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LOUIS F. RACINE (1917-2005)
WILLIAM D. OLSON, OF COUNSEL

September 5, 2007

RECEIVED

SEP 11 2007

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

Department of Water Resources
Eastern Region

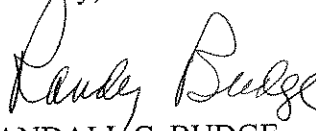
Re: *Notice of Protest to Claim No. 11-7579, 11-7580*
Protestant: Bushman Farm & Livestock Co. LP

Enclosed please find for filing the following:

1. Original and two copies of Notices of Protest to each of the above-referenced claims submitted on behalf of Bushman Farm & Livestock, LP.
2. Check for filing fees in the amount of \$50.
3. Stamped and addressed return envelopes to me and John Bushman. Upon filing, please conform stamp and return the extra copies to each of us.

Thank you.

Sincerely,


RANDALL C. BUDGE

RR

RCB:rr

Enclosures

cc: Bushman Farm & Livestock Co., LP

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

NOTICE OF PROTEST

This form may be used to file a protest with the department under sections 42-108B, 42-2-3A, 42-203C, 42-211, 42-222 and 42-224, Idaho Code.

1. Matter being protested: Oxborrow Statutory Claim No. 11-7579.
2. Name of protestant: Bushman Farm & Livestock Co., LP
C/o John Bushman, Partner
680 W. Main
Lehi, Utah 84043
(801) 368-6370
3. Protestant's Representative: Randall C. Budge
Racine, Olson, Nye, Budge & Bailey, Chartered
4. Service mailing list: P.O. Box 1391, Pocatello, Idaho 83204.
5. Service telephone number: 208-232-6101.
6. Basis of Protest:
 - A. The claim is invalid because all water rights to the Bear River and all tributaries, including Nounan Creek, Stauffer Creek, Spring Creek and their tributaries were adjudicated in the District Court of the United States for the District of Idaho, Eastern Division, in the case of *Utah Power & Light Co. V. Last Chance Canal Co., et al, in Equity No. 203*, with Final Decree entered by District Judge F. S. Dietrich filed July 14, 1920 (the so-called "Dietrich Decree").
 - B. The relevant portions of the Dietrich Decree, including pages 25 through 30 which set forth the rights in Nounan Creek, Stauffer Creek and their tributaries as established in the Decree in 1920 are attached hereto. For each decreed right, the handwritten number reflects the identifying number assigned to each right by the Idaho Department of Water Resources, which would begin with Water Right No. 11-0291 and end with 11-0313. Although all of these rights have not been updated on the records of the Department to reflect the current owners, the rights of the current owners affected by the Oxborrow statutory claim are believed to be as follows:

Owner:

Water Right Nos.

Bushman Farm and Livestock
Company, LP

11-291, 11-292, 11-293
11-296, 11-297, 11-299

Greg Kempton

11-300

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Department of Water Resources
Eastern Region

Receipt
#0033339

Doyle Alleman	11-306
Brett Oxborrow	11-308
Scott Hennings	11-302, 11-303
Melba Bartschi	11-310

- C. The Claimant's Water Right No. 11-308 was originally decreed to William Morgan Williams with a priority date of 5/1/1897 permitting the diversion and use of 0.5 cfs of water from Stauffer Creek for irrigation purposes from April 20 through September 30. There are two points of diversion reflected in Sections 33 and 34, Twp. 11 S., Range 43 E., B.M., Bear Lake County, with the place of use described as 25 acres located in the SE NE, Section 23, and NW NW of Section 24, T. 11 S., R. 43 E. Claimant purportedly also owns 320 acres located in the SW1/4, S1/2 SE1/4 of Section 32, T. 11 S., R. 34 E., but there are no water rights appurtenant to this property.
- D. Based on the foregoing, the claim of claimant is invalid. Any water right established by claimant by beneficial use could only have been established after the entry of the July 14, 1920 Dietrich Decree.
- E. The quantity of water claimed by claimant substantially exceeds the maximum duty of water of .02 cfs per acre allowed by Idaho law. Accordingly, the quantity claimed could not lawfully have been applied to beneficial use on the listed irrigated acres.
- F. The claimant first diverted the claimed water in the year 2006. There are no known prior authorized diversions of the claimed water.
7. What would resolve your protest? Denial of the statutory claim.

I hereby acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the Department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 10 day of September, 2007.

