladder

B. Institutional

- .. INVESTMENT COSTS
- VI. OPERATING AND MAINTENANCE COSTS (O & M)
- VII. ECONOMICS

ii. NEW ROAD CONSTRUCTION

No new roads will be necessary for the purpose of conducting the studies described in the exhibit.

Request for Waiver: Based on Applicant's use of data as described above and its belief that the studies will not adversely affect cultural resources or endangered species or should not cause alterations of lands and waters. Applicant requests the FERC to waive requirements of paragraph (c) (2) pursuant to Section 1.14 (a) (2).

EXHIBIT 2 (i) (1)

SUMMARY OF STUDIES, TESTS, AND SURVEYS TO BE CONDUCTED FOR

II. ENGINEERING CONSIDERATIONS

A. Field surveys and site reconnaissance

1. Review of existing mapping
2. Aerial photographs
3. River profile and cross section
4. Topographic site survey

B. Study of hydrology and hydraulics

1. Review of water resources data
 - a) U.S. Geological Survey
 - b) Canal Company Records
 - c) State Water Resources Department
2. Flow duration curves
3. Flood flow determination
4. Computation of water surface profiles
5. New head determination
6. Installed capacity recommendations

C. Study of civil elements

1. Powerhouse orientation
2. Foundation requirements
3. Turbine and generator arrangements
 - a) Equipment selection
 - b) Number of units

- 4. **Hydraulic structures**
 - a) Tailrace and outlet works
 - b) Energy dissipation
 - c) Ice damage protection
- 5. **Site access**
- D. **Study of electrical elements**
 - 1. Switchyard requirements (on site)
 - 2. Voltage transformers
 - 3. Transmission line size and length
 - 4. Grid tie- in requirements
- E. **Operating schedule development**
 - 1. Monthly power output projections
- F. **Preparation of capital construction costs**
 - 1. Structures and improvements
 - 2. Reservoirs, dams, and waterways
 - 3. Waterwheels, turbines, and generators
 - 4. Accessory electrical equipment
 - 5. Miscellaneous powerplant equipment
 - 6. Station equipment
 - 7. Overhead conductors
 - 8. Underground conductors
- G. **Project schedule development**

III. ENVIRONMENTAL CONSIDERATIONS

- A. Competing water uses**
 - 1. Irrigational water supply**
 - 2. Recreation**
 - 3. Aesthetics**
 - 4. Fire Protection**
- B. Historical and archaeological preservation**
- C. Fish and wildlife preservation**
- D. Turbine operation impacts on aquatic life**
- E. Disruption during construction (short term)**

IV. LEGAL INVESTIGATIONS

- A. Determination of ownership of necessary water rights**
- B. Determination of water rights necessary for operation**
- C. Determination of additional land ownership**
- D. Determination of rights-of-way and ownership for project transmission line**
- E. Determination of necessary permits and other regulatory matters**
- F. Principles of state, local, and federal laws concerning hydroelectric development**

EXHIBIT 2 (ii) (i)

DEVELOPMENT PHASE SCHEDULE

	<u>Year 1</u>	<u>Year 2</u>
<u>PRELIMINARY RECONNAISSANCE STUDY</u> <u>FEASIBILITY PHASE:</u>		
S		Equipment sizing and capital costs

S		Preliminary engineering and costs

S		Preliminary legal, land, and flowage

S		Preliminary environmental

<u>DETAILED FEASIBILITY PHASE:</u>		

S

Detailed
engineering

S

Detailed cost
estimate

S

Construction
schedules

S

Negotiate
power
contract/letter
of intent

S

Legal
investigation

3

Detailed
hydrology and
hydraulics

S

Field surveys

FEDERAL ENERGY REGULATORY COMMISSION
LICENSE APPLICATION PREPARATION:

S

Writing

S

Studies

S

Editing

3

Drawings

5

Legal

EXHIBIT 3

STATEMENT OF COSTS AND FINANCING

(1) STUDY FOR TASKS IDENTIFIED IN EXHIBIT 2

- i) Technical data (engineering consideration)
- ii) Business data
- iii) Environmental, institutional, and safety considerations
- iv) Plant characteristics and power potential
- v) Costs, benefits, economic, key tasks, and legal investigations

TOTAL LUMP SUM \$10,000

(2) EXPECTED SOURCES AND EXTENT OF FINANCING

Samaria Water and Irrigation Co. has retained Sorenson Engineering to carry out the engineering feasibility study and will contract with environmental consultants as necessary.

(3) PROPOSED MARKET FOR THE POWER

Power generated at this proposed hydroelectric plant will be fed into the nearby existing grid system. The present proposed purchaser is PacifiCorp, dba Utah Power. Current rates available for twenty year contract is approximately 5.8 cents per kilowatt hour.

EXHIBIT 4

1. PRINCIPAL PROJECT FEATURES

Exhibit 4A indicates the location of the project as a whole with respect to the stream and locates the principal project features of this project.

2. PROPOSED BOUNDARY FOR THE PROJECT

Exhibit 4A locates the proposed boundary for the project. All of the principal project features are identified and federal lands of the United States affected by the proposed project are identified.

3. NATIONAL WILD AND SCENIC RIVER SYSTEM

There are no lands that have been designated for study for inclusion in the National Wild and Scenic River System.

4. WILDERNESS ACT

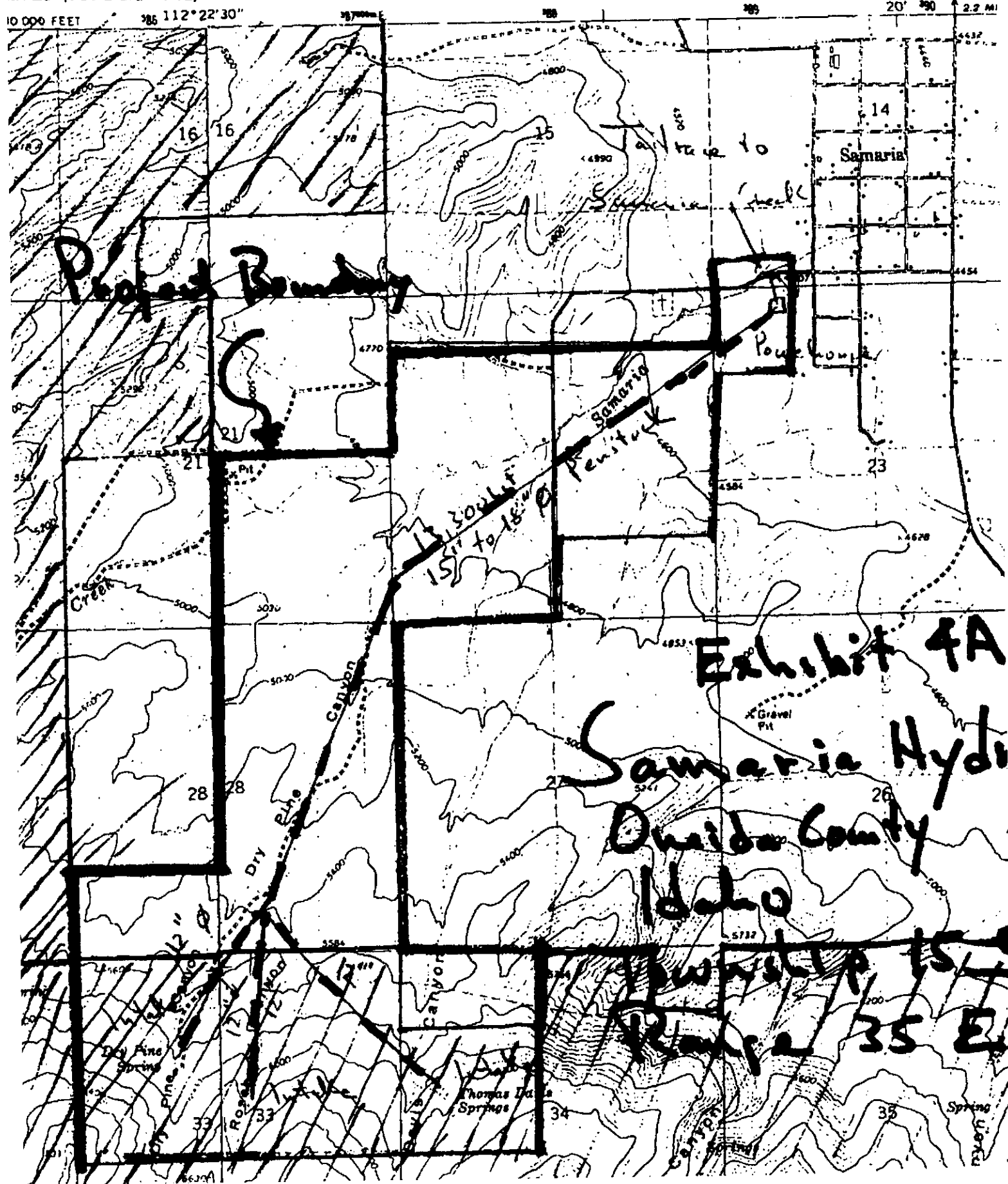
To the best knowledge of the applicant, the lands within the project boundary have not been:

- i) designated as wilderness areas
- ii) recommended for designation of wilderness area
- iii) designated as a wilderness study area

ION QUADRANGLE
HO-UTAH
ERIES (TOPOGRAPHIC)

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

BLM Ground



Randall C. Budge, ISB No. 1949
RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED
P.O. Box 1391; 201 E. Center Street (83201)
Pocatello, Idaho 83204-1391
Phone: 208-232-6101
Fax: 208-232-6109
<rcb@racinelaw.net>

BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION

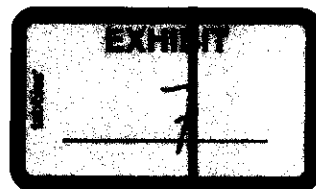
**In the Matter of the Application for
Preliminary Permit, Project No.
P-12656-000, Samaria Water &
Irrigation Company.**

**MOTION TO INTERVENE
AND PROTEST**

COMES NOW M.J. Davis Memorial Limited Partnership in care of Jeff Davis, Manager, (hereinafter "Movant"), whose address is 1970 LaBelleza Grove, Colorado Springs, Colorado 80919, through counsel Randall C. Budge of Racine, Olson, Nye, Budge & Bailey, Chartered, P.O. Box 1391, 201 E. Center Street, Pocatello, Idaho 83204-1391, and hereby moves to intervene and become a party and hereby protests the proposed Application in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 285.210, .211, .214 as follows:

1. Movant has a direct and substantial interest in the Application because Movant owns real property which is adjacent to the proposed facility and water rights in Samaria Water & Irrigation Company and also in Thomas Davis Creek, Rosebud Creek and Dry Pine Creek, the proposed source of water for the facility, which rights are prior in time and right and may be adversely affected by the proposed facility as further described below.

2. Movant owns 11.125 shares of water stock in Samaria Water & Irrigation Company (the "Company"). Movant owns the W1/2 of Section 27, Township 15 South, Range 35 East, B.M., Oneida County, and other land downstream on Samaria Creek and in and around the townsite of Samaria. Movant's property relies upon water from the Company to provide irrigation and stock water upon these lands. The Company's source of water which supplies water to Movant and other shareholders includes waters arising from Dry Pine, Rosebud and Thomas Davis Creeks which join to form Samaria Creek.



Additionally Movant owns Idaho Department of Water Resources License No. 15-07032, Application for Permit No. 15-7273 for 0.25 cfs of water in Rosebud Creek for irrigation purposes, Application for Permit No. 15-7274 for 0.57 cfs of water in Dry Pine Creek for irrigation purposes, and Application for Permit No. 15-7275 for 1.02 cfs of water in Thomas Davis Creek for irrigation, stock water, recreation, esthetics and fire protection purposes.

Attached as Exhibit "A" is a copy of the Notice of Exception Movant filed with the Idaho Department of Water Resources with respect to Samaria Water & Irrigation Company's Water Right Claim No. 15-4066. Also attached is a true and correct copy of the Application for Permit Nos. 15-7273, 15-7274 and 15-7275 Movant filed with the Idaho Department of Water Resources.

3. Applicant owns no water rights in the proposed source for hydro power purposes and has no pending Application before the Idaho Department of Water Resources to secure any such water right. Accordingly all water rights owned and in the permit stage of Movant, as described above, are senior to and have priority over any water right that may be obtained by the Applicant for hydro power purposes. There is no water available to Applicant from the proposed source as all available water is fully appropriated.

4. The proposed use of water by Applicant would unlawfully impair and interfere with Movant's water rights by diverting water from Thomas Davis, Rosebud and Dry Pine Creeks into a pipeline system that would make the water unavailable to supply Movant's water rights for stock water, irrigation, recreation and esthetic purposes, all to Movant's loss and damage.

5. Thomas Davis Creek and Samaria Creek flow through Movant's property and also provide water for riparian habitat, deer, upland game and other wildlife, all of which would be impaired and damaged by Applicant's proposed project. Applicant proposes to collect water from Thomas Davis, Rosebud and Dry Pine Creeks near the headwaters on public BLM property, diverting water flows out of the natural channels and around Movant's property in a closed penstock de-watering the natural channels from the source to the power house over a distance of approximately 2-1/2 miles. This would effectively eliminate the availability of water for most, if not all, of the year for the purposes and uses as described above.

6. Movant's interests are not represented by the Applicant or any other parties in the

proceedings.

7. Prejudice will result or additional burdens will be placed upon Movant if intervention is not permitted.

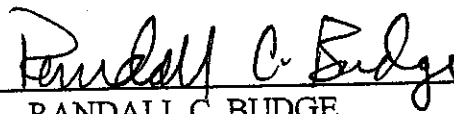
8. Movant reserves the right to set forth the basis of its protest in further detail as the Application is further evaluated and additional information is known.

WHEREFORE, Movant protests the Application and respectfully requests intervention in these proceedings.

RESPECTFULLY SUBMITTED this 17th day of May, 2006.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By



RANDALL C. BUDGE

Attorney for Movant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of May, 2006, a true and correct copy of the foregoing document was served on each of the following in the manner indicated.

David Reel	☒	U.S. Mail/Postage Prepaid
Samaria Water & Irrigation Co.	☐	Overnight Mail
5176 S. 4400 W.	☐	Facsimile
Malad, Idaho 83252	☐	E-Mail
Ted Sorenson, P.E.	☒	U.S. Mail/Postage Prepaid
Sorenson Engineering	☐	Overnight Mail
5203 S. 11th E.	☐	Facsimile
Idaho Falls, Idaho 83404	☐	E-Mail
John J. Evans	☒	U.S. Mail/Postage Prepaid
5071 S. 4600 W.	☐	Overnight Mail
Samaria, Idaho 83252	☐	Facsimile
	☐	E-Mail
Kent Foster	☒	U.S. Mail/Postage Prepaid
Holden, Kidwell, Hahn & Crapo	☐	Overnight Mail
P.O. Box 50130	☐	Facsimile
Idaho Falls, Idaho 83405	☐	E-Mail
Bureau of Land Management	☒	U.S. Mail/Postage Prepaid
4350 Cliff Drive	☐	Overnight Mail
Pocatello, Idaho 83202	☐	Facsimile
	☐	E-Mail
State of Idaho Department of Lands	☒	U.S. Mail/Postage Prepaid
954 W. Jefferson	☐	Overnight Mail
Boise, Idaho 83702	☐	Facsimile
	☐	E-Mail



RANDALL C. BUDGE

EXHIBIT "A"

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Samaria Water &)
Irrigation Company, I.C. 42-243)
Notice of Statutory Claim Re Water)
Right No. 15-4066)

NOTICE OF EXCEPTION

RECEIVED

DEC 16 2005

Department of Water Resources
Eastern Region

NOTICE IS HEREBY GIVEN that the undersigned Jeff Davis hereby files this Notice of Exception with the Idaho Department of Water Resources ("IDWR") pursuant to Idaho Code §42-244 for the purpose of taking exception to the Place of Use set forth by Samaria Water & Irrigation Company (hereinafter the "Company") in its Statutory Claim pursuant to Idaho Code §42-243 to water in Thomas Davis Creek, Water Right No. 15-4066. The following is provided in support of this exception, to-wit:

1. Jeff Davis is the general partner and with his wife the owners of M.J. Davis Memorial Limited Partnership (hereinafter "Davis"). Davis owns a residential home located at 5054 S. 4600 W., Samaria, Idaho, together with farmland in and around Samaria. The Davis property was acquired in approximately 1999 from Melvin Joseph Davis and Louise Davis, husband and wife, the parents of Jeff Davis. The property was owned by Jeff's parents from approximately 1965 until sold to Jeff Davis in 1999. It was previously owned from approximately 1943 to 1965 by Melvin Martin Davis, the grandfather of Jeff Davis and father of Melvin Joseph Davis.
2. The water rights owned by Davis consist of 11.125 shares of water stock in Samaria Water & Irrigation Company and IDWR Water Right License No. 15-07032.
3. The Davis property includes the W1/2 of Section 27, Township 15 South, Range 35 E., B.M., Oneida County, containing 320 acres, together with the appurtenant water rights which includes 11.125 shares of water stock in the Company. Pursuant to these shares, Davis has a lawful right to utilize his proportionate share of available water in Thomas Davis Springs to irrigate said property. Water from Thomas Davis Springs has been used pursuant to the Company's shares by Davis's predecessors in interest, his grandfather Melvin Martin Davis during the period 1943 to 1965, his predecessor Daniel Campbell and his predecessor Edward

Receipt
21503

Daniel Campbell dated October 9, 1928, Oneida County Instrument No. 46003, which reflects that one-half share of stock in the Company is appurtenant to the W1/2 of Section 27. In recent years, water from Thomas Davis Springs has not been used on the W1/2 of Section 27 pursuant to the Company's shares for the reason that the property has been enrolled in the CRP program since the early 1980s.

4. Continuously since sometime prior to 1928, all water from Thomas Davis Springs has been diverted out of the natural channel into an artificial ditch located to the east of the natural channel. The ditch follows the contour of the hill through the Davis property in the W1/2 of Section 27. The ditch is believed to have been constructed for the sole purpose of delivering irrigation water to the Davis property in the W1/2 of Section 27 as it would serve no other purpose.

5. Based on the foregoing, Davis takes exception to the Company's statutory claim to the extent that it does not include the Davis property in the W1/2 of Section 27 in the designated place of use. Davis submits that his property in the W1/2 of Section 27, Township 15 South, Range 35 East should be included in the place of use of the Company with respect to Water Right No. 15-4066.

6. This Notice of Exception is being filed with IDWR pursuant to Idaho Code §42-244 and a copy of this Notice of Exception has been mailed to the Claimant Company in accordance with the attached certificate of mailing.

