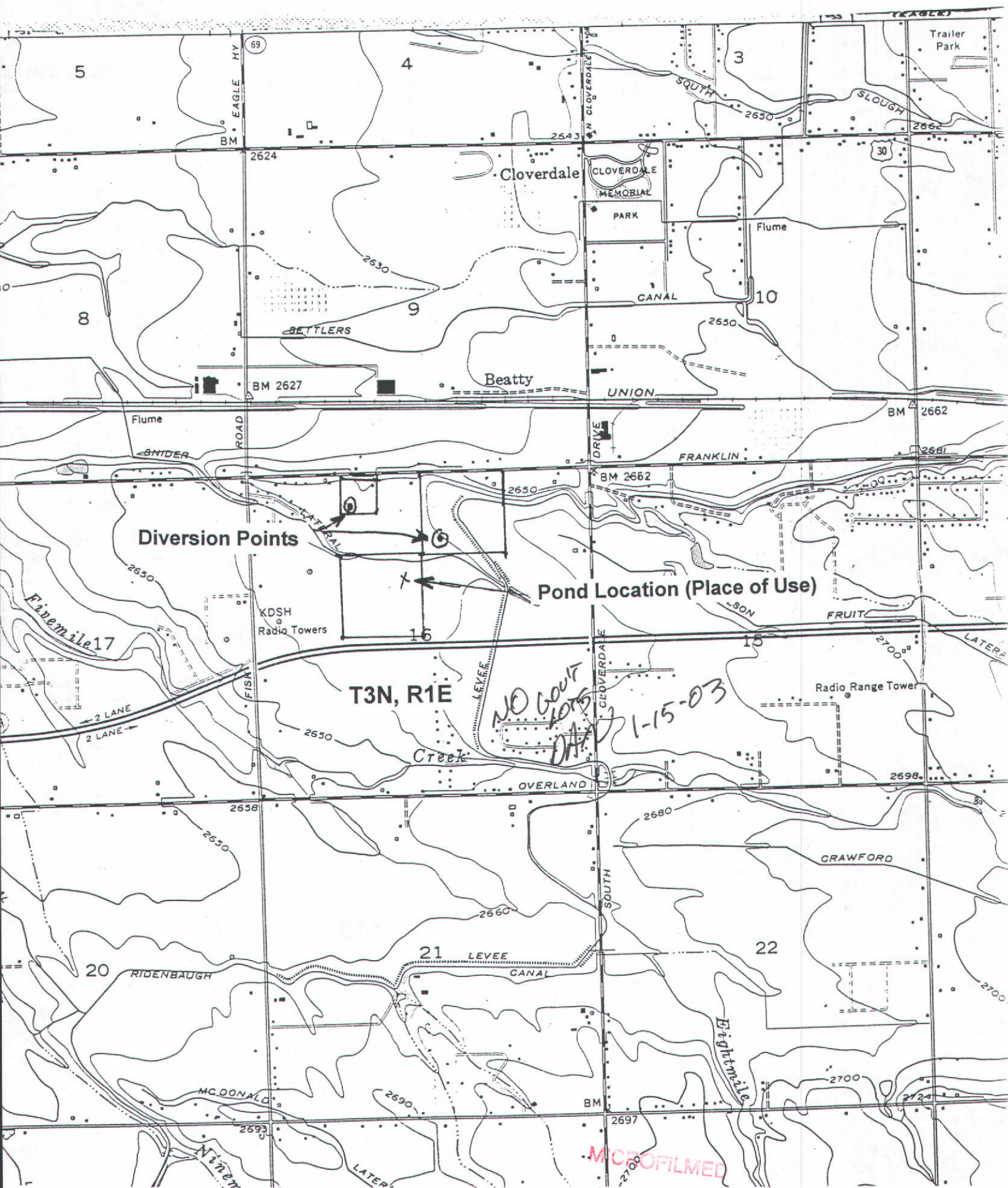




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63-31829

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13-9972

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Exhibit B

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COMMENT
LETTERS

IDAHO DEPARTMENT OF WATER RESOURCES
APPROPRIATION APPLICATION ANALYSIS SHEET

Initial review by DAN. Date 12-11 Application # 63-31829

REQUIRED INFORMATION

- ☒ Name (for corporation or partnership, names & addresses for director, officers, &/or other partners must be included)
- ☒ Address
- ☒ Source (see USGS quad for source names)
- ☒ P/D (10 acres for spring, lot & block descriptions for subdivisions, local name)
- ☒ County
- ☒ Quantity (flow & /or volume)
- ☒ Period of use
- ☒ Nature of use (list details in appl. Item 8 if non-irrigation)
- ☒ Description of diverting works
- ☒ Time required for beneficial use of water
- ☒ P/U
- ☒ Map (show T, R, S, QQ &/OR QQQ)
- ☒ Subdivision plat (if > 1 home restricted area $\geq$ 5 homes non-restricted area)
- ☒ Signature (if corporation, partnership, municipality, need title of signatory)
- ☒ Correct fee paid
- Government Lots
NO P/D
NO P/U

ADDITIONAL INFORMATION

YES ADVERTISE REMARKS (Yes or No)

YES NO

- ☒ P/D overlap (explain) 63-31383 uses same wells for
- ☒ P/U overlap (explain) irrigation purposes on same lands.
- ☒ Critical groundwater area (send letter) Nampa meridian irrigation
- ☒ Ground water management area (send letter) rights also overlap area.
- ☒ Drilling concern area (send letter)
- ☒ 1992 moratorium (send letter) mitigation is proposed.
- ☒ Surface water source, IDFG comment letter
- ☒ Protected river or minimum flow reach, notify water planning bureau
- ☒ E-mail to Dam Safety staff (if any storage)
- ☒ Mitigation plan: "request to process form" in file:
- ☒ Immediate = closed areas, acceptable plan required & submitted
- ☒ Future = open areas, plan not required
- ☒ Send power requirement letter &/or fish farm requirement letter
- ☒ Power residency affidavit