Protestant


Protestant's Representative
THOMAS J. BUDGE

FOR DEPARTMENT USE ONLY

Received by _____ Date _____ Time _____

\$25.00 fee Received by _____ # _____ Date _____

Certificate of Mailing

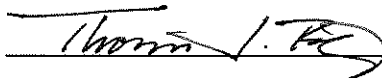
I HEREBY CERTIFY that on this 10 day of September, 2007, I mailed a true and complete copy of the foregoing document, postage prepaid, to each of the following:

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

Bret C. And Collette Oxborrow
P.O. Box 246
Georgetown, Idaho 83239

Bushman Farm & Livestock Co., LP
c/o John Bushman, Manager
680 W. Main
Lehi, Utah 84043

Rocky Mountain Environmental Associates, Inc.
452 Constitution Way
Idaho Falls, Idaho 83402



Case No. 1777
L. E. POOLE,
Recorder.

RECEIVED IN
EVIDENCE
MAY 9-1956
L. E. POOLE

In the District Court of the United States for the
District of Idaho, Eastern Division.

UTAH POWER & LIGHT COMPANY,

Plaintiff

vs.

THE LAST CHANCE CANAL COMPANY,
Limited, et. al.

Defendants.

In Equity

No. 203.

FINAL DECREE

Before HON. F. S. DIETRICH,
District Judge.

Filed July 14, 1920.

W. D. McREYNOLDS,
Clerk.

By PEARL ZANGER,
Deputy.

DATE OF
PRIORITY

AMOUNT IN
SECOND FEET

POINT OF DIVERSION AND
PLACE OF USE

GEORGETOWN CREEK.

26. *Georgetown Irrigation Company:*
1881—May 1 70 c.f.s.

To be diverted from Georgetown Creek by means of ditches diverting therefrom as follows:

Paine Ditch—North 72°19' East 7957.3 ft.
Hayes Ditch—North 73°32' East 5301.3 feet.

Smart Ditch—North 75°03' East 4673.0 feet.

Mill Ditch—North 84°06' East 1932.9 feet.
South Ditch—North 82°32' East 2106.6 feet.

Armitage Ditch—South 57°43' West 1296.7 feet.

Stoddard Ditch—South 61°52' West 2554.6 feet.

Church Ditch—South 61°46' West 3510.9 feet.

Hoff Ditch—South 62°20' West 3976.0 feet.

All from the corner common to Sections 5, 6, 7 and 8, Township 11 South, Range 44 East, B.M., also at a point on the left hand fork of said Georgetown Creek, which bears North 46°41' East 4467.3 feet from the above mentioned Section corner where the said Paine Ditch intersects said left hand fork, and to be used for the irrigation of 3,500 acres of land situated in Sections 5, 6, 7, 8, 18 and 19, Township 11 South, Range 44 East, B.B.M., and Sections 1, 11, 12, 13, 14 and 24, Township 11 South, Range 43 East, B.B.M.

NOUNAN CREEK.

27. *Fred Stauffer:*
(a) 1876—May 1 1.8 c.f.s.

To be diverted from Stauffer, later known as Nounan Creek, through three small ditches diverting therefrom in Sections 33 and 34, Township 11 South, Range 43 East, B.B.M.

DATE OF PRIORITY	AMOUNT IN SECOND FEET	POINT OF DIVERSION AND PLACE OF USE
(b) 1876—May 1	1.1 c.f.s.	To be diverted from Spring Creek, a tributary of Nounan Creek, through various ditches having their intakes at points on the same stream where the same crosses the land of this cross complainant, as hereinbelow described: Said water from Stauffer Creek and Spring Creek to be used for the irrigation of 145 acres of land in the Southeast quarter of the Northwest quarter, the Southwest quarter of the Northeast quarter, and West half of the Southeast quarter, Section 34, Township 11 South, Range 43 East, B.B.M.
(c) 1881—May 1	1.4 c.f.s.	To be diverted from Stauffer Creek through a ditch having its intake therefrom 27 rods South and 25 rods West of the Northeast corner of the Northwest quarter of the Southwest quarter, said Section 34.
(d) 1881—May 1	.2 c.f.s.	To be diverted from Liberty Lookout Creek, later known as Nounan Creek, through a ditch diverting therefrom where the same passes over the lands hereinbelow described: The water claimed in paragraphs (c) and (d) above to be used for the irrigation of 80 acres of land, being the North half of the Southwest quarter of said Section 34.
(e) 1893—May 1	.4 c.f.s.	To be diverted from said Liberty Lookout Creek through a ditch having its intake therefrom 85 rods West and 60 rods South of the Southeast corner of the Southwest quarter of said Section 33, said Township and Range, for the irrigation of 20 acres of land in the Southwest quarter of the Southeast quarter, said Section 33.
(f) 1898—May 1	2.6 c.f.s.	To be diverted from Stauffer Creek through several ditches having their intake from said creek on the lands hereinbelow described, for the irrigation of 130 acres of land situated in the East half of the Southwest quarter and the North half of the Southeast quarter, said Section 33.