DATED this 8th day of October, 2005.
December

M.J. DAVIS MEMORIAL PARTNERSHIP

By


JEFF DAVIS, Managing Partner/Owner

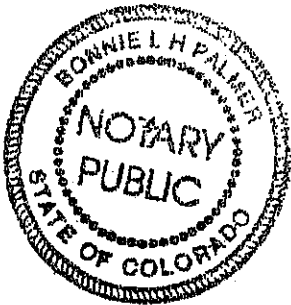
STATE OF Colorado)
) : SS
COUNTY OF El Paso)

Jeff Davis, being first duly sworn under oath, deposes and states that the foregoing is true and correct to the best of his knowledge, information and belief.

Dated this 8th ^{December} day of October, 2005.

Jeff Davis
JEFF DAVIS, Managing Partner/Owner

SUBSCRIBED AND SWORN TO before me this 8th day of October, 2005.
December



Bonnie L.H. Palmer
NOTARY PUBLIC FOR: PSP/Centura
Residing at: 3205 N. Academy
My Commission Expires: _____

MY COMMISSION EXPIRES
01/06/2008

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 8th ^{December} day of October, 2005, I mailed a true and complete copy of the foregoing instrument, postage prepaid, to the following:

Samaria Water & Irrigation Company
Board of Directors
c/o David Reel, President
5176 S. 4400 W.
Malad, Idaho 83252

Kent Foster
Holden, Kidwell, Hahn & Crapo
P.O. Box 50130
Idaho Falls, ID 83405-0130

Idaho Department of Water Resources
Eastern Region
900 N. Skyline Drive, Suite A
Idaho Falls, Idaho 83402

Randall C. Bodey

BOOK 21 pg 21

THIS INDENTURE, Made this 9th day of October in the year of our Lord one thousand nine hundred and Twenty-eight between Edward Martin and his wife Emma Martin

of Samaria County of Oneida State of Idaho the part 1es of the first part, and Daniel Campbell

of Malad County of Oneida State of Idaho the part y of the second part,

WITNESSETH: That the said part 1es of the first part, for and in consideration of the sum of

Three Thousand and no/100----- Dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, in ve granted, bargained and sold, and by these presents do grant, bargain, sell, convey and confirm unto the said part y of the second part, and to his heirs and assigns forever, all the following described real estate situated in Oneida County, State of Idaho, to-wit:

The West half of Section Twenty-Seven(27) in Township Fifteen South, Range Thirty-Five(35) East of the Boise Meridian, in Idaho, containing 320 acres; together with all improvements located thereon and all acquired rights of roadway leading to and from the above described premises to the main highway.

Also One-Half share of the Capital Stock of the Samaria Water and Irrigation Company, an Idah Corporation

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all estates, right, title and interest in and to the said property, as well in law as in equity, of the said part 1es of the first part.

TO HAVE AND TO HOLD, All and singular the above mentioned and described premises, together with the appurtenances, unto the said part y of the second part, and to his heirs and assigns forever. And the said parties of the first part, and their heirs, the said premises in a quiet and peaceable possession of the said part y of the second part, his heirs and assigns, against the said part 1es of the first part, and their heirs and against all and every person and persons whomsoever lawfully claiming or to claim the same shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, The said part 1es of the first part have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered in the Presence of

S.T. Jeppsen

Edward Martin

(SEAL)

Emma Martin

(SEAL)

(SEAL)

(SEAL)

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

Jeff Davis, Mgr, M.J. Davis Memorial

Phone 719-290-2988

1. Name of Applicant Limited Partnership
- Mailing address 2525 Himalaya Ct., Colorado Springs, CO 80919
2. Source of water supply Rosebud Creek which is a tributary of Samaria Creek
3. Location of point of diversion is Township 15S Range 35E Sec. 27, in the NW $\frac{1}{4}$,
NW $\frac{1}{4}$, Govt. Lot _____, B.M., _____ County;
additional points of diversion if any: 15S 35E: Sec 22: SW1/4, NE1/4

4. Water will be used for the following purposes:

- | | | |
|--|---|------------------------|
| Amount <u>0.25</u> for <u>irrigation</u> | purposes from <u>4/1</u> to <u>11/1</u> | (both dates inclusive) |
| (cfs or acre-feet per annum) | | |
| Amount _____ for _____ | purposes from _____ to _____ | (both dates inclusive) |
| (cfs or acre-feet per annum) | | |
| Amount _____ for _____ | purposes from _____ to _____ | (both dates inclusive) |
| (cfs or acre-feet per annum) | | |
| Amount _____ for _____ | purposes from _____ to _____ | (both dates inclusive) |
| (cfs or acre-feet per annum) | | |
| Amount _____ for _____ | purposes from _____ to _____ | (both dates inclusive) |
| (cfs or acre-feet per annum) | | |
| Amount _____ for _____ | purposes from _____ to _____ | (both dates inclusive) |
| (cfs or acre-feet per annum) | | |

5. Total quantity to be appropriated is (a) 0.25 and/or (b) _____
cubic feet per second acre feet per annum

6. Proposed diverting works:

- a. Describe type and size of devices used to divert water from the source earthen dam into collection box and pipeline

- b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet

- c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet

- d. Is ground water with a temperature of greater than 85°F being sought? _____

- e. If well is already drilled, when? _____; Drilling firm _____
Well was drilled for (well owner) _____; Drilling Permit No. _____

7. Time required for completion of works and application of water to proposed beneficial use is _____ years (minimum 1 year)

8. Description of proposed uses (If irrigation only, go to item 9):

- a. Hydropower; show total feet of head and proposed capacity in kW. _____
- b. Stockwatering; list number and kind of livestock. _____
- c. Municipal; show name of municipality. _____
- d. Domestic; show number of households. _____
- e. Other; describe fully. _____

RECEIVED

3. Description of place of use:

- a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
 b. If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	R&E	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
15S	35E	22	30	40	40	22													132
15S	35E	27					30												30

Total number of acres to be irrigated 1620

10. Describe any other water rights used for the same purposes as described above. Samaria Water & Irrigation Company stock

11. a. Who owns the property at the point of diversion? Applicant
 b. Who owns the land to be irrigated or place of use? Applicant
 c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: _____

12. Remarks: _____

13. MAP OF PROPOSED PROJECT REQUIRED - Attach an 8 1/2" x 11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

BE IT KNOWN that the undersigned hereby makes this application for permit to appropriate the public waters of the State of Idaho as herein set forth.

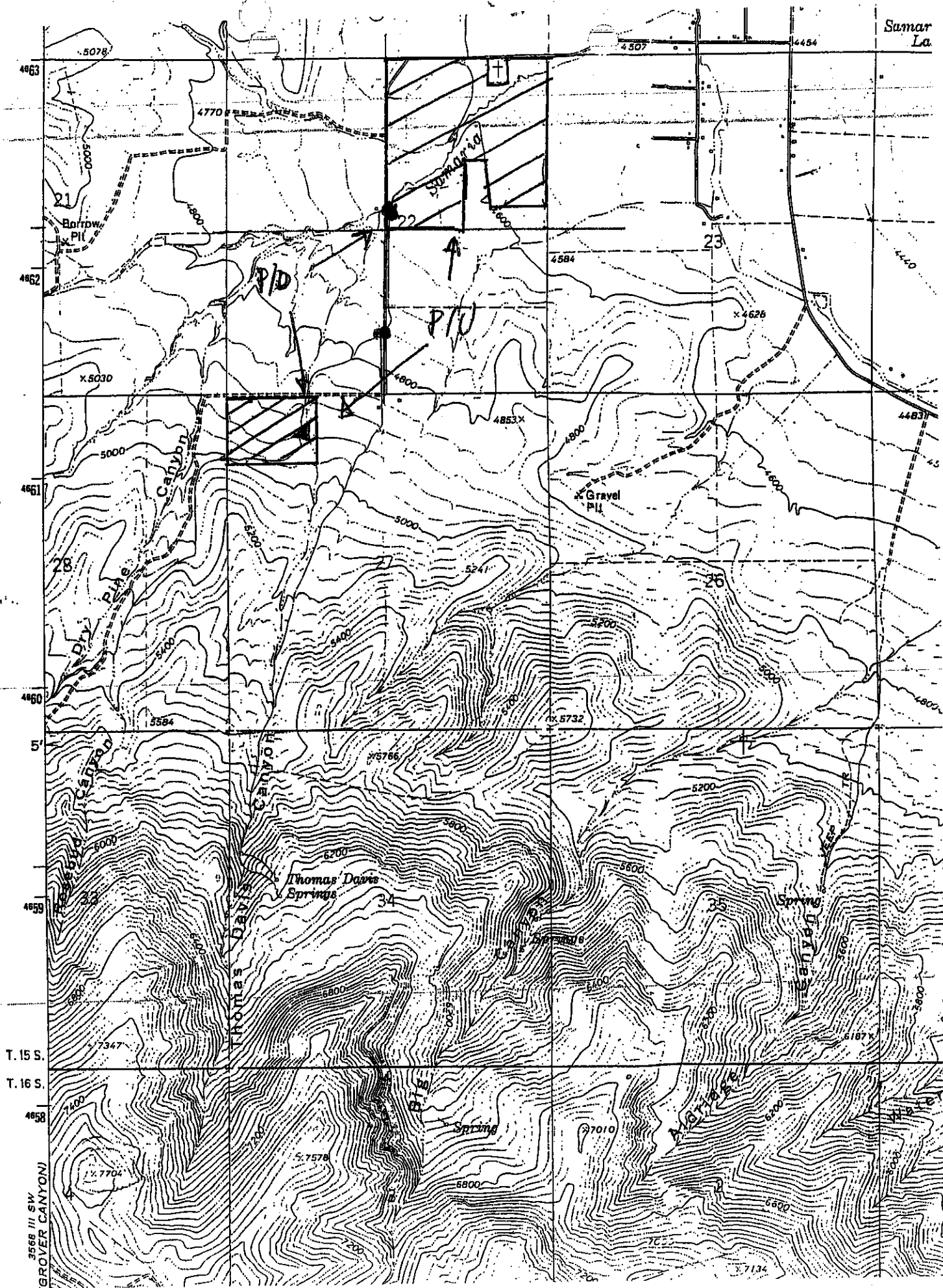
M.J. Davis Memorial Limited Partnership

By [Signature]

Signature of Applicant (and title, if applicable)
Ben Davis, Managing Partner

Received by [Signature] Date 10/10/05 Time 10:30 Preliminary check by [Signature] Date 10/10/05
 Fee \$ 250 Recollected by SC Published In _____
 Publication prepared by _____ Date _____
 Publication approved _____

Samar
La.



Ident. No. 15-1274

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

Jeff Davis, Mgr, M.J. Davis Memorial

Phone 719-290-2988

1. Name of Applicant Limited Partnership

Mailing address 2525 Himalaya Ct., Colorado Springs, CO 80919

2. Source of water supply Dry Pine Creek which is a tributary of Samaria Creek

3. Location of point of diversion is Township 15 S Range 35E Sec. 27, in the NW $\frac{1}{4}$,
NW $\frac{1}{4}$, Govt. Lot _____, B.M., _____ County;

additional points of diversion if any: 15S, 35E, Sec 22: SW1/4, NE1/4

4. Water will be used for the following purposes:

Amount <u>0.75 cfs</u> for <u>irrigation</u>	purposes from <u>4/1</u> to <u>11/1</u> (both dates inclusive)
(cfs or acre-feet per annum)	
Amount _____ for _____	purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)	
Amount _____ for _____	purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)	
Amount _____ for _____	purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)	
Amount _____ for _____	purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)	
Amount _____ for _____	purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)	

5. Total quantity to be appropriated is (a) 0.75 cubic feet per second and/or (b) _____ acre feet per annum

6. Proposed diverting works:

a. Describe type and size of devices used to divert water from the source earthen dam into collection box and pipeline

b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet

c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet

d. Is ground water with a temperature of greater than 85°F being sought? _____

e. If well is already drilled, when? _____; Drilling firm _____; Drilling Permit No. _____
Well was drilled for (well owner) _____

7. Time required for completion of works and application of water to proposed beneficial use is _____ years (minimum 1 year)

8. Description of proposed uses (If irrigation only, go to item 9):

- Hydropower; show total feet of head and proposed capacity in kW. _____
- Stockwatering; list number and kind of livestock. _____
- Municipal; show name of municipality. _____
- Domestic; show number of households. _____
- Other; describe fully. _____

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DEC 16 2005

3. Description of place of use:
- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
 - If water is used for other purposes, place a symbol of the use (example; D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SE				TOTALS
			NE	NW	SE	SW	NE	NW	SE	SW	NE	NW	SE	SW	
156	35E	22	30	40	40	22									132
155	35E	27					30								30

Total number of acres to be irrigated 162

10. Describe any other water rights used for the same purposes as described above. Samaria Water is
Irrigation Company stock

11. a. Who owns the property at the point of diversion? Applicant
 b. Who owns the land to be irrigated or place of use? Applicant
 c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing:

12. Remarks:

13. MAP OF PROPOSED PROJECT REQUIRED - Attach an 8 1/2" x 11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

BE IT KNOWN that the undersigned hereby makes this application for permit to appropriate the public waters of the State of Idaho as herein set forth.

M.J. Davis Memorial Limited Partnership

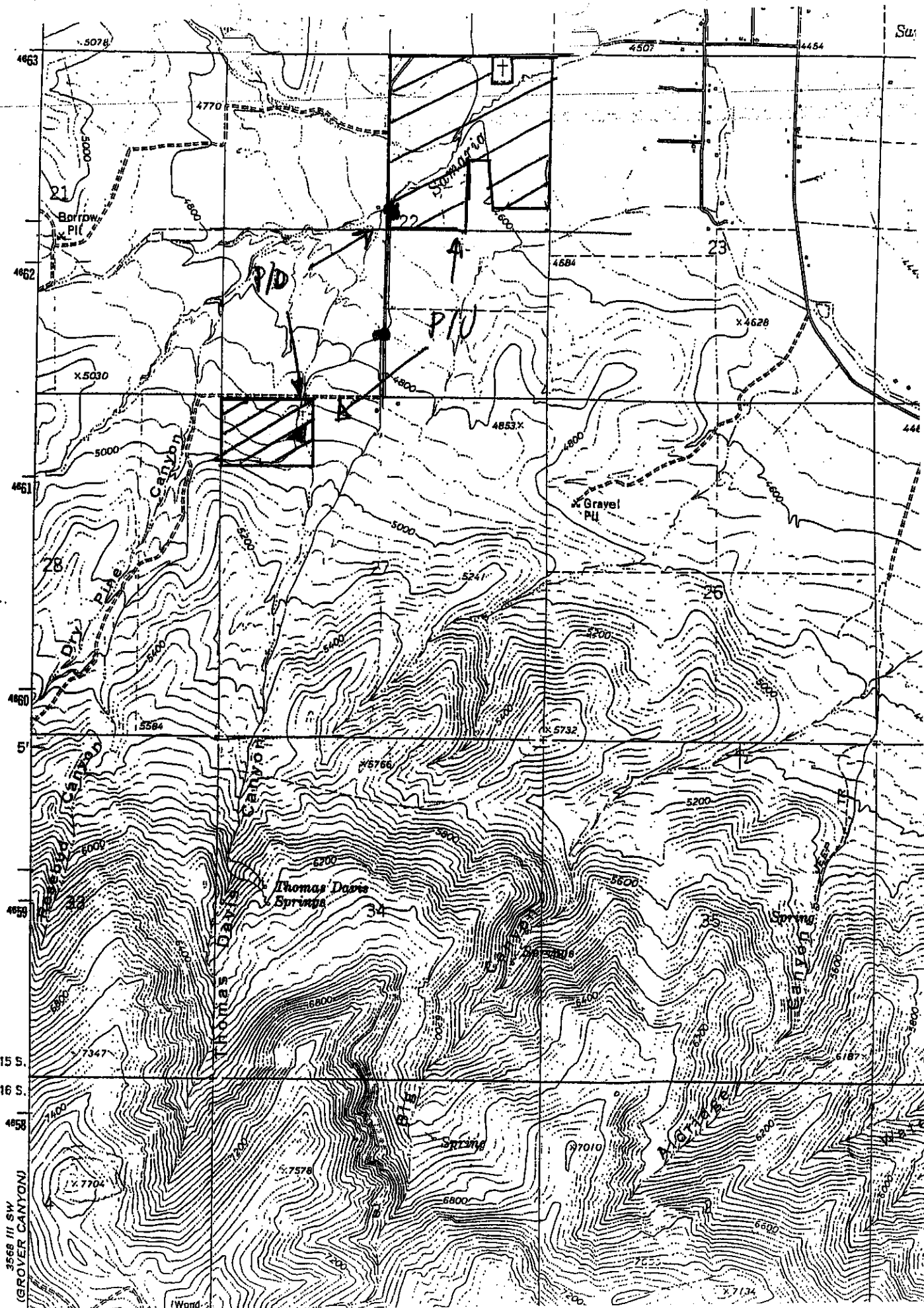
By Jeff Davis
 Signature of Applicant (and title, if applicable)
Jeff Davis, Managing Partner

Received by SC Date 12/1/05 Time 10:00 Preliminary check by 12/1/05
 Fee \$ 250 Recollected by SC Date 12/1/05 Published in 12/1/05
 Publication prepared by SC Date 12/1/05
 Publication approved SC Date 12/1/05

T.15.S

T.15 S.
T.16 S.

3568 III SW
(GROVER CANYON)



Ident. No. 15-7275

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

Jeff Davis, Mgr, MJ Davis Memorial

Phone 719-290-2988

1. Name of Applicant Limited Partnership
Mailing address 2525 Himalaya Ct., Colorado Springs, CO 80919
2. Source of water supply Thomas Davis Creek which is a tributary of Samarina Creek
3. Location of point of diversion is Township 15S Range 35E Sec. 34 In the NW $\frac{1}{4}$,
NW $\frac{1}{4}$, Govt. Lot _____ B.M., _____ County;
additional points of diversion if any: 15S, 35E; Sec 27 SW1/4, SW1/4; SE1/4, NW1/4; NE1/4
NW1/4; Sec 22: SW1/4 NE1/4
4. Water will be used for the following purposes:
Amount 1.0 cfs for irrigation purposes from 4/1 to 11/1 (both dates inclusive)
(cfs or acre-feet per annum)
Amount 0.02 cfs for stock water purposes from 4/1 to 11/1 (both dates inclusive)
(cfs or acre-feet per annum)
Amount 1.0 cfs for recreation purposes from 1/1 to 12/31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount 1.0 cfs for esthetics purposes from 1/1 to 12/31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount 1.0 cfs** for fire protection purposes from 6/1 to 11/1 (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum) ***non-consumptive **emergency only**
5. Total quantity to be appropriated is (a) 1.02 cfs and/or (b) _____
cubic feet per second acre feet per annum
6. Proposed diverting works:
a. Describe type and size of devices used to divert water from the source earthen dam into
collection box and pipeline
b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total
reservoir capacity _____ acre-feet
c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet
d. Is ground water with a temperature of greater than 85°F being sought? _____
e. If well is already drilled, when? _____; Drilling firm _____
Well was drilled for (well owner) _____; Drilling Permit No. _____
7. Time required for completion of works and application of water to proposed beneficial use is _____ years (minimum 1 year)
8. Description of proposed uses (If irrigation only, go to item 9):
a. Hydropower; show total feet of head and proposed capacity in kW. _____
b. Stockwatering; list number and kind of livestock. 100 beef cattle @ 0.00002 cfs per head
c. Municipal; show name of municipality. _____
d. Domestic; show number of households. _____
e. Other; describe fully. recreation for fishing and hunting; emergency fire
protection from range and forest fires; esthetics related to
riparian buffer areas and wildlife habitat.