- ☒ Diversion greater than 5 cfs or 500 af or irrigation greater than 200 acres (if YES, attach large diversion supplementary analysis sheet)

REQUEST ADDITIONAL INFORMATION FROM APPLICANT

Date Requested _____ Date Response Received _____

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 63-31829

Priority: December 19, 2003

Maximum Diversion Rate: 0.70 CFS

This is to certify, that TOUCHMARK OF THE TREASURE VALLEY LLC
PO BOX 1355
MERIDIAN ID 83682

has applied for a permit to appropriate water from:

Source: GROUND WATER

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

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
AESTHETIC	01/01 to 12/31	0.70 CFS	
DIVERSION TO STORAGE	01/01 to 12/31	0.70 CFS	
AESTHETIC STORAGE	01/01 to 12/31		10.0 AF

LOCATION OF POINTS OF DIVERSION:

GROUND WATER NW¼NE¼NW¼ Sec. 16, Twp 03N, Rge 01E, B.M., ADA County

GROUND WATER NW¼NE¼ Sec. 16, Twp 03N, Rge 01E, B.M., ADA County

PLACE OF USE: AESTHETIC & AESTHETIC STORAGE

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
03N 01E 16								X									

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **April 01, 2009**.
2. Subject to all prior water rights.
3. 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 permit holder had no control.
4. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
5. Water bearing zone to be appropriated is from 50 to 480 feet.
6. Prior to diverting water under this right, the right holder shall mitigate for the consumption of water under this right by notifying the Department that the right holder has acquired and permanently abandoned the right to divert 0.04 cfs and 6.4 afa for the irrigation of 2.2 acres under Water Right 63-9972 (SRBA Claim 63-31790). The right holder shall notify the Department by submitting a Notice of Change of Water Right Ownership for the portion of Water Right 63-9972 (SRBA Claim 63-31790) to be abandoned and by submitting a notarized affidavit attesting to the permanent abandonment of that portion of Water Right 63-9972 (SRBA Claim 63-31790).