DATE OF PRIORITY	AMOUNT IN SECOND FEET	POINT OF DIVERSION AND PLACE OF USE
(g) 1898—May 1	.4 c.f.s.	To be diverted from Middle Fork, later known as Nounan Creek, through a ditch diverting therefrom 40 rods North and 20 rods East of the Southwest corner of the Northwest quarter of the Southwest quarter, said Section 34.
(h) 1898—May 1	0.7 c.f.s.	To be diverted from Spring Creek, hereinabove described, through a ditch having its intake at the Spring. The water decreed in paragraphs (g) and (h) to be used for the irrigation of 55 acres in the South half of the Southwest quarter, Section 34, Township 11 South, Range 43 East, and Lots 2 and 3 of Section 3, Township 12 South, Range 43 East, B.B.M.
(i) 1900—May 1	1.6 c.f.s.	To be diverted from Stauffer Creek, later known as Nounan Creek, through ditches diverting therefrom in Sections 32 and 33, said Township and Range, for the irrigation of 80 acres, in the East half of the Southeast quarter, Section 32, and the West half of the Southwest quarter, Section 33, Township 11 South, Range 43 East, B.B.M.
28. <i>Oliver Williams:</i> 1876—May 1	3.0 c.f.s.	To be diverted from Stauffer Creek, later known as Nounan Creek, through four ditches diverting therefrom in Sections 34 and 27, Township 11 South, Range 43 East, for the irrigation of 150 acres of land in the North half of the Northeast quarter, the Northeast quarter of the Northwest quarter of Sec. 34 and the southwest quarter of the southeast quarter of Section 27, Township 11 South, Range 43 East, B.B.M.
29. <i>Edgar M. Lindsay:</i> (a) 1877—May 1	1.6 c.f.s.	To be diverted from Spring Creek, a tributary of Nounan Creek, through ditches diverting therefrom in Sections 34 and 35, Township 11 South, Range 43 East, for the irrigation of 80 acres of land in the East half of the Southeast quarter, the Southeast quarter of the Northeast quarter, Section 34, the West half of the Southwest quarter and the West half of the Northwest quarter of Section 35, said Township and Range.

DATE OF PRIORITY	AMOUNT IN SECOND FEET	POINT OF DIVERSION AND PLACE OF USE
(b) 1877—May 1	.5 c.f.s	To be diverted from Stauffer Creek, through a ditch having its intake therefrom in the Northwest quarter of the Southwest quarter of said Section 34.
(c) 1877—May 1	.8 c.f.s.	To be diverted from Middle Fork, later known as Nounan Creek, through a ditch having its intake in the Southeast quarter of the Northeast quarter of Section 34, said Township and Range. Said water decreed in paragraphs (b) and (c), immediately above, to be used for the irrigation of 35 acres of land in the Southeast quarter of the Northeast quarter of Section 34, Township 11 South, Range 43 East, B.B.M.
(d) 1881—May 1	.8 c.f.s.	To be diverted from Spring Creek, through a ditch having its intake in the Southwest quarter of the Southwest quarter, Section 34, for the irrigation of 40 acres of land situate in the Southeast quarter of the Southeast quarter of Section 34, the West half of the Southwest quarter of Section 35, Township 11 South, Range 43 East, B.B.M.
(e) 1898—May 1	1.3 c.f.s.	To be diverted from Nounan Creek, through ditches having their point of diversion on the lands hereinbelow described, for the irrigation of 65 acres of land in the Southeast quarter of the Northwest quarter of the Northeast quarter of the Southwest quarter, Section 22, Township 11 South, Range 43 East, B.B.M.
30. <i>William Morgan Williams:</i>		
(a) 1885—May 1	1.6 c.f.s.	To be diverted from Stauffer Creek, later known as Nounan Creek, through three ditches diverting therefrom in Sections 27 and 34, Township 11 South, Range 43 East.
(b) 1885—May 1	.6 c.f.s.	To be diverted from Spring Creek through two ditches diverting therefrom in the East half of Section 27, said Township and Range. Water decreed in paragraphs (a) and (b), immediately above, to be used for the irrigation of 110 acres of land in the Southwest quarter of the Northeast quarter, the