RECEIVED

DEC 16 2005

Department of Water Resources
Eastern Region

2. Description of place of use:

- a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
 b. If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
156	35E	22	30	40	40	22													1.12
158	35E	27					40	40	40	40	40	40	40	35					3.15
156	35E	34	20	15			20	20											.75
156	35E	22	6			S													
156	35E	27																	
159	35E	34																	

Total number of acres to be irrigated 522

10. Describe any other water rights used for the same purposes as described above. Samaria Water II Irrigation Company stock

11. a. Who owns the property at the point of diversion? Applicant
 b. Who owns the land to be irrigated or place of use? Applicant
 c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: _____

12. Remarks: _____

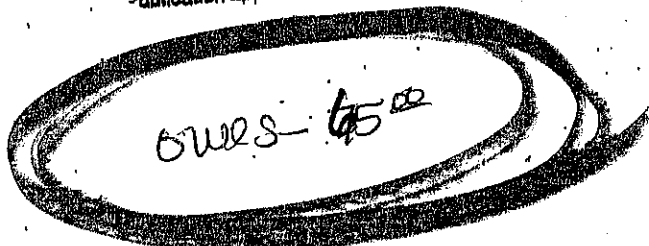
13. MAP OF PROPOSED PROJECT REQUIRED - Attach an 8 1/2" x 11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

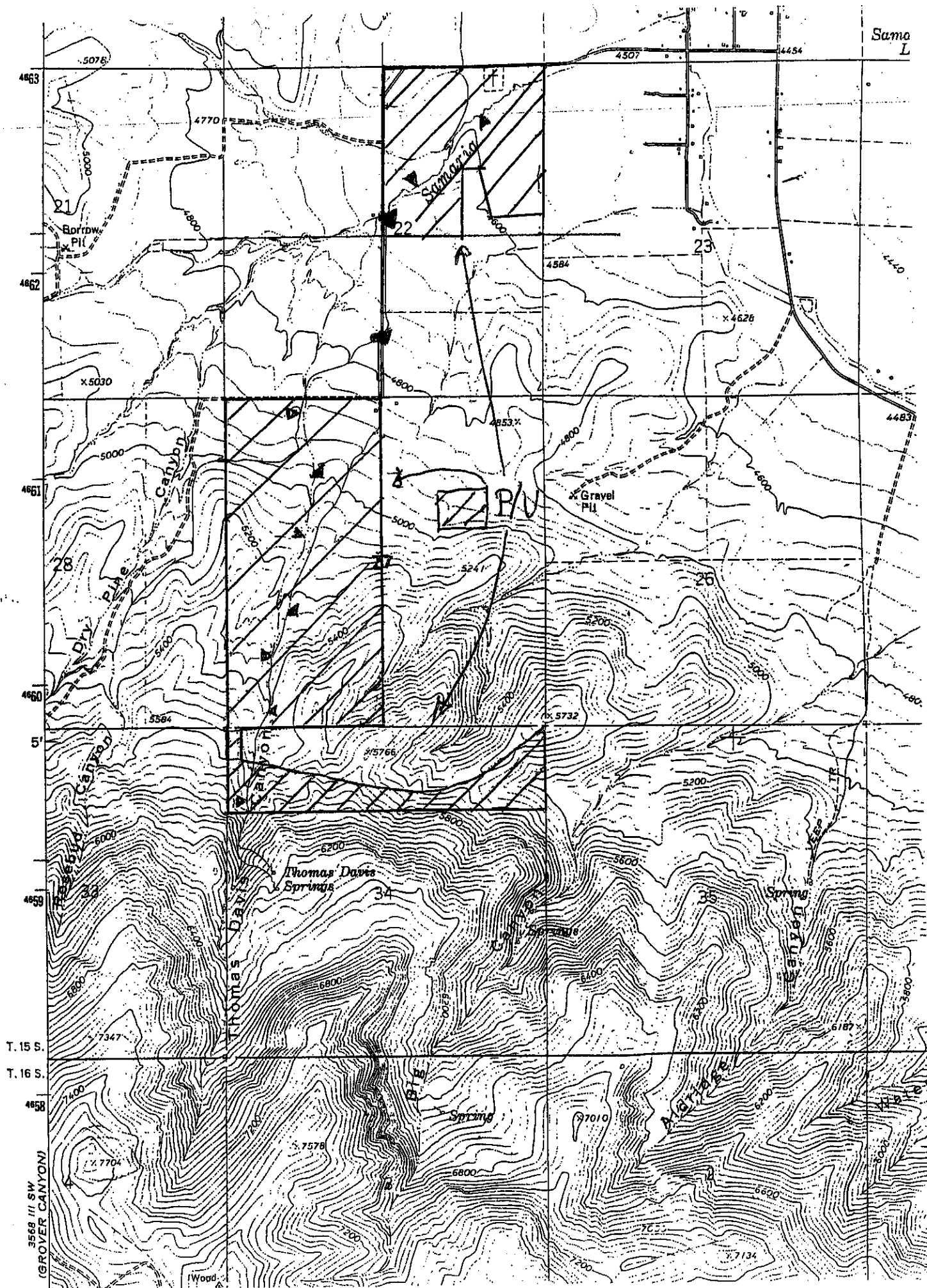
BE IT KNOWN that the undersigned hereby makes this application for permit to appropriate the public waters of the State of Idaho as herein set forth.

M.J. Davis Memorial Limited Partnership

By Jeff Davis
 Signature of Applicant (and title, if applicable)
Jeff Davis, General Partner

Received by SC Date _____ Time _____ Preliminary check by SC Date 12/16/05
 Fee \$ 125 Received by SC Date _____ Published in _____
 Publication prepared by _____ Date _____
 Publication approved _____



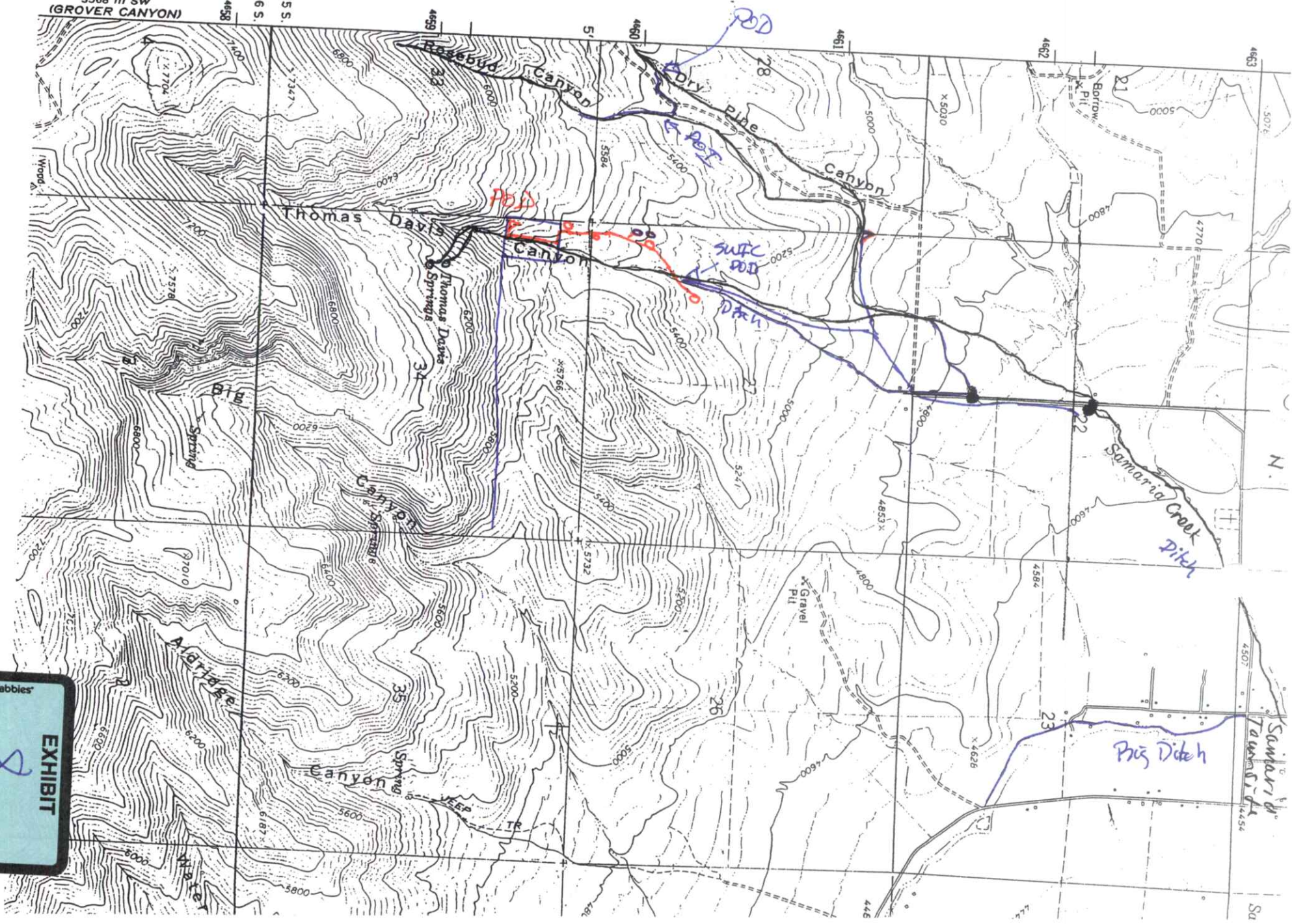


T.15.S.

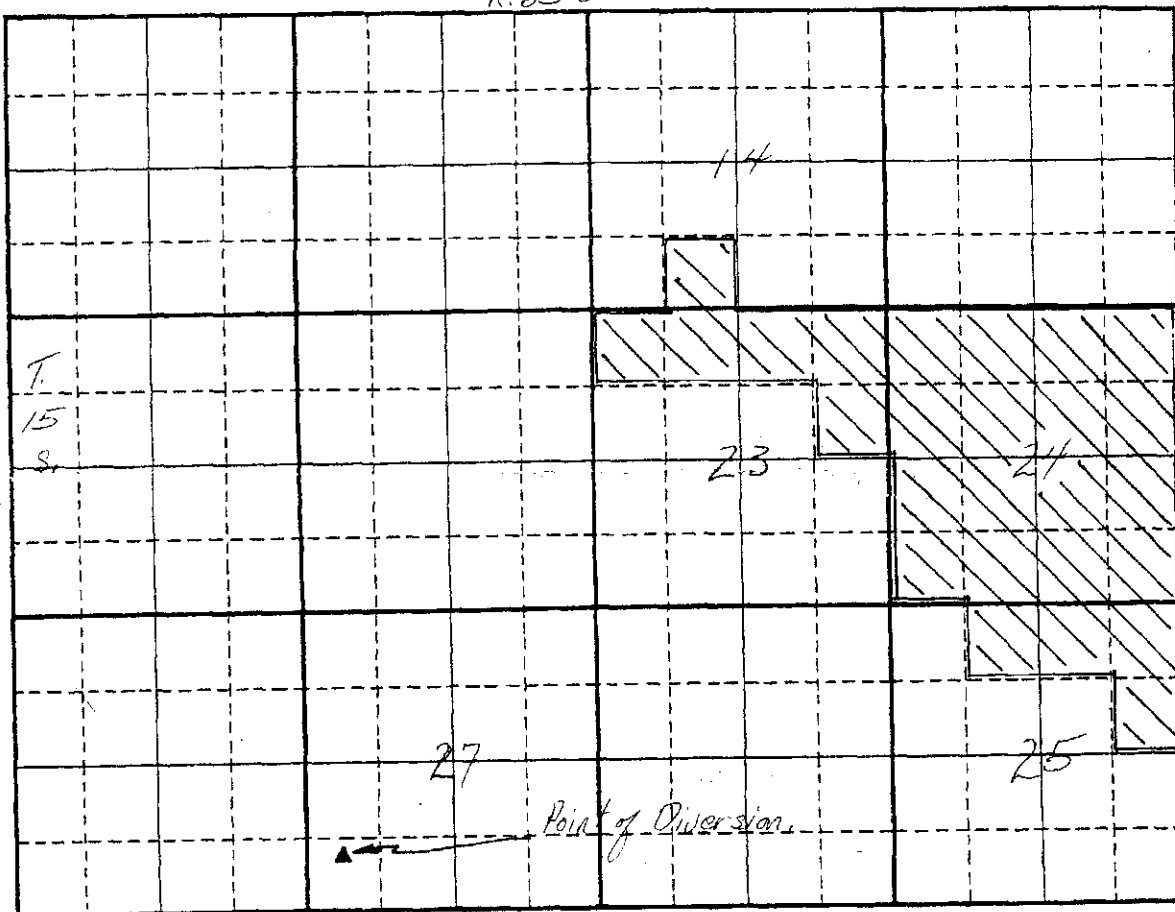
3568 III SW
(GROVER CANYON)

T.15 S.
T.16 S.

R.37E.



R. 35 E.



Scale: 2 inches equal 1 mile.

Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

State of Idaho)

) ss.

County of ONEIDA)

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

David John President
(Claimant)

Subscribed to before me this 16th day of December

19 80

Notary Public

Residing at Malad City, IdahoMy commission expires Life

FOR DEPARTMENT USE ONLY

Received by JKDate 12/19/80

Exception filed by:

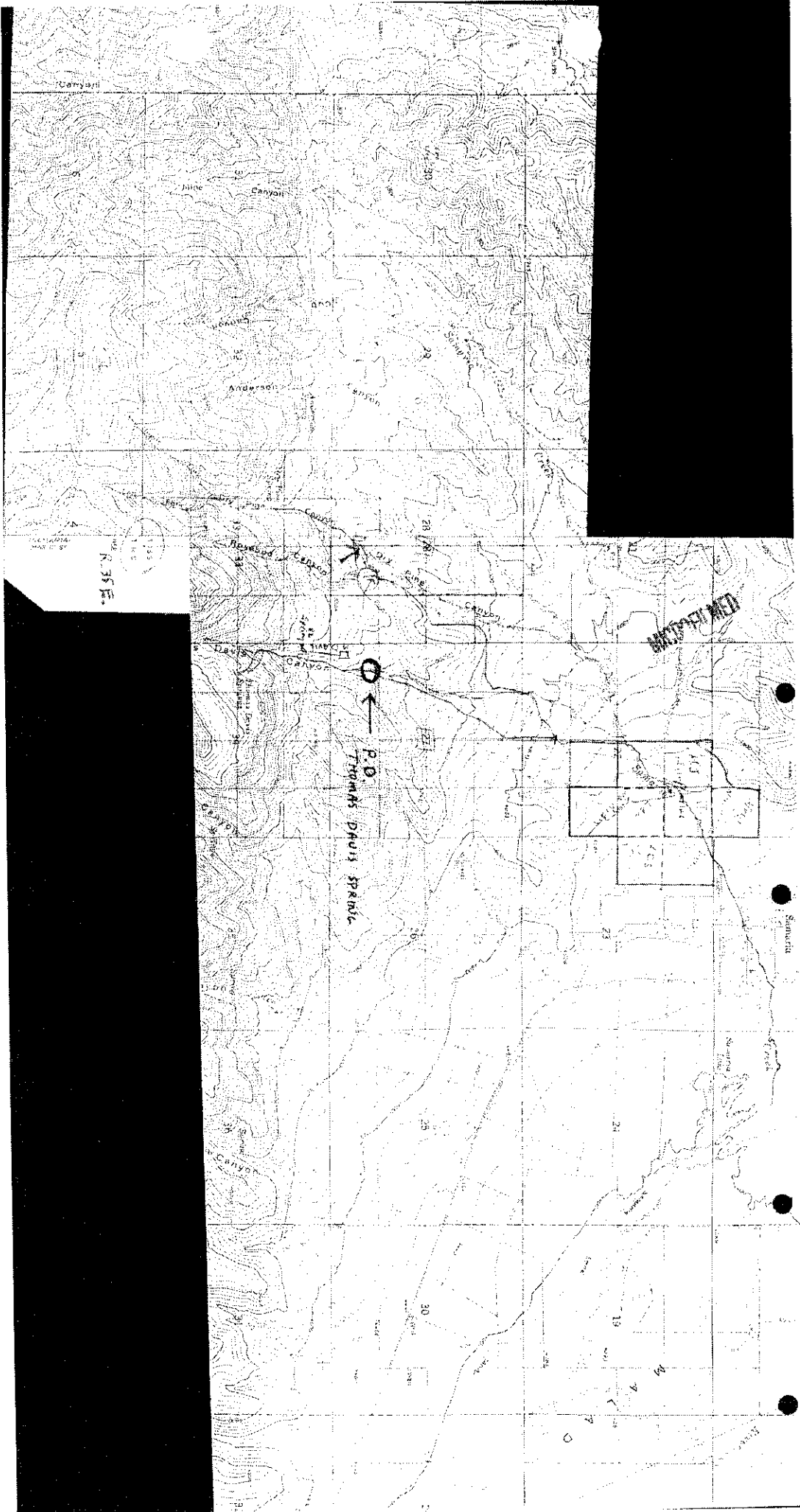
Forwarded to

Date

Prelim. check by JKDate 12-22-80\$20.00 fee received by Idaho Department of WaterDate 12/22/80# 16130

claimant by:

Published in Idaho EnterpriseDates 1/8 & 1/15/81



Canyon

Jane Canyon

Anderson Canyon

Rosebud Canyon

Canyon

P.O.
THOMAS DAVIS SPRING

RECEIVED

Sanctuary

Canyon

Sanctuary

Sanctuary

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

CLAIM TO A WATER RIGHT



Under the provisions of Section 42-243, Idaho Code, any person using or claiming rights to the public waters of Idaho established by diversion and application to a beneficial use must file a claim with the Department of Water Resources on or before June 30, 1983. Exempted from this filing are single family domestic uses as defined in Section 42-230(d), Idaho Code. Also exempted are rights represented by a permit, license, decree, adjudicated right, or a previously filed claim.