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State of Idaho
Department of Water Resources
Permit to Appropriate Water
NO. 63-31829

7. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to determine the amount of water diverted from power records and shall annually report the information to the Department.
8. The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 13th day of April, 2004.


KARL J. DREHER, Director

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Ident. No.

63-31829

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STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

DEC 19 2003

WATER RESOURCES
WESTERN REGION

APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of Applicant Touchmark of the Treasure Valley, LLC Phone 208-888-2277
Mailing address P.O. Box 1355, Meridian, ID 83682
2. Source of water supply Groundwater which is a tributary of _____
3. Location of point of diversion is Township 3N Range 1E Sec. 16, in the NW $\frac{1}{4}$,
NE $\frac{1}{4}$, NW $\frac{1}{4}$, Govt. Lot _____, B.M., Ada County; additional points of
diversion if any: NWNE Section 16, T3N, R1E; pond is located in SENW Section 16, T3N, R1E
4. Water will be used for the following purposes:

Amount <u>0.70 cfs</u> for <u>Aesthetic</u> purposes from <u>01/01</u> to <u>12/31</u> (both dates inclusive)
(cfs or acre-feet per annum)
Amount <u>0.70 cfs</u> for <u>Diversion to Storage</u> purposes from <u>01/01</u> to <u>12/31</u> (both dates inclusive)
(cfs or acre-feet per annum)
Amount <u>10 afa</u> for <u>Aesthetic Storage</u> purposes from <u>01/01</u> to <u>12/31</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)
5. Total quantity to be appropriated is (a) 0.70 and/or (b) 10.0
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 two wells with electric pumps and pipe to pond. Pond is membrane lined with a surface area of 1.7 acres and an average depth of 6 feet
 - b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total reservoir capacity 10 acre-feet
 - c. Proposed well diameter is 8 inches; proposed depth of well is 200 feet
 - d. Is ground water with a temperature of greater than 85°F being sought? no
 - e. If well is already drilled, when? October 1979; Drilling firm Stevens and Sons
Well was drilled for (well owner) Ed Bews; Drilling Permit No. _____
7. Time required for completion of works and application of water to proposed beneficial use is 5 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. Aesthetic use is for a 1.7-acre pond with average depth of 6 feet and a capacity of 10 acre feet.

AMENDED

9. 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				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
3N	1E	16								J									

Total number of acres to be irrigated _____

10. Describe any other water rights used for the same purposes as described above. _____

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: Pond will be filled initially with water rented from the State Water Bank. Pond level will be maintained with groundwater (see attached mitigation plan). Existing well is in the NWNENW. Proposed well is in the NWNE. Both wells are also diversion points for irrigation water right 63-31383. Water-bearing zone to be appropriated is 50 to 480 feet, but the new well will not exceed 200 feet total depth. Diversion volume from wells will be limited to ^{9.9} 7.0 afa.

KTM 12/18/03

13. **MAP OF PROPOSED PROJECT REQUIRED** - Attach an 8½"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.

 CHIEF OPERATING OFFICER
Signature of Applicant (and title, if applicable)

Received by LG Date 8/14/03 Time 12:18 Preliminary check by DAW
Fee \$ 25000 Receipted by LG # W030798 Date 8/14/03
Publication prepared by SK Date 2-5-12-04 Published in _____
Publication approved SK Date _____ THE IDAHO STATESMAN