DATE OF PRIORITY	AMOUNT IN SECOND FEET	POINT OF DIVERSION AND PLACE OF USE
		Northwest quarter of the Southeast quarter, the East half of the Southwest quarter, said Section 27.
31. <i>William Mormon Williams:</i> 1897—May 1	.5 c.f.s.	To be diverted from Stauffer Creek, later known as Nounan Creek, through ditches diverting therefrom on the lands hereinbelow described, for the irrigation of 25 acres of land in the East half of the Northeast quarter, Section 33, the West half of the Northwest quarter, Section 34, Township 11 South, Range 43 East, B.B.M.
32. <i>Fred Bartschi:</i> (a) 1899—May 1	1.4 c.f.s.	To be diverted from Nounan Creek, by means of three ditches diverting therefrom in Sections 15 and 22, to be used for the irrigation of 70 acres of land in the South half of the Southwest quarter, Section 15, and the North half of the Northwest quarter, Section 22, Township 11 South, Range 43 East, B.B.M.
(b) 1907—May 1	.8 c.f.s.	To be diverted from Nounan Creek in the Northwest quarter of Section 15, to be used for the irrigation of 40 acres of land in the South half of the Southeast quarter and the Southeast quarter of the Southwest quarter, Section 10, the Northeast quarter of the Northwest quarter, Section 15, Township 11 South, Range 43 East, B.B.M.
33. <i>Charles Bartschi:</i> (a) 1885—May 1	2 c.f.s.	To be diverted from Nounan Creek by means of five ditches diverting therefrom in Sections 27 and 22, Township 11 South, Range 43 East.
(b) 1885—May 1	.8 c.f.s.	To be diverted from Unnamed Spring in the Northwest quarter of the Northeast quarter of Section 27, said Township and Range, a tributary of said Nounan Creek. Said water decreed in paragraphs (a) and (b) immediately above, to be used for the irrigation of 140 acres of land in the East half of the Northwest quarter, the Northwest quarter of the Northeast quarter, Section 27, the Southwest quarter of the Southeast quarter and the Southeast quarter of the Southwest quarter of Section 22, said Township and Range, B.B.M.

DATE OF PRIORITY	AMOUNT IN SECOND FEET	POINT OF DIVERSION AND PLACE OF USE
34. <i>Andrew Stauffer:</i> 1900—May 1	.9 c.f.s.	To be diverted from Liberty Lookout Creek, later known as Nounan Creek, through two ditches diverting therefrom in the Northwest quarter of Section 4, Township 12 South, Range 43 East, to be used for the irrigation of 45 acres of land in the East half of the Northwest quarter and the Northwest quarter of the Northeast quarter of Section 4, said Township and Range.

SKINNER AND JEWETT CREEKS.

35. *Skinner Irrigation Company:*
1885—May 1 43.2 c.f.s.
- For the irrigation of 2160 acres in Sections 31 and 32, Township 10 South, Range 43 East, and Sections 5, 7, 8, 9, 16, 17, Township 11 South, Range 43 East, B. M. Said water to be diverted from said Skinner Creek by means of five (5) ditches, having points of intake as follows:
- (a) At a point about 20 rods South and 5 rods East of the Northeast corner of the Northwest quarter of the Southeast quarter of Section 8, Township 11 South, Range 43 East, B. M.
 - (b) At a point about 15 rods West and 5 rods North of the center of the Southeast quarter of said Section 8.
 - (c) At a point about 5 rods Southeasterly of the center of the Southwest quarter of said Section 8.
 - (d) At a point about 20 rods Southwesterly of the center of the Southwest quarter of said Section 8.
 - (e) At a point about 5 rods South of the Northwest corner of the Northeast quarter of Section 18, Township 11 South, Range 43 East.
- And the said waters from Jewett Creek to be diverted by means of two (2) ditches having points of intake as follows:
- (a) At a point about 20 rods Northwesterly of the Southeast corner of the Northeast quarter of the Southeast quarter of Section 31, Township 10 South, Range 43 East, B. M.