The filing of this claim does not confirm the water right claimed but failure to file may result in forfeiture of a water right.

Notice is hereby given that Samaris Water & Irrigation Company

(Name of Claimant)

% Deverl John, President, RFD, Malad, Idaho 83252

Telephone No. 766-2554

(Mailing Address)

(Zip Code)

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

follows:

(1) Date of priority: (When was the water first applied to a beneficial use) November, 1925

A claim is not acceptable on a ground water source with a priority later than March 25, 1963 or on a surface water source with a priority later than May 20, 1971. An exception is that a claim may be filed on single family domestic use from a ground water source.

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

Rosebud Spring _____ tributary to _____ Samaria Creek

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

claimed:		(Both dates inclusive)			
	(cfs, gpd, AFA)	(Domestic, Irrigation, Stock, Etc.)	(Mo., Day)		(Mo., Day)
Quantity	.20 cfs	Use Irrigation	Period of Use From Apr. 1	To	Nov. 1
Quantity	.01 cfs	Use Stockwater	Period of Use From May 1	To	Sept. 1
Quantity	_____	Use _____	Period of Use From _____	To	_____
Quantity	_____	Use _____	Period of Use From _____	To	_____
Quantity	_____	Use _____	Period of Use From _____	To	_____

(4) .20 cfs TOTAL QUANTITY USED.
(cfs, gpd, AFA)

(5) A) Point of diversion: (Location of point where water is diverted from its source)

S.W. 1/4 SE 1/4, Sec. 28 Twp. 15S Rge. 35 E, B.M., County of Oneida

Additional points of diversion:

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.). Give sizes and capacities: be as specific as possible. Describe any changes in the system and give the date of the change. Diversion at spring and 4 miles of open ditch used for irrigation.

(6) A) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

[illegible]

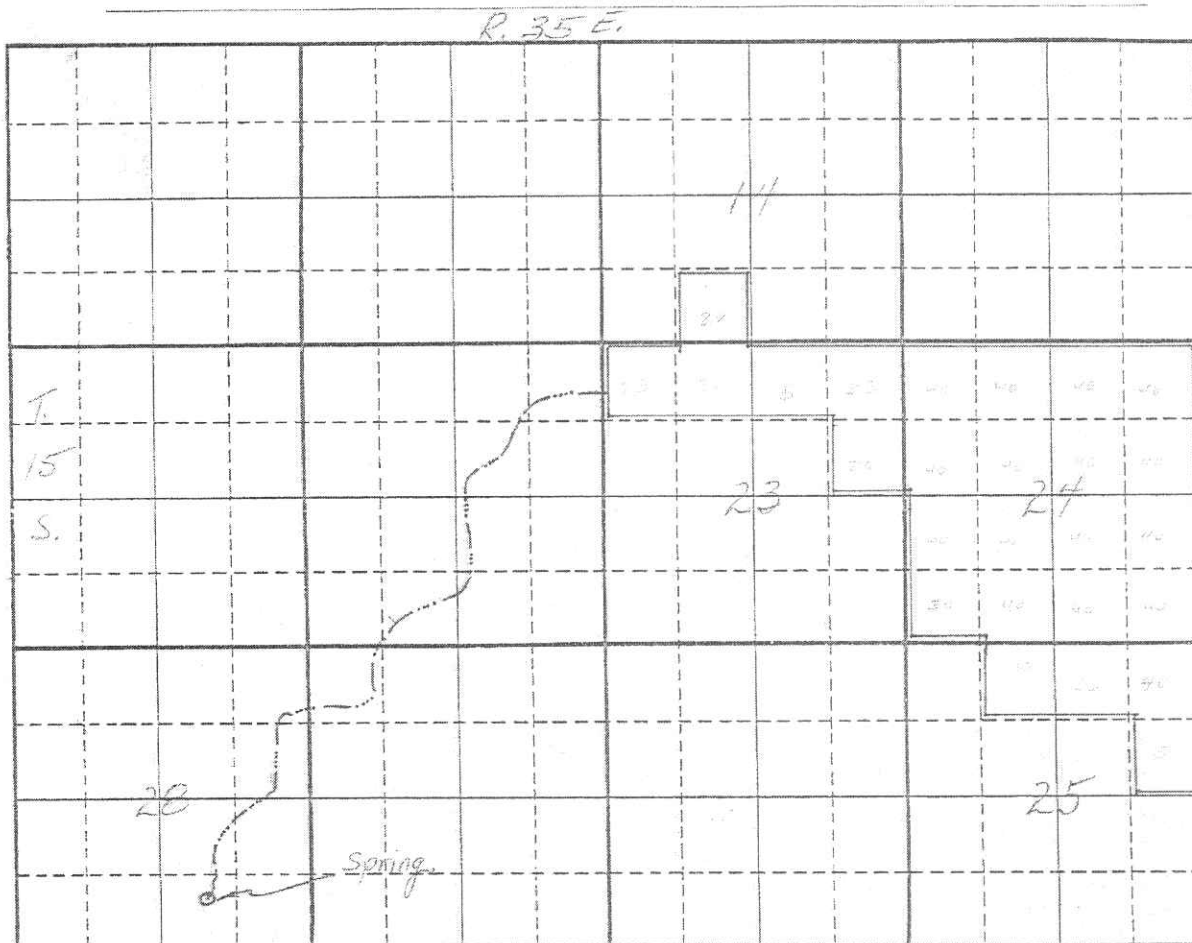
No. of acres 845

10 If water is used for other than irrigation, fully describe that use, being as specific as possible: Used for
stockwater during grazing season.

NOTE: Include here the type and number of stock watered: Range cattle, 600 head.

(7) If you are claiming water as a member of an organization, list name of organization:

(8) Remarks _____



Scale: 2 inches equal 1 mile.

Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

State of Idaho)
County of ONEIDA) ss.

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

SAMARIA WATER & IRRIGATION CO.

David J. Hall President
(Claimant)

Sworn to before me this 16th day of December

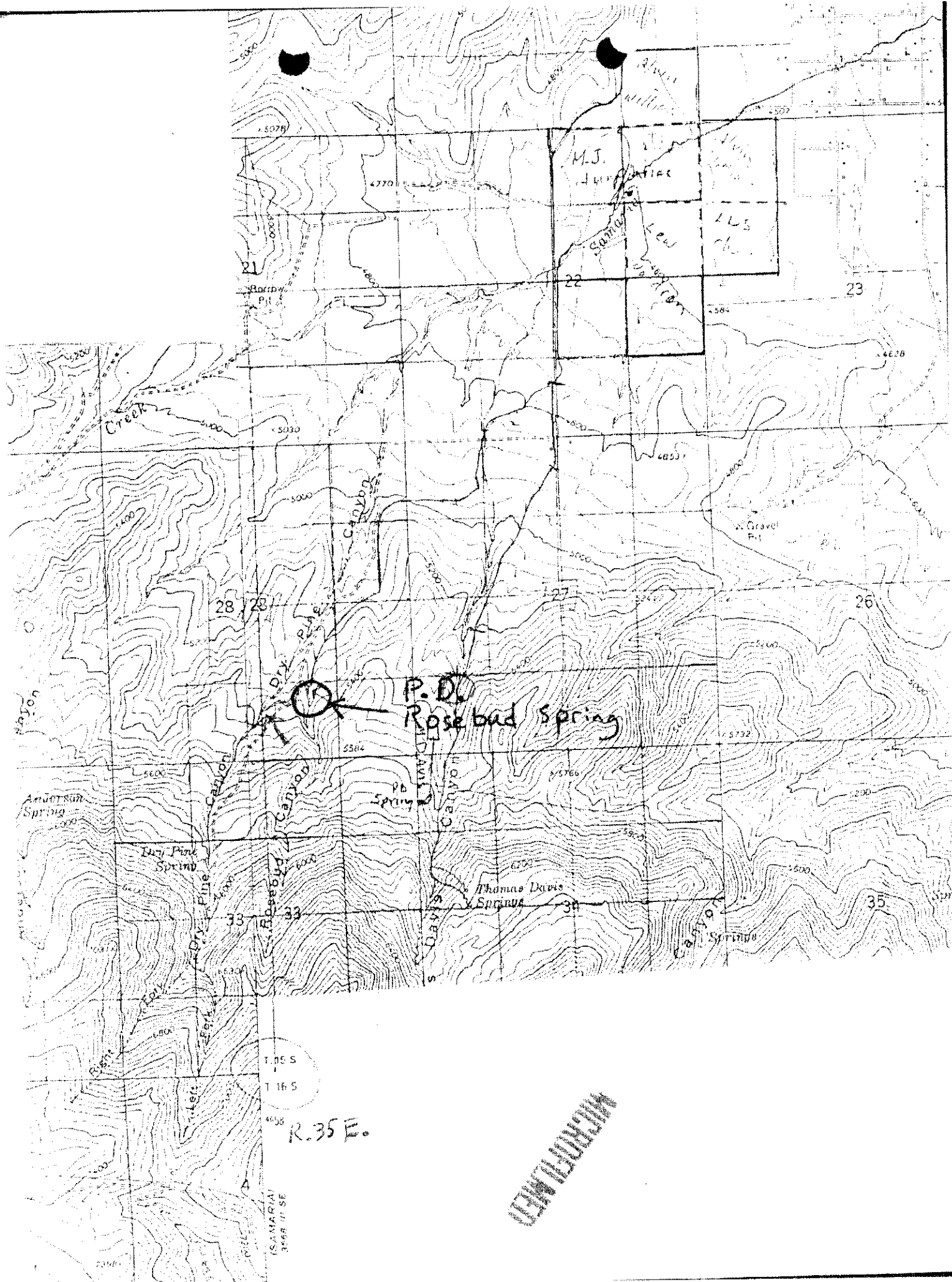
19 80

Sam Hawkins
Notary Public
Residing at Malad City, Idaho

My commission expires Life

FOR DEPARTMENT USE ONLY

Received by C.W. Date 12/19/80 Exception filed by: _____ Date _____
Prelim. check by J.K. Date 12/22/80 Forwarded to claimant by: _____ Date _____
\$20.00 fee received by C.W. Date 12/22/80 # 10130
Published in Idaho Enterprise
Dates 12/15/81



The filing of this claim does not confirm the water right claimed but failure to file may result in forfeiture of a water right.

(Name of Claimant)

Telephone No. 766-2554

(Mailing Address)

{Zip Code}

follows:

(1) Date of priority: (When was the water first applied to a beneficial use) November, 1925

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

(2) Describe the source of water: (Name of stream, lake, spring, etc., or ground water)
Dry Pine Spring tributary to Samaria Creek

Quantity		Use	Period of Use From	To
(cfs, gpd, AFA)			(Mo., Day)	(Mo., Day)
.90 cfs	Use	Irrigation	Apr. 1	Nov. 1
.01 cfs	Use	Stockwater	May 1	Sept. 1
	Use			
	Use			
	Use			
	Use			

(4) .90 cfs TOTAL QUANTITY USED:

(5) A) Point of diversion: (Location of point where water is diverted from its source)

A) Point of diversion: (Location or point where water is diverted from its source)
 SW ¼ SE ¼, Sec. 28 Twp. 15S Rge. 35 E.B.M., County of Oneida

Additional points of diversion: ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.). Give sizes and capacities: be as specific as possible. Describe any changes in the system and give the date of the change. Diversion at spring and 4 miles of open ditch used for irrigation.

(6) A) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

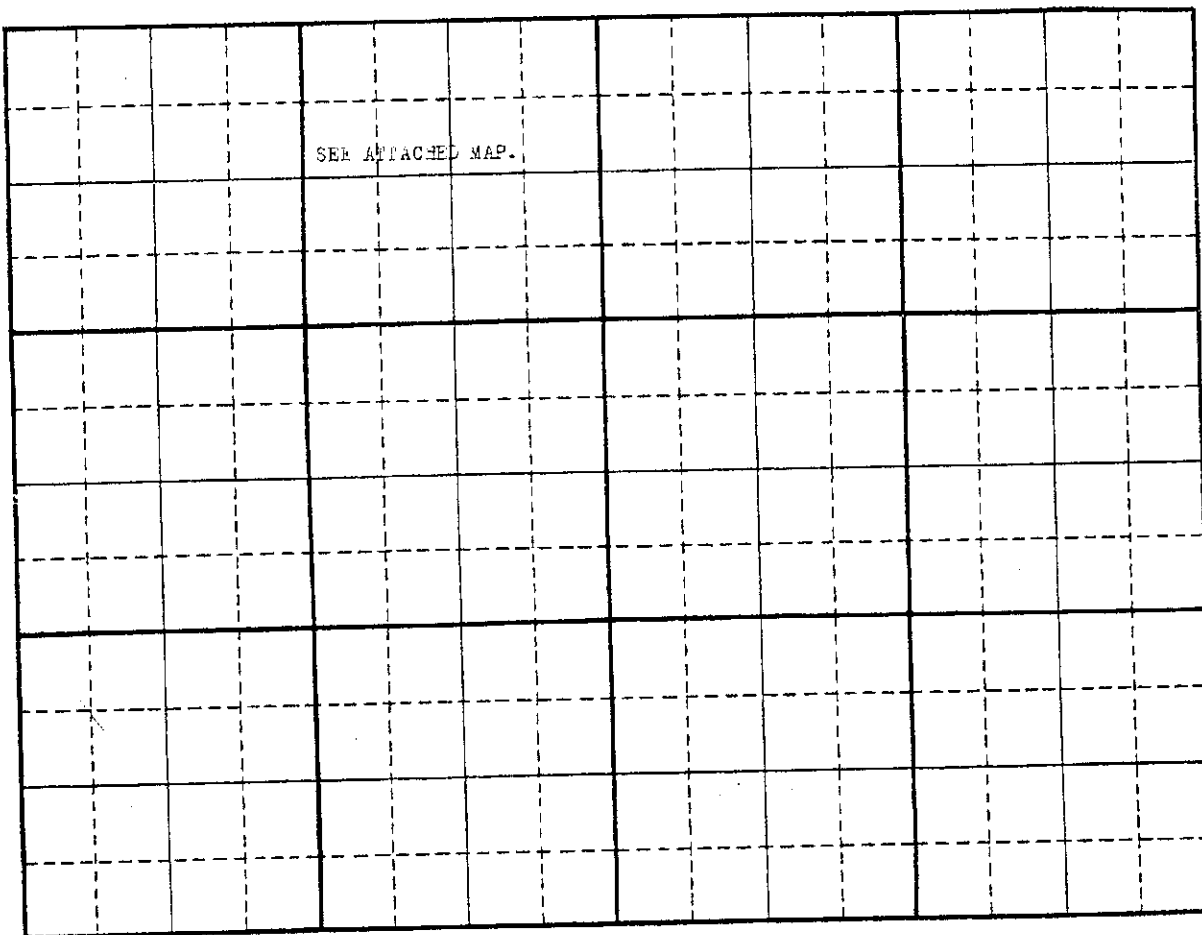
[illegible]

No. of acres 845

If water is used for other than irrigation, fully describe that use, being as specific as possible: Used for
stockwater during grazing season.

NOTE: Include here the type and number of stock watered: range cattle, 600 head.

(7) If you are claiming water as a member of an organization, list name of organization:



Scale: 2 inches equal 1 mile.

Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

State of Idaho)
County of ONEIDA) ss.

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

SAMARIA WATER & IRRIGATION CO.

David John President
(Claimant)

Sworn to before me this 16th day of December

19 80

Notary Public

Residing at Malad City, Idaho

Commission expires Life

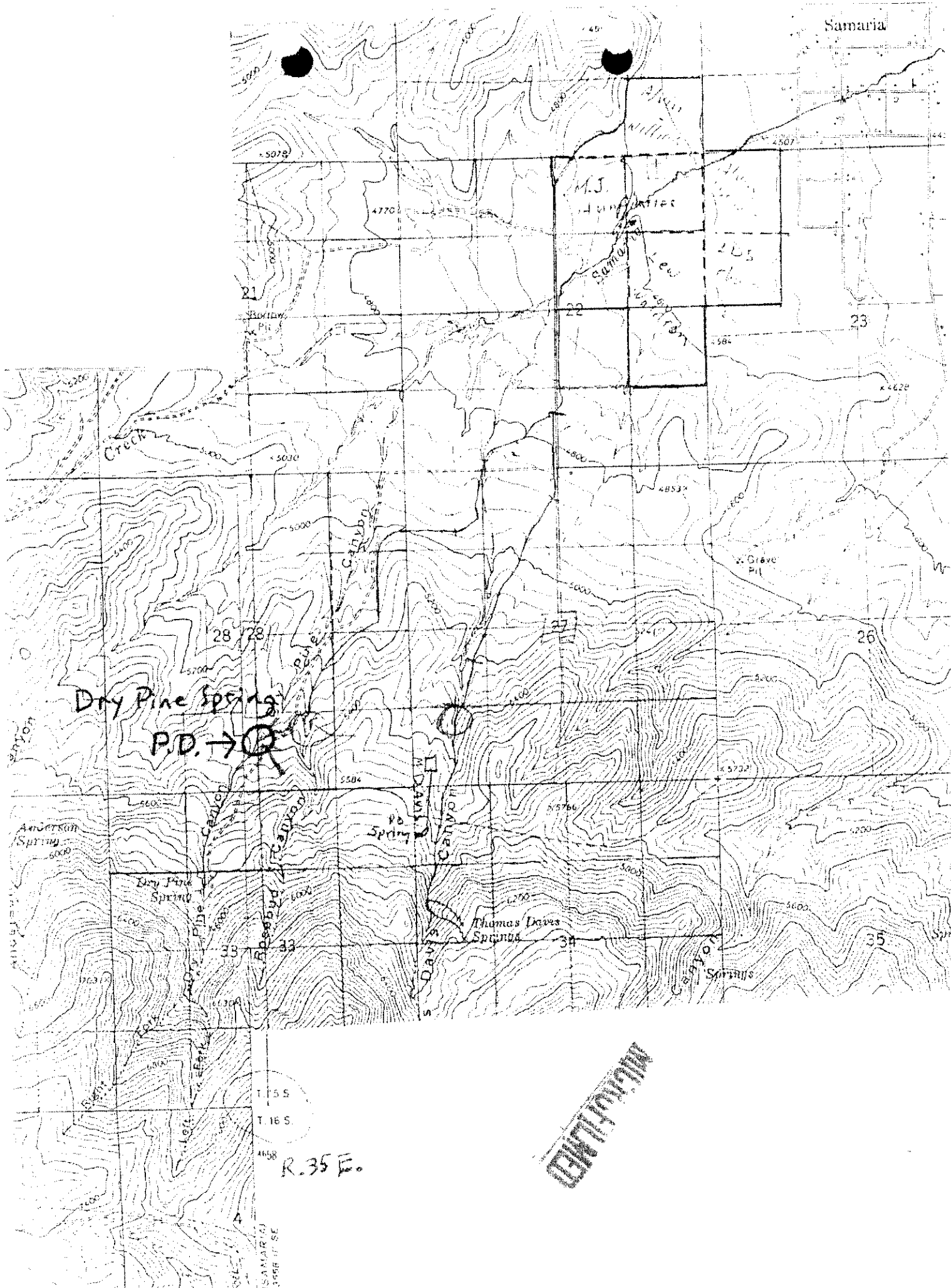
FOR DEPARTMENT USE ONLY

Received by EW Date 12/19/80 Exception filed by: _____ Date _____
Prelim. check by EW Date 12/22/80 # 16130
\$0.00 fee received by Idaho Enterprise
Published in 1/29 1/5/81
Dates _____

Forwarded to
claimant by: _____

MICROFILMED

Samaria

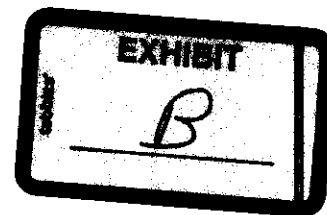


Dry Pine Spring
P.D. -> Q

R.35 E.