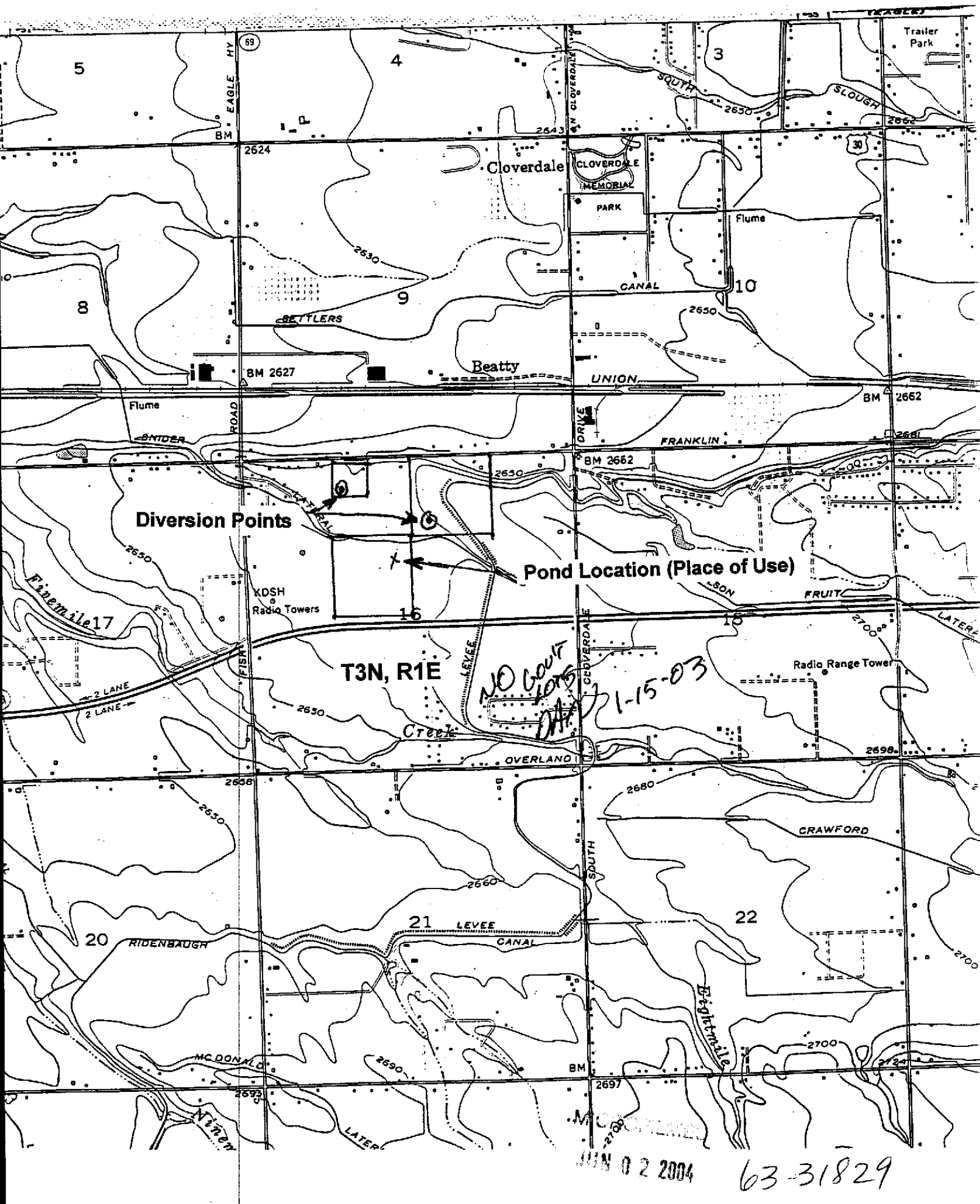
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Mitigation Plan for Water Right Application by Touchmark of the Treasure Valley, LLC

As a part of the attached application for permit to appropriate groundwater for aesthetic purposes, Touchmark of the Treasure Valley, LLC, proposes the following mitigation plan to prevent injury to other water rights.