CENTRAL INTELLIGENCE AGENCY

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
AMENDED
CLAIM TO A WATER RIGHT



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

Notice is hereby given that Samaria Water and Irrigation Company, c/o David Reel, President
(Name of Claimant)
5176 South, 4400 West, Malad, Idaho 83252 Telephone No: (208) 766-2828
(Mailing Address) (Zip Code)

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

1. Date of Priority: (When the water was first applied to beneficial use) July 3, 1893

A claim is not acceptable for the use of surface water with a priority later than May 20, 1971. A claim is not acceptable for the use of ground water with a priority date later than March 25, 1963, unless the water is used for domestic purposes as defined in Section 42-111, Idaho Code.

2. Describe the source of water: (Name of stream, lake, spring, etc., or ground water)
Thomas Davis Spring tributary to Samaria Creek

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

(cfs or af)	(Irrigation, Domestic, Stock, Etc.)	(Both dates inclusive) (MM/DD) (MM/DD)
Quantity <u>3.0 cfs</u>	Use <u>Irrigation</u>	Period of Use From <u>03/01</u> to <u>10/31</u>
Quantity <u>.01 cfs</u>	Use <u>Stockwater</u>	Period of Use From <u>05/01</u> to <u>09/01</u>
Quantity _____	Use _____	Period of Use From _____ to _____
Quantity _____	Use _____	Period of Use From _____ to _____

4. 3.0 cfs TOTAL QUANTITY USED.
(cfs or af)

5. A) Location of point of diversion is SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of _____ $\frac{1}{4}$, Govt. Lot _____
Sec. 27 Township 15 South Range 35 East B.M., Oneida County; additional points of diversion, if any: _____

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch etc.). Give sizes and capacities. Be specific. Describe any changes in the system and give the date of the change.

Diversion at spring and 3 1/2 miles of open ditch used for irrigation.

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

Twp.	Rge.	Sec.	NE¼				NW¼				SW¼				SE¼				Total Acres
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
15	35	14															20		20
15	35	23	35	20			5	25							20				105
15	35	24	40	40	40	40	40	40	40	40	40	40	30	40	40	40	40	40	630
15	35	25	40	10			35									5			90

TOTAL ACRES 845

- B) If water is used for purposes other than irrigation, fully describe the use. Be specific. Water is used for stockwater during grazing season.

NOTE: Include here the type and number of stock watered: Range cattle - 600 head

7. Remarks: Water is put into canal to help reduce salt content of canal water to all users below springs.

8. **Map** - Attach an 8½"x11" map clearly identifying the point of diversion and the place of use by 40-acre subdivisions, section, township and range of the public land survey system. (A photocopy of a USGS 7½ minute topographic quadrangle map is preferred.) Attach an **aerial photograph** of the place of use if available.

State of Idaho)
 County of) ss.

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

David Reel, President of Samaria Water and Irrigation Company

Sworn to before me this day of , .

Notary Public
 Residing at

My commission expires:

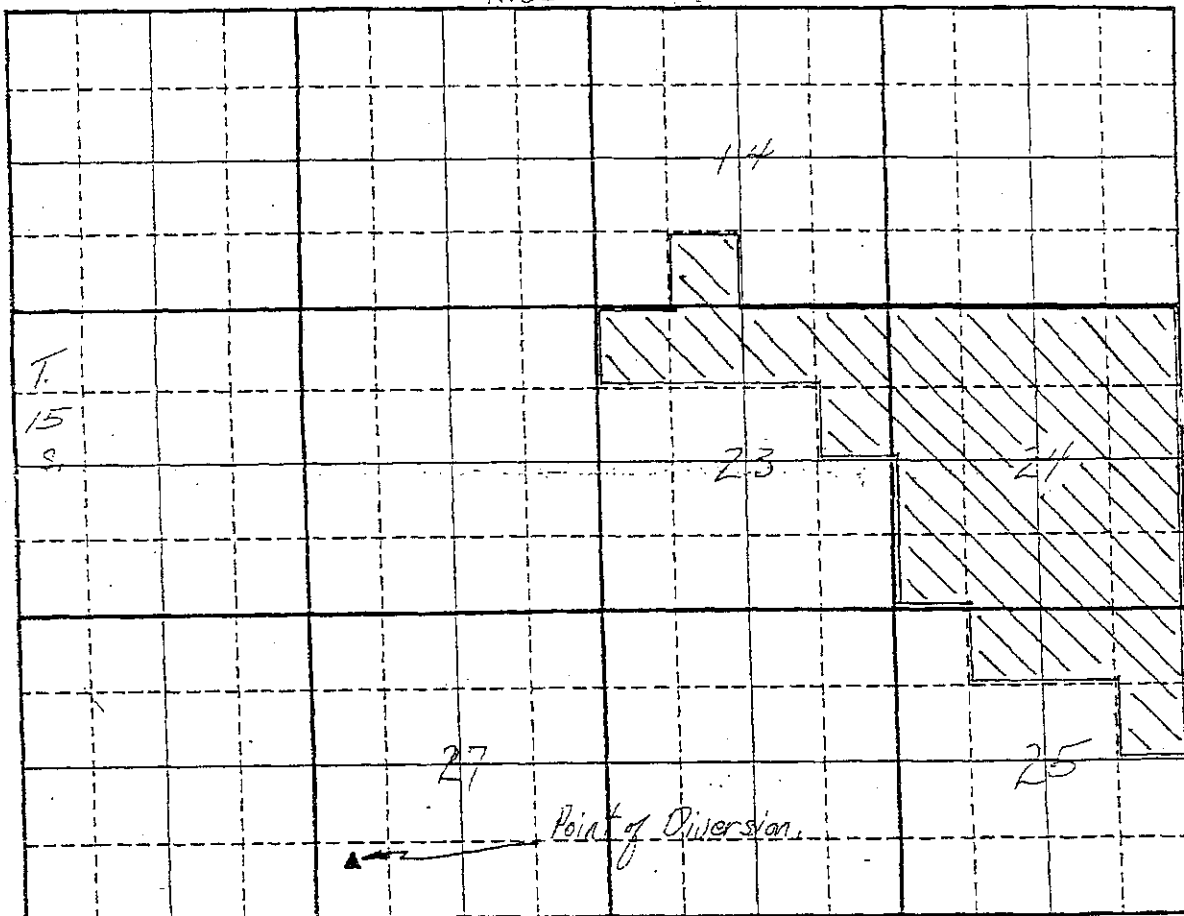
FOR DEPARTMENT USE ONLY

Received by Date
 Prelim. check by Date
 Fee Receipt #
 Receipt prepared by Date

Published in
 Publication dates
 Publication checked by Date
 Exceptions filed by

(B) Remarks _____

R. 35 E.



Scale: 2 inches equal 1 mile.

Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

State of Idaho)

) ss.

County of ONEIDA)

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

SAMARIA WATER & IRRIGATION CO.

David J. Smith President
(Claimant)

Subscribed to before me this 16th day of December

1980

Notary Public

Residing at Malad City, Idaho

My commission expires Life

FOR DEPARTMENT USE ONLY

Received by J.K.

Date

12/19/80

Exception filed by:

Forwarded to

Date

Printed check by J.K.

Date

12/22/80

16130

claimant by:

\$20.00 fee received by J.K.

Date

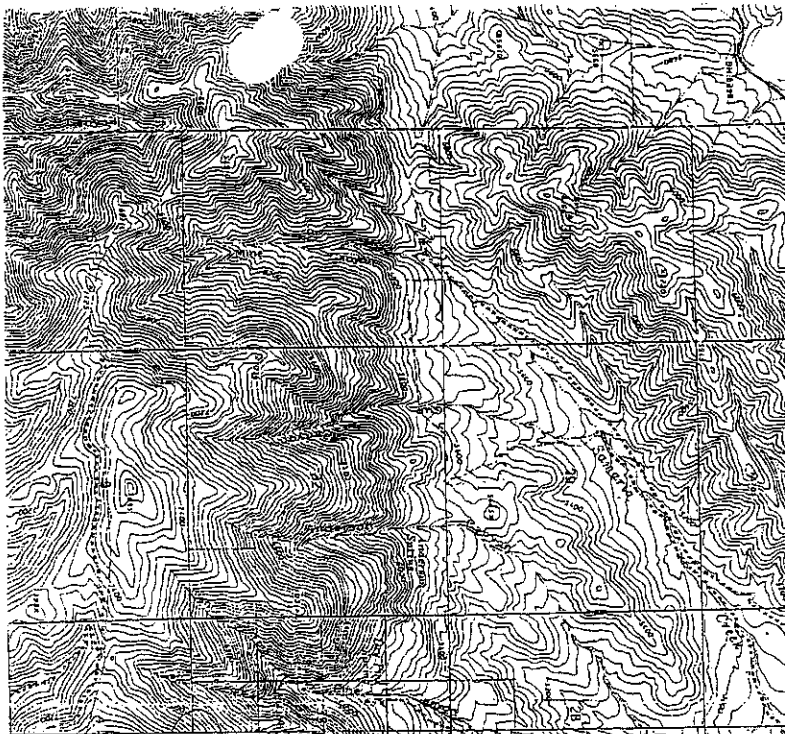
12/22/80

Published in

Idaho State Tribune

Dates

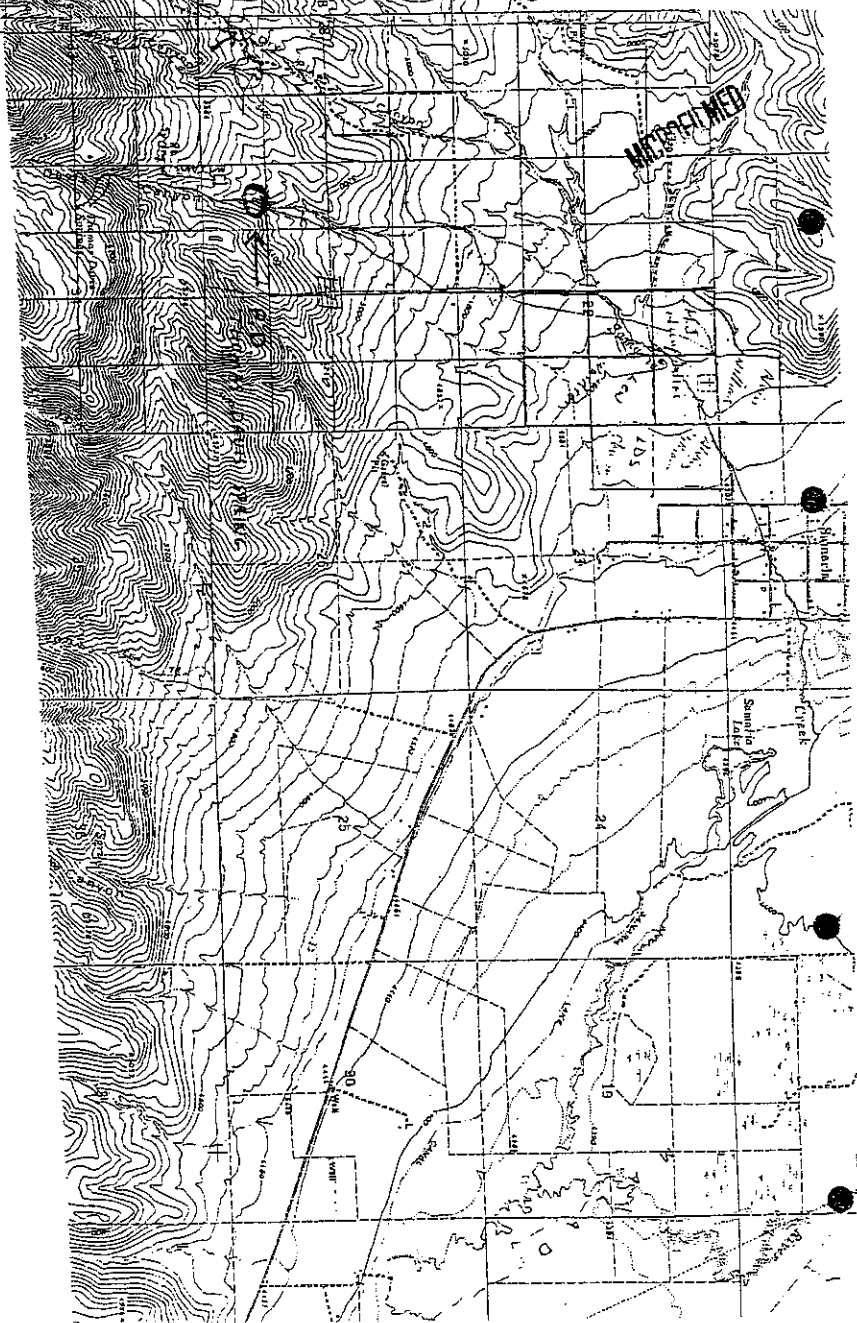
12/15/81



THAMARIA

3588 M. SE

R.35 E.



The S. & S. W. M. & S. Co

To

The S. W. and S. Co

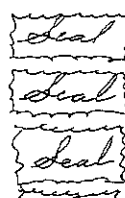
SS.

This Indenture, Made the 31st day of July in the year of our Lord one thousand eight hundred and ninety three Between, The Samaria and South West Mountain Water and Irrigating Company party of the first part and The Samaria Water and Irrigating Company of the same place the party of the second part, Witnesseth, that the said party of the first part, for and in consideration of the sum of Fifty dollars, lawful money of the United States of America, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, remised, released, conveyed and confirmed and by these presents does grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part and to its heirs and assigns forever, all those certain streams of water in what is known as dry pine, Rose Bush, and Thomas Davis Canyons near Samaria, in Oneida County, Idaho, being the same water duly located by said grantor Company herein on the 3rd day of July 1893 and filed for record in the office of the County Recorder of said County on said date.

Together with all and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said part of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances. To have and to hold, all and singular, the said premises, together with the appurtenances, unto the said party of the second part, and its heirs and assigns forever.

In Witness Whereof, the said party of the first part has hereunto set its hand and seal the day and year first above written.

Signed, Sealed and Delivered } Richard Morse
in the Presence of } James Thomas
Daniel J. Williams } Daniel E. Price
10. 5. 10 } 10. 5. 10



as of said
party.

State of Idaho } ss.
County of Oneida }

On this 31st day of July A.D. one thousand eight hundred and ninety three before me a Justice of the Peace in and for Samaria Precinct Oneida County duly commissioned and qualified, personally appeared the within named Richard Morse, Jas Thomas, Daniel Price, David Bowen and Jeremiah A Williams, Directors of said Company named therein whose names are subscribed to the foregoing Deed of Conveyance as grantors therein, personally known to me to be the identical person mentioned in and who executed the same, and duly acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In Witness Whereof, I have hereunto set my hand and the day and year in this certificate first above written.

David T. Davis

Justice of the Peace
Samaria Precinct, Oneida County, Idaho.

Recorded at the request of Stone and Evans
October 27th A.D. 1893 at 3³⁰ P.M.

C. T. Thomas

Recorder of Oneida Co

70
 Notice of Water Right } Thomas & Davis
 James Thomas } Canyon

To all whom these presents may come greeting:

Be it known that James Thomas, Richard Morse, Daniel E. Price, John E. Price, William R. Thomas, Daniel J. Williams, Jeremiah H. Williams, William Jones, & David Bowen, of Samaria, Oneida County, Idaho, do hereby publish and declare, as legal notice to all the world,

I. That they have a legal right to the use, possession and control of said claim on hundred and fifty inches of water of Thomas & Davis Canyon $2\frac{1}{2}$ miles South West of Samaria in said County and State, measured under a four inch pressure and flowing at the point of diversion, which point of diversion is described as follows: at a point on the East side of said Canyon about one fourth mile below the mouth of said canyon.

II. That the special purpose for which said water is to be used, is to irrigate the lands of the appropriators herein and for domestic and culinary purposes. That the place of intended use, is on the lands of the appropriators herein, situated North and North East from said point of diversion and situated along the ditch conducting the water mentioned herein.

III. That we intend to divert it from said Thomas & Davis Canyon by means of a ditch of the following dimensions and carries or conducts _____ inches of water from said canyon a ditch 2 feet wide and $1\frac{1}{2}$ feet deep.

Witness our hands at Samaria, Idaho, July 3rd 1893.

James Thomas
 Richard Morse
 Locators { Daniel E. Price
 John E. Price
 State of Idaho } ss
 County of Oneida }

William R. Thomas
 Daniel J. Williams
 Jeremiah H. Williams
 William Jones
 David Bowen

Richard Morse being first duly sworn deposes and says that he is of lawful age and one of the appropriators and claimants of the water and water right mentioned in the foregoing notice of appropriation and claim and the persons whose names are subscribed thereto as appropriators and claimants he knows, and also knows the contents of said instrument and that the same is true and correct.

Richard Morse.

Subscribed and sworn to before me this 3rd day of July 1893.

Seal

C. D. Stone
 U.S. Circuit Court Commissioner

State of Idaho } ss
 County of Oneida }

Samuel E. Price being duly sworn says that he is one of the appropriators named herein, that the foregoing is a true copy of the notice posted at point designated therein on the 3rd day of July 1893.

Samuel E. Price.

Subscribed and sworn to before me this the 3rd day of July 1893.

Seal

W. R. Evans, Notary Public

Recorded at the request of Stone & Evans

July 5th 1893 at 25 minutes past 10 A.M.

C. D. Stone, Recorder of Oneida Co.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
AMENDED
CLAIM TO A WATER RIGHT

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

Notice is hereby given that Samaria Water and Irrigation Company, c/o David Reel, President
(Name of Claimant)
5176 South, 4400 West, Malad, Idaho 83252 Telephone No: (208) 766-2828
(Mailing Address) (Zip Code)

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

1. Date of Priority: (When the water was first applied to beneficial use) July 3, 1893

A claim is not acceptable for the use of surface water with a priority later than May 20, 1971. A claim is not acceptable for the use of ground water with a priority date later than March 25, 1963, unless the water is used for domestic purposes as defined in Section 42-111, Idaho Code.

2. Describe the source of water: (Name of stream, lake, spring, etc., or ground water)
Rose Bud Spring tributary to Samaria Creek

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

(cfs or af)	(Irrigation, Domestic, Stock, Etc.)	(Both dates inclusive) (MM/DD) (MM/DD)	
Quantity <u>1.0 cfs</u>	Use <u>Irrigation</u>	Period of Use From <u>04/01</u>	to <u>11/01</u>
Quantity <u>.01 cfs</u>	Use <u>Stockwater</u>	Period of Use From <u>05/01</u>	to <u>09/01</u>
Quantity _____	Use _____	Period of Use From _____	to _____
Quantity _____	Use _____	Period of Use From _____	to _____

4. 1.0 cfs TOTAL QUANTITY USED.
(cfs or af)

5. A) Location of point of diversion is SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of _____ $\frac{1}{4}$ Govt. Lot _____
Sec. 28 Township 15 South Range 35 East B.M., Oneida County; additional points
of diversion, if any: _____

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch etc.). Give sizes and capacities. Be specific. Describe any changes in the system and give the date of the change.

Diversion at spring and 4 miles of open ditch used for irrigation.

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

Twp.	Rge.	Sec.	NE¼				NW¼				SW¼				SE¼				Total Acres
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
15	35	14															20		20
15	35	23	35	20			5	25							20				105
15	35	24	40	40	40	40	40	40	40	40	40	40	30	40	40	40	40	40	630
15	35	25	40	10			35									5			90

TOTAL ACRES 845

- B) If water is used for purposes other than irrigation, fully describe the use. Be specific. Water is used for stockwater during grazing season.

NOTE: Include here the type and number of stock watered: Range cattle - 600 head

7. Remarks: Water is put into canal to help reduce salt content of canal water to all users below spring.

8. **Map** - Attach an 8½"x11" map clearly identifying the point of diversion and the place of use by 40-acre subdivisions, section, township and range of the public land survey system. (A photocopy of a USGS 7½ minute topographic quadrangle map is preferred.) Attach an **aerial photograph** of the place of use if available.

State of Idaho)
) ss.
 County of)

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

David Reel, President of Samaria Water and Irrigation Company

Sworn to before me this _____ day of _____

Notary Public

Residing at: _____

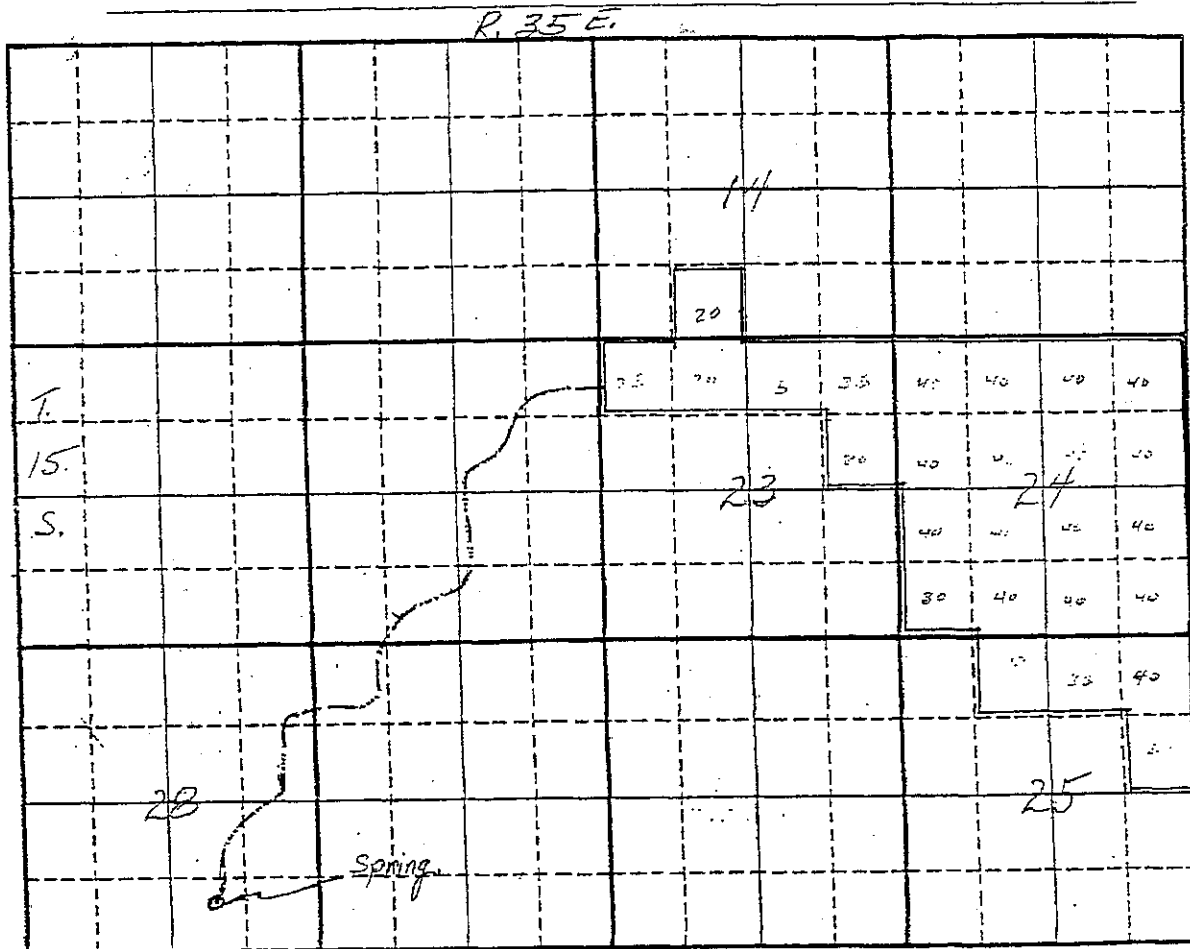
My commission expires: _____

FOR DEPARTMENT USE ONLY

Received by _____ Date _____
 Prelim. check by _____ Date _____
 Fee _____ Receipt # _____
 Receipt prepared by _____ Date _____

Published in _____
 Publication dates _____
 Publication checked by _____ Date _____
 Exceptions filed by _____

(18) Remarks _____



Scale: 2 inches equal 1 mile.

Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

State of Idaho)
County of ONEIDA) ss.

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

SAMARIA WATER & IRRIGATION CO.

Sworn to before me this 16th day of December

Samaria Water & Irrigation Co. President
(Claimant)

19 80

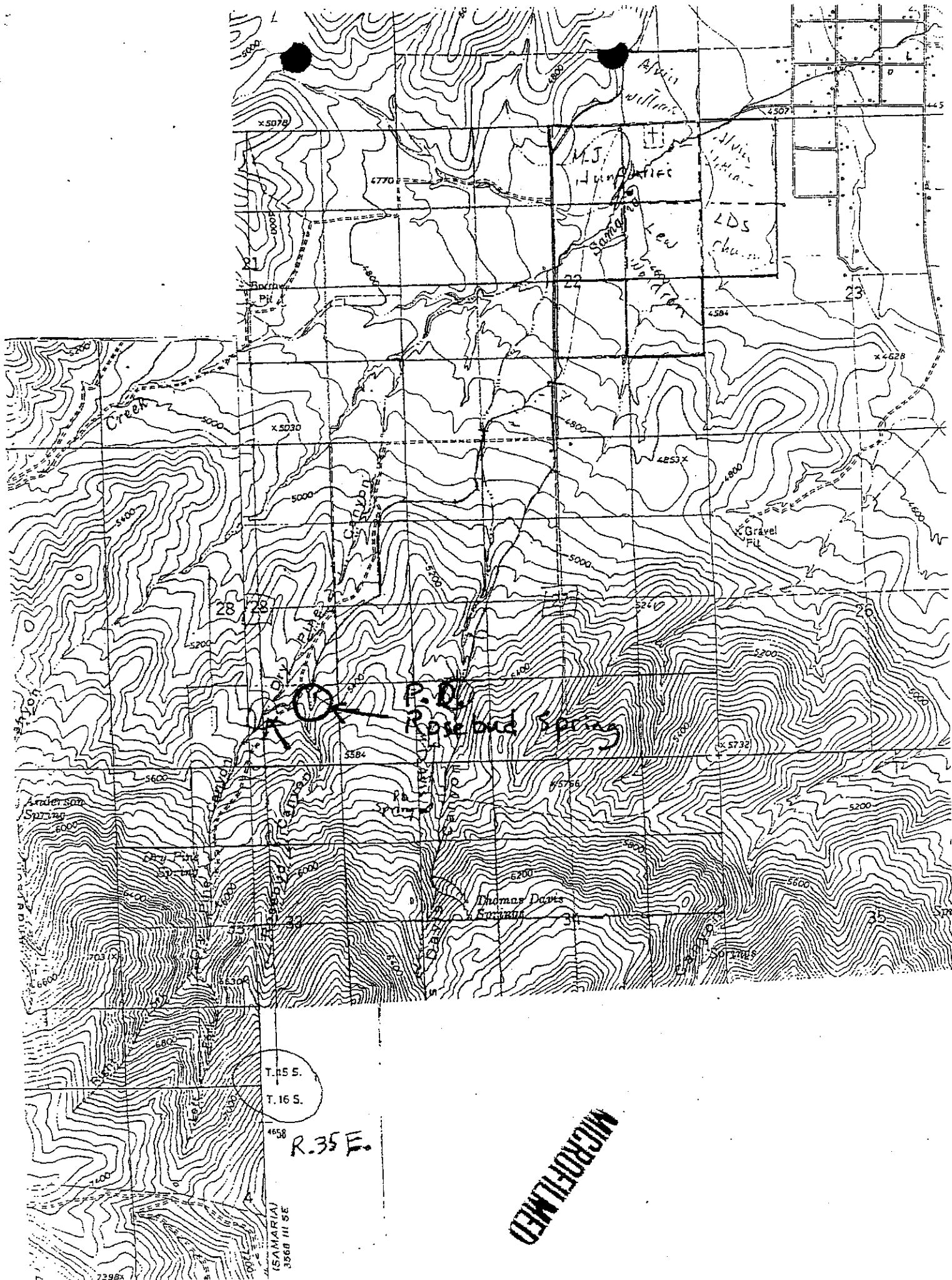
Notary Public
Residing at Malad City, Idaho

My commission expires Life

FOR DEPARTMENT USE ONLY

Received by JK Date 12/19/80 Exception filed by: _____ Date _____
Premium check by JK Date 12-22-80
\$10.00 fee received by JK Date 12/22/80 # 16130
Published in Idaho Express
Dates 12/15/81

Forwarded to claimant by: _____ Date _____



The S. & S. W. M. & S. Co }
To } ss.
The S. W. and S. Co }

This Indenture, Made the 31st day of July in the year of our Lord one thousand eight hundred and ninety three Between, The Samaria and South West Mountain Water and Irrigating Company party of the first part and The Samaria Water and Irrigating Company of the same place the party of the second part, Witnesseth, that the said party of the first part, for and in consideration of the sum of fifty dollars, lawful money of the United States of America, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, remised, released, conveyed and confirmed and by these presents does grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part and to its heirs and assigns forever, all those certain streams of water in what is known as dry pine, Rose Bush, and Thomas Davis Canyons near Samaria, in Oneida County, Idaho, being the same water duly located by said grantor Company herein on the 3rd day of July 1893 and filed for record in the office of the County Recorder of said County on said date.

Together with all and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said part of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances. To have and to hold, all and singular, the said premises, together with the appurtenances, unto the said party of the second part, and its heirs and assigns forever.

In Witness Whereof, the said party of the first part has hereunto set its hand and seal the day and year first above written,

Signed, Sealed and Delivered } Richard Morse
in the Presence of } James Thomas
Daniel J. Williams } Daniel E. Price
10, 1893 } 10 10

Seal
Seal
Seal
out of hand
harry

State of Idaho } ss.
County of Oneida }

On this 31st day of July A.D. one thousand eight hundred and ninety three before me a Justice of the Peace in and for Samar Precinct Oneida County duly commissioned and qualified, personally appeared the within named Richard Morse, Jas Thomas, Daniel Price, David Bowen and Jeremiah A. Williams, Directors of said Company named therein whose names are subscribed to the foregoing Dec of Conveyance as grantors therein, personally known to me to be the identical person mentioned in and who executed the same, and duly acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In Witness Whereof, I have hereunto set my hand and the day and year in this certificate first above written.

David T. Davis

Justice of the Peace
Samar Precinct, Oneida County, Idaho.

Recorded at the request of Stone and Evans
October 27th A.D. 1893 at 3³⁰ P.M.

C. T. Koons

Recorder of Oneida Co

Notice
of
Water Right
of
Rose Brush Canyon
James Thomas et al

To whom these presents may come greeting:

Be it remembered that James Thomas, Daniel J. Williams, Jeremiah H. Williams, Richard Morse, Daniel E. Price, John E. Price, William R. Thomas, William Jones and David Bowen, of Samaria, Oneida County, Idaho, do hereby publish and declare, as legal notice to all the world,

1st. That they have a legal right to the use, possession and control of and claim fifty inches of the waters of Rose Brush Canyon, 3 miles South West of Samaria in said County and State measured under a four inch pressure and flowing at the point of diversion, which point of diversion is described as follows: At a point at the mouth of said Canyon where a ditch from Dry Pine Canyon intersects the same.

2nd. That the special purpose for which said water is to be used, is to irrigate the lands of the appropriators herein and for domestic and culinary purposes.

That the place of intended use, is on the lands of the appropriators herein, situated North and North East from said point of diversion and situated along the ditch conducting the water mentioned herein.

3rd. That we intend to divert it from said Rose Brush Canyon by means of a ditch of the following dimensions and carries or conducts fifty inches of water from said Canyon, a ditch one foot wide and one ft deep.

Witness our hands at Samaria, Idaho, July 3 1893.

James Thomas
Richard Morse
Daniel E. Price
John E. Price

William R. Thomas
Daniel J. Williams
Jeremiah H. Williams
William Jones
David Bowen

State of Idaho, County of Oneida } ss.

Richard Morse being first duly sworn deposes and says that he is of lawful age and one of the appropriators and claimants of the water and water right mentioned in the foregoing notice of appropriation and claim, and the persons whose names are subscribed thereto as appropriators and claimants he knows, and also knows the contents of said instrument and that the same is true and correct. Richard Morse.

Subscribed and sworn to before me this 3rd day of July, 1893.

Seal

W. H. Stone, Circuit Court Commissioner.

State of Idaho, County of Oneida } ss.

Daniel E. Price being duly sworn deposes and says that he is one of the appropriators named herein and that the foregoing is a full true and correct copy of the notice posted at place designated herein on the 3rd day of July 1893. Daniel E. Price.

Subscribed and sworn to before me this 3rd day of July, 1893. W. H. Stone, Notary Public

Seal

Recorded at the request of Stone and Evans
July 5th 1893 at 15 minutes past 10 AM.

C. H. Jones Recorder of Oneida Co

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
AMENDED
CLAIM TO A WATER RIGHT

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

Notice is hereby given that Samaria Water and Irrigation Company, c/o David Reel, President
(Name of Claimant)
5176 South, 4400 West, Malad, Idaho 83252 Telephone No: (208) 766-2828
(Mailing Address) (Zip Code)

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

1. Date of Priority: (When the water was first applied to beneficial use) July 3, 1893

A claim is not acceptable for the use of surface water with a priority later than May 20, 1971. A claim is not acceptable for the use of ground water with a priority date later than March 25, 1963, unless the water is used for domestic purposes as defined in Section 42-111, Idaho Code.

2. Describe the source of water: (Name of stream, lake, spring, etc., or ground water)
Dry Pine Canyon Springs tributary to Samaria Creek

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

(cfs or af)	(Irrigation, Domestic, Stock, Etc.)	(Both dates inclusive) (MM/DD) (MM/DD)
Quantity <u>2.0 cfs</u>	Use <u>Irrigation</u>	Period of Use From <u>04/01</u> to <u>11/01</u>
Quantity <u>.01 cfs</u>	Use <u>Stockwater</u>	Period of Use From <u>05/01</u> to <u>09/01</u>
Quantity _____	Use _____	Period of Use From _____ to _____
Quantity _____	Use _____	Period of Use From _____ to _____

4. 2.0 cfs TOTAL QUANTITY USED.
(cfs or af)

5. A) Location of point of diversion is SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of _____ Govt. Lot _____
Sec. 28 Township 15 South Range 35 East B.M., Oneida County; additional points
of diversion, if any: _____

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch etc.). Give sizes and capacities. Be specific. Describe any changes in the system and give the date of the change.

Diversion at spring and 4 miles of open ditch used for irrigation.

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

Twp.	Rge.	Sec.	NE¼				NW¼				SW¼				SE¼				Total Acres
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
15	35	14															20		20
15	35	23	35	20			5	25							20				105
15	35	24	40	40	40	40	40	40	40	40	40	40	30	40	40	40	40	40	630
15	35	25	40	10			35									5			90

TOTAL ACRES 845

B) If water is used for purposes other than irrigation, fully describe the use. Be specific. Water is used for stockwater during grazing season.

NOTE: Include here the type and number of stock watered: Range cattle - 600 head

7. Remarks: Water is put into canal to help reduce salt content of canal water to all users below spring.

8. **Map** - Attach an 8½"x11" map clearly identifying the point of diversion and the place of use by 40-acre subdivisions, section, township and range of the public land survey system. (A photocopy of a USGS 7½ minute topographic quadrangle map is preferred.) Attach an **aerial photograph** of the place of use if available.

State of Idaho)
) ss.
 County of)

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

David Reel, President of Samaria Water and Irrigation Company

Sworn to before me this _____ day of _____.