1. The application for permit proposes appropriation of 0.7 cfs for aesthetic use in a pond with a total storage volume of 10 acre feet.
2. For purposes of mitigation, groundwater diverted for aesthetic use under the proposed permit is assumed to be 100 percent consumptive. The groundwater will replace evaporation losses from the pond. Annual evaporation losses in the Meridian area are estimated at approximately 45 inches (see annual free water surface evaporation map, attached). The 45 inches of evaporation from the proposed 1.7 acre pond surface results in an annual evaporation loss of 6.4 acre feet.
3. To mitigate for the consumptive use associated with the proposed groundwater diversion, the applicant shall purchase and retire (or transfer to mitigation use) a 2.2-acre portion of water right license 63-9972.
4. For purposes of mitigation, the consumptive use associated with water right license 63-9972 will be 2.91 acre feet per acre, based on the historic consumptive use for water right 63-9972 calculated by ERO Resources for the VanEss dairy transfer. Thus, retirement of 2.2 acres of 63-9972 will offset up to 6.4 acre feet annually of consumptive water use under the proposed permit. Diversion volume under the proposed permit can be limited to 9.9 afa, based on 4.5 afa diversion volume per acre and 2.2 acres of water right.
5. As a result of this mitigation plan, no detrimental impacts to existing water rights are anticipated.



WATER RIGHT PURCHASE AND SALE AGREEMENT

THIS WATER RIGHT PURCHASE AND SALE AGREEMENT ("Agreement") is entered into effective this 12th day of June, 2003 by and between Renata L. Ham, d/b/a StonecreekTurf, a sole proprietorship (the "Seller"), whose address is 5125 Morninggale Dr., Boise, ID 83713, and Touchmark of the Treasure Valley, LLC, an Oregon limited liability company (the "Buyer"), whose address is 3805 E. Franklin Rd., P.O. Box 1355, Meridian, Idaho 83680 for address. In consideration of the sums to be paid by Buyer to Seller, and the mutual covenants herein contained, the parties hereby agree as follows:

RECITALS

1. Seller owns a water right to divert ground water for irrigation purposes within the Boise River Basin (administrative Basin 63), which water right is represented by license number 63-9972 in the records of the Idaho Department of Water Resources ("Department"), and which water right authorizes diversion of ground water for irrigation uses on certain lands in Ada County during the irrigation season at a rate of 0.02 cubic feet per second ("cfs") per irrigated acre and a total annual diversion volume of 4.5 acre-feet per acre per year, such lands being located in the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$, section 31, T4N, R1E, Boise Meridian in Ada County (the "Property"). A copy of the water right license is attached as Exhibit A to this Agreement. The Property is more particularly described on Exhibit B.
2. Seller desires to sell the approximately 6.7 percent (2/30) portion of water right no. 63-9972 that is appurtenant to 2 acres in the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ within the Property (this portion of licensed water right no. 63-9972 hereinafter referred to as the "Water Right").
3. Buyer desires to purchase the Water Right and transfer its point of diversion and place of use to Buyer's property in Ada County, or, in the alternative, use the Water Right as mitigation for a new ground water permit in which the retirement of the Water Right will serve a mitigation or similar purpose.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals, and the covenants and conditions set forth below, Seller agrees to sell the Water Right to Buyer, and Buyer agrees to purchase it.

4. Purchase Price. The Purchase Price for the Water Right is [REDACTED] payable as follows:

JUN 02 2003

a. Non-refundable Earnest Money payment. Upon execution of this Agreement by Seller and Buyer, Buyer shall pay Seller [REDACTED] as a non-refundable earnest money payment ("Earnest Money"). As more particularly described below, the Earnest Money shall be applied toward the Purchase Price at Closing, but shall be retained by Seller and not refunded to Buyer if, for any reason other than Seller's refusal to close, the purchase and sale does not close.

b. Balance of purchase price. [REDACTED] being the Purchase Price less the Earnest Money, shall be due and payable to Seller at Closing.

5. Buyer responsible for water right transfer. Within thirty days after this Agreement is signed, Buyer shall file, with the Idaho Department of Water Resources ("Department"), either an application to change or transfer the Water Right to Buyer's place of use, proposed nature or time of use, and point of diversion or, in the alternative, an application for a new ground water permit in which the retirement of the Water Right will serve a mitigation or similar purpose (collectively, "Transfer"), and thereafter shall diligently pursue the Transfer at Buyer's sole cost. Upon filing the Transfer, Buyer shall provide a copy of the Transfer to Seller. Upon Seller's receipt of a copy of the Transfer, the Water Right no longer will be diverted from the well on Seller's property or placed to beneficial use by Seller unless Buyer agrees in writing that it can be so used on an interim basis during the pendency of the Transfer.