Notary Public
 Residing at: _____

My commission expires: _____

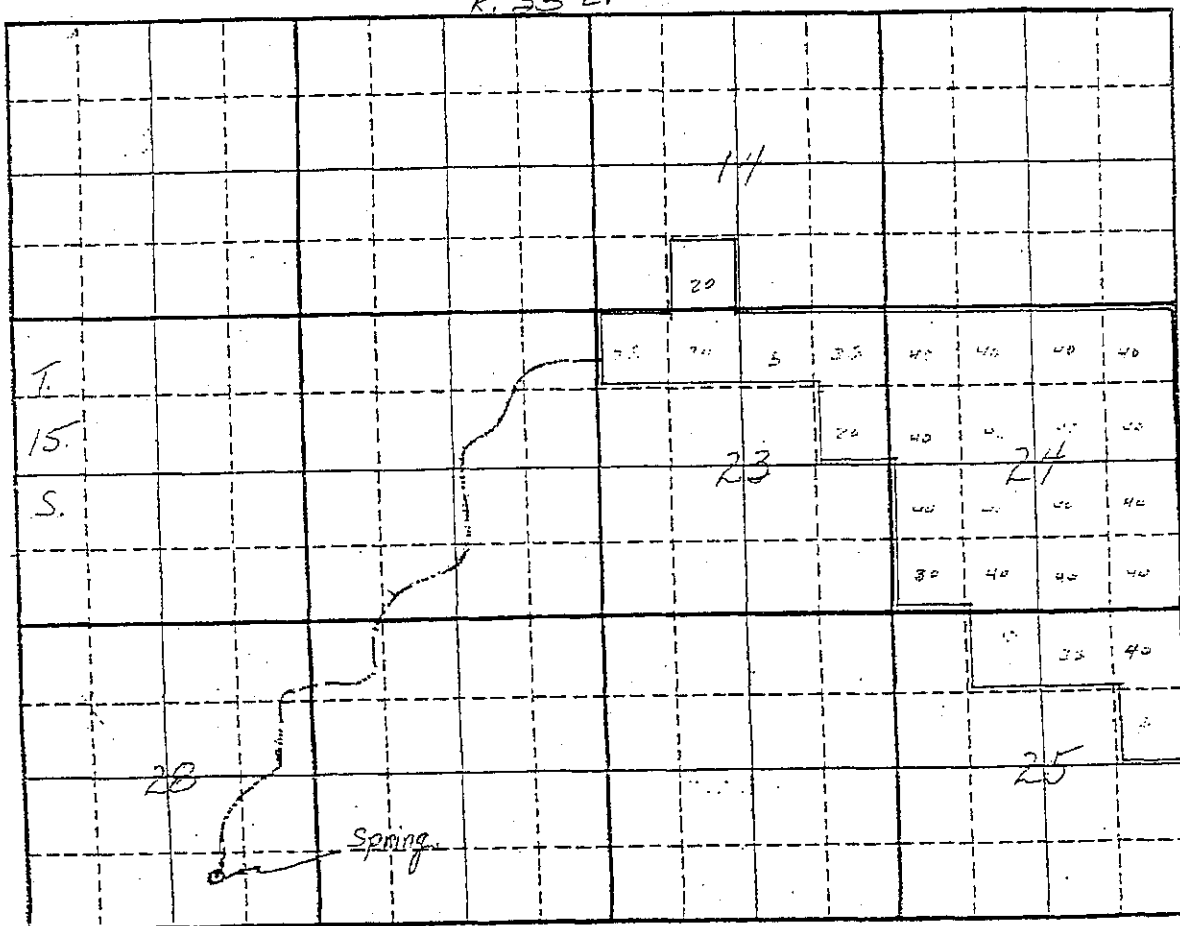
FOR DEPARTMENT USE ONLY

Received by _____ Date _____
 Prelim. check by _____ Date _____
 Fee _____ Receipt # _____
 Receipt prepared by _____ Date _____

Published in _____
 Publication dates _____
 Publication checked by _____ Date _____
 Exceptions filed by _____

(B) Remarks _____

R. 35 E.



Scale: 2 inches equal 1 mile.

Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

State of Idaho)
County of ONEIDA) ss.

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

SAMARIA WATER & IRRIGATION CO.

Samaria Water President
(Claimant)

Sworn to before me this 16th day of December

19 80

Notary Public
Residing at Malad City, Idaho

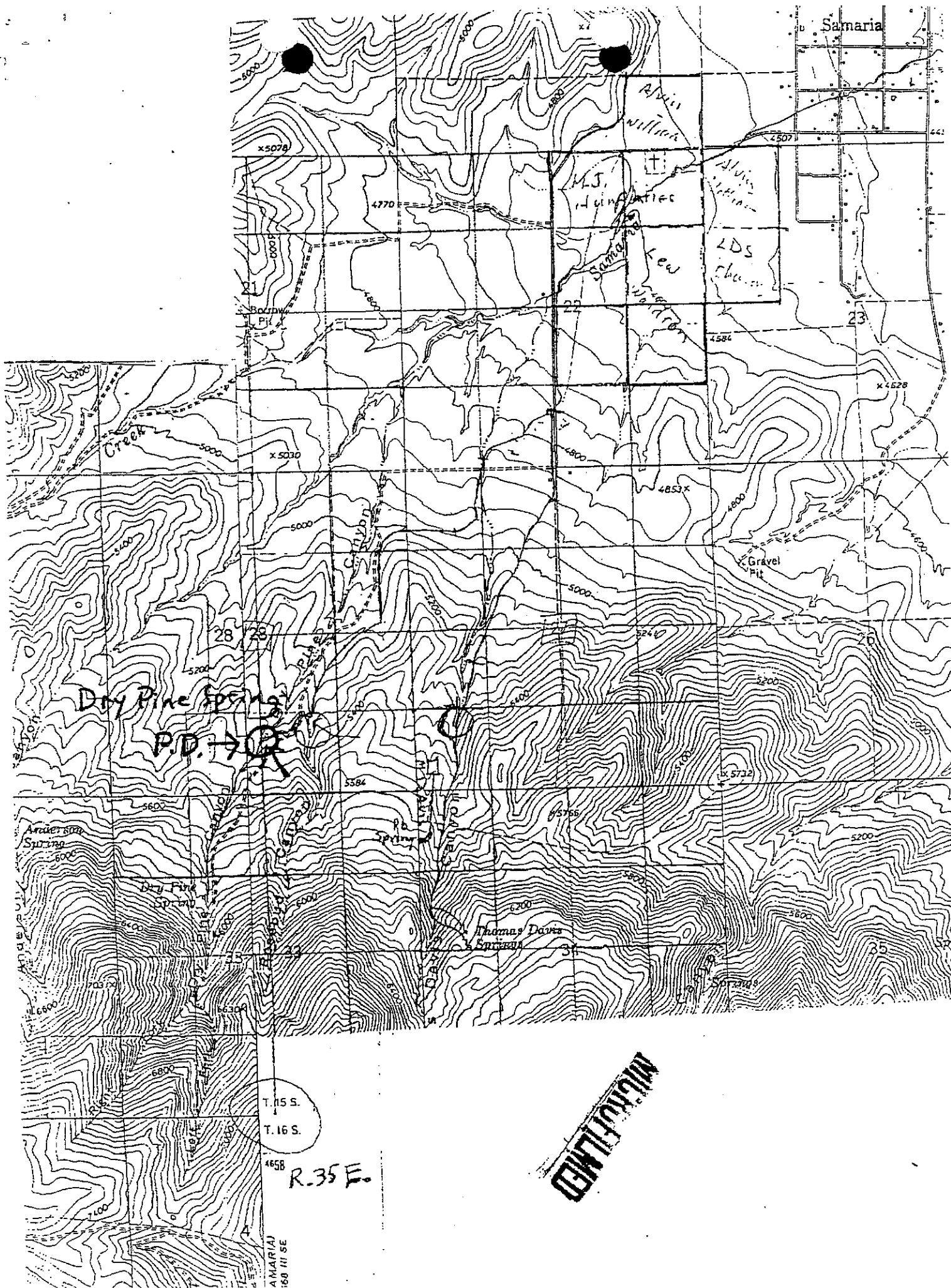
My commission expires Life

FOR DEPARTMENT USE ONLY

Received by JK Date 12/19/80 Exception filed by: _____ Date _____
Folio check by JK Date 12-22-80
\$30.00 fee received by JK Date 12/22/80 # 16130
Published in Idaho Enterprise
Dates 12/15/81

Forwarded to
claimant by: _____

Date _____



The S. & S. W. M. & S. Co

To

The S. W. and S. Co

SS.

This Indenture, Made the 31st day of July in the year of our Lord one thousand eight hundred and ninety three Between, The Samaria and South West Mountain States and Irrigating Company party of the first part and The Samaria Water and Irrigating Company of the same place the party of the second part, Witnesseth, that the said party of the first part, for and in consideration of the sum of Fifty dollars, lawful money of the United States of America, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, remised, released, conveyed and confirmed and by these presents does grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part and to its heirs and assigns forever, all those certain streams of water in what is known as dry pine, Rose Bush, and Thomas Davis Canyons near Samaria, in Oneida County, Idaho, being the same waters duly located by said grantor Company herein on the 3rd day of July 1893 and filed for record in the office of the County Recorder of said County on said date.

Together with all and singular the tenements hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the rents issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said part of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances. To have and to hold, all and singular, the said premises, together with the appurtenances, unto the said party of the second part, and its heirs and assigns forever.

In Witness Whereof, the said party of the first part has hereunto set its hand and seal the day and year first above written,

Signed, Sealed and Delivered } Richard Morse
in the Presence of } James Thomas
Daniel J. Williams } Daniel E. Price

10. 10. 10

Seal
Seal
Seal
of said
party.

State of Idaho }
County of Oneida } ss.

On this 31st day of July A.D. one thousand eight hundred and ninety three before me a Justice of the Peace in and for Samar Precinct, Oneida County duly commissioned and qualified, personally appeared the within named Richard Morse, Jas Thomas, Daniel Price, David Bowen and Jeremiah A. Williams, Directors of said Company named therein whose names are subscribed to the foregoing Deed of Conveyance as grantors therein, personally known to me to be the identical person mentioned in and who executed the same, and duly acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In Witness Whereof, I have hereunto set my hand the day and year in this certificate first above written.

David J. Davis

Justice of the Peace
Samar Precinct, Oneida County, Idaho.

Recorded at the request of Stone and Evans
October 27th A.D. 1893 at 3³⁰ P.M.

C. J. Evans

Recorder of Oneida Co

V
 11
 } *File of Water Right*
 State of Idaho } *James Thomas et al* } Dry Pine Canyon.
 County of Oneida } ss

To all whom these presents may concern,
 Be it known, That James Thomas, Richard Morse, David E Price, John E Price, H. M. Thomas, Dan'l J. Williams, Jeremiah A. Williams, Wm. Jones and David Bowen of Samaria in said County and State, do hereby publish and declare, as a legal notice to all the world, 1st. That we have a legal right to the use, possession and control of and claim One hundred inches of the waters of Dry Creek Canyon 3 miles S. W. of Samaria in said County and State, measured under a four inch pressure, and flowing at the point of diversion, which point of diversion is described as follows: at a point 40 rods below the mouth of said Canyon on the East side of said Canyon and conducted into Rose Brush Canyon, 2nd. That the special purpose for which said water is intended to be used, is to irrigate the lands of the appropriators herein and for domestic and culinary purposes. That the place of intended use, is on the lands of the appropriators herein situated North and N. East from said point of diversion and situated along the ditch conducting the water herein. 3rd. That we intend to divert it from said Dry Creek Canyon by means of a ditch of the following descriptions, Two feet wide and one foot deep in size and carries or conducts 100 inches of water from said Canyon.

Witness our hands at Samaria, Idaho, this 3rd day of July, 1893.

Locators { James Thomas
 Richard Morse
 David E Price
 John E Price

Wm. M. Thomas
 Dan'l J. Williams
 Jeremiah A. Williams
 William Jones
 David Bowen

State of Idaho, County of Oneida } ss

Richard Morse having been first duly sworn deposes and says that he is of lawful age and one of the appropriators and claimants of the water and water right mentioned in the foregoing Notice and Statement of appropriation and claim and the persons whose names are subscribed thereto as the appropriators and claimants that he knows the contents of said notice and statement foregoing and that the matters and things therein stated are true.

Richard Morse.

Seal Subscribed and sworn to before me this 3rd day of July 1893.
 C. F. Stone U.S. Circuit Court Commissioner.

State of Idaho, County of Oneida } ss.

Daniel E Price being duly sworn says that he is one of the appropriators herein and that the foregoing instrument is a full true and correct copy of a notice by him posted at place designated therein on the 3rd day of July 1893.

Daniel E Price.

Seal Subscribed and sworn to before me this 3rd day of July 1893.

State of Idaho, County of Oneida } ss.

H. M. Evans Notary Public.

I hereby certify that this instrument was filed for record at request of Stone & Evans at 20 minutes past 10 o'clock A.M., this 5th day of July A.D. 1893. at my office.

C. F. Stone
 Recorder of Oneida Co

BY LAWS
OF

THE SAMARIA WATER AND IRRIGATION COMPANY

ARTICLE 1. OFFICE.

The principal office of the Corporation in the state of Idaho will be located at Samaria in the county of oneida.

ARTICLE 2. Stockholders.

Section 1. Annual Meeting.

The regular annual meeting of the stockholders shall be held on the frist Monday in March of each year at Samaria ,Idaho, for the purpose of electing Directors and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday in the state of Idaho, such meeting shall be held on the next succeeding business day.

Section 2. Special Meetings.

Special meetings of the stockholders for any purpose may be called by the President or by the Board of Directors and shall be called by the President at the request of holders of not less than one-fifth of all the outstanding shares of the corporation entitled to vote at the meeting.

Section 3. Notice of Meeting.

Written notice of the time, place and purposes of meetings including annual meetings shall be given by the secretary or other person authorized so to do, to all stockholders entitled to vote at such meeting, at least ten (10) days prior to the day named for the meeting. If such written notice is placed in the united states mail, postage prepaid, and addressed to a shareholder at his last known post-office address, notice shall be deemed to have been given him.

Section 4. Quorum.

A majority of the outstanding shares of the corporation entitled to vote, represented in person or by proxy, shall constitute a quorm at a meeting of the shareholders, provided however, that at the annual meetings of the shareholders duly noticed, those shareholders present either in person or by proxy shall constitute a quorm and may elect Directors and transact all other business proper to be done by them.

Section 5. Proxies.

At all meetings of the stockholders, a stockholder may vote by proxy excuted in writing by the stockholders or by his duly authorized attorney in fact. Such proxy shall be filed with the secretary of the corporation before or at the time of the meeting.



Section 6. Voting of Shares.

Subject to the provisions of Section 7 of this Article II, each outstanding share entitled to vote shall be entitled to one vote upon each matter submitted to a vote at a meeting of stockholders.

Section 7. Cumulative Voting.

At each election for Directors every Stockholder entitled to vote at such election shall have the right to vote, in person or by proxy, the number of shares owned by him for as many persons as there are Directors to be elected and for whose election he has a right to vote, or to cumulate his votes by giving one candidate as many votes as the number of such Directors multiplied by the number of his shares shall equal or by distributing such votes on the same principle among any number of candidates.

ARTICLE III. Directors.

Section 1. General Powers.

The business and affairs of the corporation shall be managed by its Board of Directors.

Section 2. Number, Tenure, and Qualifications.

The number of Directors of the Corporation shall be Seven (7) consisting of a President, a Vice President and five Directors.

Each Director shall hold office until the next annual meeting of the Stockholders and until his successor shall have been elected and qualified.

Section 3. Meetings.

A regular meeting of the Board of Directors shall be held without notice other than this By-Law immediately after, and at the same place as, the annual meeting of Stockholders.

The Board of Directors may provide by resolution the time and place for the holding of additional regular meetings without other notice than such resolution.

Special Meetings of the Board of Directors may be called by or at the request of the President or any two Directors.

Section 4. Notice.

Notice of any Special Meeting shall be given at least two days previously thereto by written notice delivered personally or mailed to each Director at his business address.

Section 5. Quorum.

A majority of the number of Directors shall constitute a quorum for the transaction of business at any meeting of

the Board of Directors, but if less than such majority is present at a meeting a majority of the Directors present may adjourn the meeting from time to time without further notice.

Section 6. Manner of Acting.

The act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 7. Vacancies.

Any vacancy occurring in the Board of Directors may be filled by the affirmative vote of a majority of the remaining Directors though less than a quorum of the Board of Directors.

A Director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office.

Section 8. Compensation.

The members of the Board of Directors shall receive no compensation for their services as such.

Section 9. Powers.

(a) To call Special Meetings of the Stockholders at their discretion, giving such notice as prescribed by law. It shall be their duty to call Special meetings upon the written request of persons representing at least one-fifth of the capital stock actually paid up.

(b) To appoint a Watermaster on the fourth Monday of March of each year, prescribe his duties, fix his compensation and require of him such security of the faithful performance of his duties as may be determined by the Board of Directors.

(c) To levy and cause to be collected such assessments as may be necessary for the use of the Company, in the manner provided by law. No water shall be delivered to any person owning stock, or using water under stock, upon which an assessment has been made and remains unpaid.

(d) To make rules and regulations for the guidance of the officers of the Company.

(e) To incur such indebtedness as they may deem necessary for the normal operation and maintenance of the Company and distributing system during the year of tenure of the Board then acting.

(f) It shall be the duty of the Board to cause to be kept a complete record of all their meetings and acts, and also of the proceedings of the Stockholders; present a full statement at the regular annual meeting of the Stockholders showing in detail the collections, disbursements, and liabilities of the Company, and generally the condition of its property. A similar statement shall be presented at

any other meeting of the Stockholders when thereto previously requested by persons representing at least one-third of the stock actually paid up.

(g) To cause to be issued to the Stockholders in proportion to their interest in the Company certificates of stock not to exceed in the aggregate the capital stock of the Company. Said certificates to be subject to assessment as herein provided.

(h) They shall impose a fine of not less than Ten (\$10.00) nor more than Fifty Dollars (\$50.00) upon any member of the Company for each and every time that he takes any water out of his turn and without the consent of the Watermaster, and shall instruct the Watermaster after such fine has been imposed upon any Stockholder to withhold the water from said Stockholder until the fine is paid.

(i) All fines that may be collected of any members of the Company shall be expended under the direction of the Board of Directors the same as any other money belonging to the Company.

(j) To make rules and regulations for the guidance of the Watermaster as they may deem necessary to enable him to distribute the water of the Company to its Stockholders according to the shares owned by each Stockholder, and to this end shall provide the Watermaster with a suitable Book to keep time of watering. He shall set down the date and time of day the Company commenced irrigating and the names of the persons using it and the number of shares each person draws water on, and the time when each person commenced and left off, and the amount of inches each had at the measuring gate.

(k) No contract, appointment or any bargain whatever shall be valid or binding on the Company when such contract appointment or bargain shall be between the Board of Directors and one of its own members, other than the lawful business of the Company.

(l) It shall be the duty of the Board to inspect or cause to be inspected the springs, ditches and channels of all springs and sources of water belonging to the Company and to prevent the appropriation of Company waters by any person whomsoever.

ARTICLE IV. Officers.

Section 1. Number.