6. Seller to cooperate with Buyer's Transfer efforts. Seller shall cooperate with the Buyer in pursuit of the Transfer and, at Buyer's request, Seller shall provide Buyer with any information Seller has concerning the Water Right that Buyer may reasonably request in pursuit of the Transfer; provided, that if responding to such request will require Seller to incur attorney or consultant fees or costs, the following conditions shall apply:

a. Seller shall provide Buyer a written estimate of such fees and costs and shall not be obligated to provide a response until Seller receives from Buyer a written approval of such fees and costs and a commitment from Buyer to pay them directly or reimburse Seller for Seller's payment of them. Once Seller has received such approval, Seller shall provide the response to the extent of the fees and costs covered in the approval.

b. Seller shall forward to Buyer all bills for such fees and costs within thirty days after Seller receives invoices for such expenses from a consultant or

attorney, and shall inform Buyer whether Seller has paid these invoices or, in the alternative, is forwarding them to Buyer for payment.

c. Within thirty days after Buyer receives them, Buyer shall either pay such invoices directly or reimburse Seller for Seller's payment of them.

7. Closing. Closing shall occur no later than the earlier of: a) ten days after the final, unappealable approval of the Transfer ("Transfer approval"), or b) the one-year anniversary date of this Agreement. At the Closing:

a. Seller shall deliver to Buyer: i) an executed and acknowledged Water Right Grant Deed and Assignment ("Deed") in the form of the specimen attached to this Agreement as Exhibit C; ii) all documentation, including appropriate deeds, leases, and assignments, confirming Seller's ownership of the Water Right and its entitlement to convey it to Buyer; iii) an executed and acknowledged Notice of Change of Ownership confirming Buyer's ownership of the Water Right and the assignment of the appropriate portion of the Snake River Basin Adjudication Claim for the Water Right; and iv) such other documents as Buyer may reasonably request within thirty days prior to Closing to confirm Buyer's ownership of the Water Right or its transferability. Seller shall make best efforts to provide all documents referenced in item ii of this paragraph within 10 days after the date of this Agreement.

b. Buyer shall deliver to Seller the balance of the Purchase Price by means of a cashier's check or other means of payment acceptable to Seller. Buyer shall have responsibility for recording or filing the Deed and Notice of Change of Ownership and other documents with the county recorder, the Department, the SRBA Court, or any other entities Buyer deems appropriate.

8. Failure to close: Buyer's and Seller's elections. If the Transfer approval does not occur on or before the anniversary of this Agreement, Buyer at its option may either proceed to closing within 20 days after such anniversary deadline or terminate this Agreement by written notice and forfeit its Earnest Money. If Buyer fails to close the transaction within such 20 days after the anniversary deadline or otherwise breaches this Agreement, in addition to any other remedies Seller might have, Seller at its option may terminate this Agreement and retain the Earnest Money. If this Agreement is terminated by whatever means, Buyer, at its cost, shall forthwith withdraw and cancel the Transfer and take any steps necessary to ensure that the Department cancels, reverses or otherwise nullifies the Transfer application process and any Transfer approval, and such obligations shall survive the termination.