The officers of the corporation shall be a President, a Vice President, a Secretary, and a Treasurer. The Secretary may act in the dual capacity of Secretary- Treasurer at the instance of the Board of Directors.

Section 2. Election and term of Office.

The officers to be elected by the Board of Directors shall be elected annually by the Board of Directors at the first meeting of the Board of Directors held after each annual meeting of the Stockholders. Each officer shall

hold office until his successor shall have been duly elected and shall have qualified or until his death or until he shall resign or shall have been removed from office.

Section 3. Removal.

Any officer or agent elected or appointed by the Board of Directors may be removed by the Board of Directors whenever in its judgment the best interests of the Company would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

Section 4. Vacancies.

A vacancy in the office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board of Directors for the unexpired portion of the term.

Section 5. President.

The President shall be the principal executive officer of the Company, and, subject to the control of the Board of Directors, shall in general supervise and control all of the business and affairs of the corporation. He shall have the following powers, and it shall be his duty:

(a) Preside at all meetings of the Board of Directors and of the Stockholders.

(b) Sign as President all certificates of stock and all contracts and other instruments in writing which have been first approved by the Board of Directors.

(c) Draw all checks and warrants on the Treasurer.

(d) He shall cast the tie-breaking vote in all situations where a tie vote has been encountered by the Stockholders or the Board of Directors.

(e) He shall supervise all the officers and employees of the Company, see that their duties are properly discharged, and report to the Board of Directors any negligence or mis-conduct of such officers and employees.

Section 6. Vice President.

In the absence of the President or in the event of his death, or inability or refusal to act, the Vice-President shall perform the duties of the President, and when so acting, shall have all the powers and be subject to all the restrictions upon the president.

Section 7. Secretary.

The Secretary shall be appointed by the Board of Directors at their first meeting and shall hold his office during the pleasure of the Board of Directors. He shall have the following powers and be charged with the following duties:

(a) Keep the minutes of the Stockholders' meetings and of the Board of Directors' meetings in one or more books provided for that purpose.

(b) See that all notices are duly given in accordance with the provisions of these By Laws as required by law.

(c) Be the custodian of the corporate records and of the seal of the Company, and see that the Seal of the Company is affixed to all documents, the execution of which on behalf of the corporation under its seal, is duly authorized.

(d) Keep a register of the postoffice address of each Stockholder which shall be furnished to the Secretary by such Stockholder.

(e) Sign with the President, or Vice President, certificates for shares of the corporation, the issuance of which shall have been authorized by resolution of the Board of Directors.

(f) Have general charge of the stock transfer books of the Company.

(g) In general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

Section 8. Treasurer.

The Treasurer shall be appointed by the Board of Directors at their first meeting and shall hold his office at the pleasure of the Board of Directors. He shall have the following powers and be charged with the following duties:

(a) Have charge and custody of and be responsible for all funds and securities of the corporation; receive and give receipts for moneys due and payable to the Company from any source whatsoever, and deposit all such moneys in the name of the corporation in such Banks as shall be selected by the Board of Directors.

(b) In general perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

ARTICLE V. Contracts, Loans and Checks.

Section 1. Contracts.

The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances.

No contract by any officer or officers of the Company shall be valid without the previous authorization or subsequent ratification of the Board of Directors.

Section 2. Loans.

No loans shall be contracted on behalf of the corporation and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors.

Section 3. Checks, Drafts, etc.

All checks, drafts, or other orders for the payment of Money, notes, or other evidences of indebtedness issued in the name of the corporation shall be signed by such officer or officers, agent or agents of the corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors.

ARTICLES VI. Certificates for Shares.

Section 1. Certificates for Shares.

Certificates representing shares of the corporation shall be in such form as shall be determined by the Board of Directors. Such Certificates shall be signed by the President and by the Secretary when issued. All certificates for shares shall be consecutively numbered.

The name and address of the person to whom the shares represented thereby are issued, with the number of shares and date of issue, shall be entered on the stock transfer books of the Company.

Section 2. Transfer of Shares.

Transfer of shares of the corporation shall be made only on the stock transfer books of the corporation by the holder of record thereof or by his legal representative, who shall furnish proper evidence of authority to transfer, or by his attorney thereunto authorized by power of attorney duly executed and filed with the Secretary, and on surrender for cancellation of the certificate for such shares. The person in whose name shares stand on the books of the corporation shall be deemed by the corporation to be the owner thereof for all purposes.

No transfer of any shares of stock shall be valid upon which any assessments are due and unpaid, or the holder thereof is indebted in any way to the Company without the consent of the Board of Directors.

Section 3. Stock Rights.

Each share of stock issued and outstanding shall represent the right to share equally with every other share of stock issued and outstanding in the delivery and use of irrigation water available to the Company.

Section 4. Restriction on Sale.

No stock shall be sold hereafter in any instance where the use of the water therefrom shall be transferred to lands lying above the Pleasantview Hot Springs. It is the intent of this restriction that as much clean and clear water as possible be available for mixing with the water from the Hot Springs and use by persons below. No Stock

shall be transferred on the books of the Company where it can be shown that such transfer would result in the use of water contrary to this provision.

Section 5. Stock Assessable.

The capital stock of this corporation shall be assessable to defray costs of operation and other corporate indebtedness lawfully incurred.

ARTICLE VII. Watermaster.

Section 1. Duties.

The Watermaster shall have the management of all of the waters of the Company under the directors, and any other water that may be conveyed through the Company ditches. Water shall be timed whenever all the streams at the disposal of the Watermaster are taken.

Section 2. Rights of Stockholders.

Any member of the corporation that may be aggrieved by the action of the Watermaster or any other officer of the Company shall make his complaint in writing to the President of the Company. The President must notify the defendant of said Complaint and the time and place that an examination will be made before the Board of Directors, and said examination shall be made forthwith as soon as the Board can be called together and the defendant notified. The decision of the Board shall be final as far as the corporation is concerned.

ARTICLE VIII. Responsibilities of water users.

Section 1.

Every Stockholder shall be personally responsible for his gates, dams or flumes that leads water to his lands. It shall be good evidence against him before the Board of Directors if any water passes through his gate, dam, flume, without the consent of the Watermaster and out of his turn. He shall be dealt with according to subsection (h) of Article III unless he can prove by good evidence of his innocence.

Section 2.

No one shall have a right to take water from the Company's ditches without permission of the Watermaster.

ARTICLE IX. Ditches, Structures, and Water Rights.

Section 1. The Board of Directors shall cause the ditches of the Company to be repaired in time always before the commencement of the Irrigating season each year.

Section 2. The Board of Directors shall cause all gates and flumes, where water is measured, to be examined before irrigating time each year by a Watermaster and a member of the Board of Directors appointed and instructed as to their

duties not later than the last Saturday in March of each year who shall report in writing to the Board within seven days after their appointment recommending such repairs as shall be needed. They shall also examine the ditches at the same time and state in their report what places should be repaired, cleaned, or if any new ditches are needed, and estimate the expense to cover said repairs, cleanings or the making of the new ditches. Should any new gates or flumes be required, to estimate the amount and kind of material necessary to build said gates or flumes. The Board shall cause said repairs, or whatever the report calls for, to be done in time so as not to interfere with watering in the irrigating time.

Said Watermaster and member of the Board shall receive for such services a sum as allowed by the Board of Directors.

Section 3. It shall be the duty of the Board to cause to be built suitable gates and boxes, all of the same dimensions so that the same quantity of water may be given to each shareholder according to the shares held by him. Each and every aperture used must be the same dimensions all through one round of watering.

Section 4. When a gate or box is constructed by the Company hereunder, all costs of material and construction shall be paid for by the person using the same or for whose benefit it was made.

Section 5. No person using water from the Company, or having a right thereto, shall construct any fence, building or other obstruction within one rod of the Company ditches and canals.

Section 6. The approval of the Board in writing shall be first had before any bridge or culvert shall be constructed or installed in any Company ditch or canal.

Section 7. It shall be the duty of the owners and users of culverts, bridges and other structures and improvements on, in and near the Company ditches to clean the ditches through and around such structures in the Spring of the year and to keep the same clean in order that a free flow of water through or around such structures may be had.

ARTICLE X. General Provisions.

Section 1. Amendment.

These By Laws may be altered or amended at any annual meeting of the Company or at any Special meeting called for that purpose by a vote of two-thirds (2/3) of the outstanding stock of the Company.

Section 2. Possession.

These By Laws shall remain always in the possession of the Secretary of this Company. Copies shall be available and it shall be the duty of each Director upon taking the oath of office to seek the possession of the copy of his predecessor and retain possession thereof until he is succeeded in office.

Section 3. Officers to take oaths.

All Officers and Directors of this Company shall within one week of their election and before assuming the duties of their office, qualify by taking an oath before an officer authorized to administer oaths, that he will perform the duties of his office to the best of his ability, and in accordance with the laws of the State of Idaho and the By Laws of this Company. Said oath shall be in writing and shall be filed with the Secretary of the Company.

CERTIFICATE OF ADOPTION

State of Idaho

County of Oneida, ss

We, JOHN J. RODERICK, STEPHEN HUGHES, LEO BROWN, MELVIN J. DAVIS and JOSEPH R. MAY, being a majority of the Directors of THE SAMARIA WATER AND IRRIGATION COMPANY, and WARREN EDWARDS the Secretary thereof, do hereby certify that the foregoing BY LAWS were adopted as the By Laws of said The Samaria Water and Irrigation Company, at a Special meeting of the Stockholders duly called and held for that purpose on the 15th day of July, 1971, at 8:00 o'clock P.M. of said day by the affirmative vote of all stockholders present, represented in person or by proxy, 506.65 shares of the capital stock outstanding which being at said time more than two-thirds of the total issued and outstanding capital stock of said corporation.

Dated this 16th day of July, 1971.

Joseph R. May
Joseph R. May, President and Director

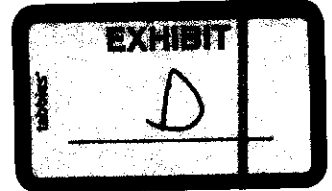
John J. Roderick
John J. Roderick, Director

Stephen Hughes
Stephen Hughes, Director

Leo Brown
Leo Brown, Director

Melvin J. Davis
Melvin J. Davis, Director

Warren Edwards
Warren Edwards, Secretary



ARTICLES OF INCORPORATION OF
THE SAMARIA WATER AND IRRIGATION COMPANY

KNOW ALL MEN BY THESE PRESENTS; That we the undersigned have this day voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the State of Idaho, for the re-incorporation of The Samaria Water and Irrigation Company whose present Charter has expired; and we do certify:

ARTICLE I.

That the name of this corporation shall be and is The Samaria Water and Irrigation Company.

ARTICLE II.

That the principal place of business of this corporation is and shall be at Samaria in the County of Oneida and State of Idaho.

ARTICLE III.

That the number of Directors shall be Seven; and until their successors are elected and qualified the following named persons shall be the officers and directors of this corporation, namely:

NAMES	RESIDENCE
David Hughes	Samaria, Idaho; President and Director
William A. Morse	Samaria, Idaho; Vice-President and Director
Eyrum W. Jones	Pleasantview, Idaho; Secretary and Treasurer
Levi S. Waldron	Gwenford, Idaho; Director
Samuel J. Williams	Samaria, Idaho; Director
Samuel Williams	Samaria, Idaho; Director
Alfred Atkinson	Samaria, Idaho; Director

ARTICLE IV.

That the term for which this corporation is to exist is and shall be Fifty Years from and after the date of its incorporation.

ARTICLE V.

That the amount of the capital stock of this corporation is and

D

will be issued upon the surrender of the same.

ARTICLE VI.

That the purposes for which this corporation is formed are to convey the waters of Big Malad River from a point about two miles below the head thereof, and also the waters of Sulphur Springs otherwise known as Warm Springs; and also the waters of Thomas Davis Rose Bush and Dry Pine streams, located North and South and West of Samaria, Oneida County, Idaho, by ditches, canals and aqueducts; or other means of conveying waters, to the lands in and about Samaria in the valley of Malad in said Oneida County, Idaho, for the purpose of irrigating said lands, and for the further purposes that this corporation may require; to establish reservoir sites; to build, erect and maintain reservoirs for the impounding of waters for agricultural purposes, and to buy, own, sell and acquire real estate necessary for the uses and requirements of this corporation; to apply for, acquire and obtain permits for the appropriation and distribution of waters for agricultural and irrigation purposes, and to retain all its acquired rights to waters, reservoir sites, ditch and canal rights of way, now owned or claimed and belonging to it, however evidenced and, to do all things necessary for the proper operation and management of this Company for its properties in Malad Valley, Oneida County, Idaho.

IN WITNESS WHEREOF we have hereunto set our hands and seals this the 8th. day of March 1924.

Signed and sealed
in the presence of

David Hughes	SEAL
Wm. L. Morse	SEAL
H. W. Jones	SEAL
S. J. Williams	SEAL
W. C. Waldron	SEAL
Samuel Williams	SEAL
W. F. Atkinson	SEAL
Owen L. Davis	SEAL
Samuel W. Price	SEAL

STATE OF IDAHO)
) SS
County of Oneida)

On this the 8th. day of March 1924 before me
J. Peter Jensen; Clerk of the District Court for said County
and State, personally appeared David Hughes; William E. Morse
Hyrum W. Jones; Samuel J. Williams; Levi S. Waldron; Samuel
Williams; Alfred Atkinson; Owen T. Davis; Daniel E. Price
John Daniels and J.F. Fredrickson, known to me to be the persons
whose names are subscribed to the within instrument and ac-
knowledgeed 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 in this certificate first above
written.

Clerk of the District Court for Oneida
County, Idaho.

STATE OF IDAHO)
) SS
COUNTY OF ONEIDA)

I, J. Peter Jensen; Clerk of the District
Court and Ex-Officio Auditor and Recorder, do hereby certify
that the foregoing is a full true and correct copy of the articles
of Incorporation of The Samaria Water and Irrigation Company, as
filed in my office the 10th. day of March 1924.

J. Peter Jensen
Clerk of the District Court and
Ex-Officio Auditor and Recorder.

CERTIFICATE OF AMENDMENT OF ARTICLES OF INCORPORATION
of

THE SAMARIA WATER AND IRRIGATION COMPANY

KNOW ALL MEN BY THESE PRESENTS: That we, Joseph R. May and Warren Edwards, the President and Secretary, respectively, of the Samaria Water and Irrigation Company, a corporation duly organized and existing under the laws of the State of Idaho, being first duly and severally sworn, say:

That at a Special Meeting of the Board of Trustees of the Samaria Water and Irrigation Company, duly called and held at Malad City, Idaho, on June 4, 1971, at which a quorum of the members of the Board were present, the following resolution and order was duly and unanimously adopted, to-wit:

"BE IT RESOLVED by the Board of Trustees of The Samaria Water and Irrigation Company, that a Special Meeting of the Stockholders of said Company be and the same is hereby called, to be held at the Samaria Ward Church, in Samaria, Oneida County, State of Idaho, at 8:00 o'clock P.M., on the 15th day of July, 1971, for the purpose of considering and acting upon the following matters:

1. To amend the Articles of Incorporation of the Company in the following particulars:

(a) To increase the capital stock of the Company from 1000 shares of the par value of \$20.00 per share to 1000 shares of the par value of \$400.00 per share.

(b) To give the corporation perpetual existence.

"BE IT FURTHER RESOLVED that the Secretary be, and he is hereby ordered and directed to give notice of such Special Meeting of the Stockholders in the manner provided by law."

That pursuant to said RESOLUTION the Secretary of said Company did, at least 30 days prior to the date set for said Special Meeting of the Stockholders, duly served upon each stockholder of the Company a written NOTICE of said Special Stockholders Meeting in words and figures following:

NOTICE IS HEREBY GIVEN:

June 14, 1971

That a Special Meeting of the Stockholders of THE SAMARIA WATER AND IRRIGATION COMPANY is hereby called and will be held on Thursday, the 15th day of July, 1971, at 8:00 o'clock P.M. at the Samaria Ward Church, in Samaria, Oneida County, State of Idaho, for the purpose of voting and acting upon the following Resolutions and transacting such other business as shall properly come before the said meeting, to-wit:

I.

RESOLVED that the Articles of Incorporation of The Samaria Water and Irrigation Company be amended as follows:

1. That ARTICLE IV be amended so that it shall, as amended, read as follows, to-wit:

"That this Corporation shall have perpetual existence."

2. That ARTICLE V be amended so that it shall, as amended, read as follows, to-wit:

"That the amount of the Capital Stock of the corporation is and shall be Four Hundred Thousand Dollars (\$400,000.00), divided into One Thousand shares of the par value of Four Hundred Dollars (\$400.00), each; of which 723 shares have been subscribed and are paid for in full."

BY ORDER OF THE BOARD OF TRUSTEES

Warren Edwards,

Secretary

That on the 15th day of July, 1971, at 8:00 o'clock P.M., at the Samaria Ward Church, in Samaria, Oneida County, State of Idaho, the following Resolution was duly passed by a vote of more than two-thirds of the outstanding capital stock of said corporation, said Resolution being in words and figures following, to-wit:

RESOLVED that the Articles of Incorporation of The Samaria Water and Irrigation Company be amended as follows:

1. That ARTICLE IV be amended so that it shall, as amended, read as follows, to-wit:

"That this Corporation shall have perpetual existence."

2. That ARTICLE V be amended so that it shall, as amended, read as follows, to-wit:

"That the amount of the Capital Stock of the corporation is and shall be Four Hundred Thousand Dollars (\$400,000.00), divided into One Thousand shares of the par value of Four Hundred Dollars (\$400.00), each; of which 723 shares have been subscribed and are paid for in full."

That the total number of shares of the subscribed capital stock of said corporation at said time was 723 shares. That the amount of capital stock represented on the adoption of said Resolution was 506.65 shares; that the total amount of shares of stockholders voting in the affirmative on said Resolution was 506.65 shares, and there were no shares voting against the passage of said Resolution.

That the total amount to which the capital stock of said corporation has been increased is Four Hundred Thousand Dollars (\$400,000.00), divided into One Thousand (1000) shares of the par value of \$400.00 each.

That the corporation was given perpetual existence.

IN WITNESS WHEREOF we have hereunto set our hands this 16th day of July, 1971.

Joseph R. May
President

William W. Edwards
Secretary

Subscribed and sworn to before me this 16th day of July, 1971.

E. J. Scott
Notary Public at Malad City, Idaho
My Commission expires May 19, 1975

State of Idaho, County of Oneida ss.
I hereby certify that this instrument was filed for record at
request of E. J. Scott at 45 minutes past 2
o'clock P.M. this 16 day of July A.D. 1971 in my presence
and duly recorded on film as last file 8-11-71
Fee 1.00
Robert H. Smeaton
Ex-Officio Recorder
William W. Edwards
Deputy

Malad City, Idaho