9. Representations and Warranties.

a. Seller hereby represents and warrants that:

- i. The Water Right has been beneficially used as the sole water source to irrigate the Property;
- ii. The Property no longer will be irrigated by the Water Right after the date of this Agreement, subject to the provision for interim use in paragraph 5, above;
- iii. Seller is the owner of the Water Right and has not conveyed, mortgaged, or pledged the Water Right to any other person or entity;
- iv. Seller has not engaged or dealt with any broker or finder in connection with the sale of the Water Right;
- v. Seller has the legal power, right and authority to enter into this Agreement and to perform Seller's obligations hereunder;
- vi. A claim for the Water Right has been filed in the Snake River Basin Adjudication, but Seller makes no representation or warranty regarding the outcome of that proceeding as it might affect the Water Right;
- vii. The Water Right has been placed to continual beneficial use on the Property, and Seller has no knowledge of any continuous five-year period of nonuse of the Water Right; and
- viii. Seller makes no other guarantees or warranties as to the Water Right, its yield upon transfer, or its transferability. Buyer understands and agrees that the purchase price set forth above will remain the same regardless of the amount of water Buyer ultimately is allowed to divert and place to beneficial use under the Transfer; that the amount of water could be less than the face value of the Water Right; and that, should it approve the Transfer, the Department may impose conditions on the use of the Water Right.

b. Buyer hereby represents and warrants that:

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JUN 02 2004

- i. Buyer has the legal power, right and authority to enter into this Agreement and to perform Buyer's obligations hereunder; and
- ii. Buyer has not engaged any broker or finder in connection with the purchase of the Water Right.

10. Remedies on Default. If either party breaches this Agreement, the non-breaching party shall be entitled to all remedies available at law or in equity.

11. Notices:

Seller: Renata L. Ham
5125 Morninggale Drive
Boise, ID 83713

Buyer: Joseph O. Swenson, Chief Operating Officer
Touchmark of the Treasure Valley, LLC
3805 E. Franklin Rd., P.O. Box 1355
Meridian, Idaho 83680

12. General Provisions.

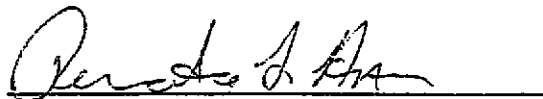
- a. This Agreement contains the entire agreement between the parties related to the purchase and sale of the Water Right, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein.
- b. No modification, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing and signed by both parties.
- c. If either party commences litigation for the judicial interpretation, enforcement or rescission of this Agreement, the prevailing party shall be entitled to its reasonable attorney fees and costs.
- d. Time is of the essence to this Agreement. In particular, the requirement that Closing must occur within 12 months of the date of this Agreement is a central and material term, and either party's failure to close within that time period, subject to the provisions of paragraph 8, above, shall be a breach of this Agreement.

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- e. All obligations referred to herein that reasonably are to be performed, or may be performed, after Closing, and all representations and warranties contained herein, shall survive the Closing and delivery of Seller's Water Right Grant Deed and Assignment.
- f. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, representatives, successors and assigns.
- g. All notices to be given to the parties shall be in writing, delivered in hand, or by U.S. Mail, postage pre-paid directed to such parties address as stated above unless such party shall have directed in writing that notice be sent to a different address.
- h. This Agreement may be executed in counterparts.

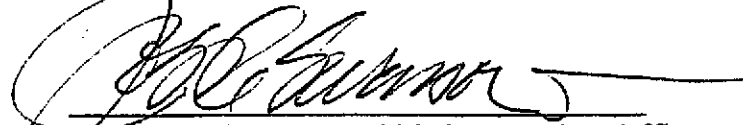
IN WITNESS WHEREOF, this Agreement has been executed by the parties, in the State of Idaho, as of the date set forth above.

SELLER:



Renata L. Ham
Stonecreek Turf

BUYER:



Joseph O. Swenson, Chief Operating Officer
Touchmark of the Treasure Valley, LLC

JUN 02 2004

WATER RIGHT LICENSE

WATER RIGHT NO. 63-09972

Priority: December 9, 1983

Maximum Diversion Rate:
Maximum Diversion Volume:¹

0.60 CFS
135.0 AF

This is to certify, that FRANK N. HAM
WYOMA HAM

4415 N. LOCUST GROVE
MERIDIAN, ID 83642

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated January 21, 1983; and has submitted Proof of Beneficial Use on January 17, 1989. An examination indicates that the works have a diversion capacity of 2.490 cfs of water from a GROUNDWATER source, and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
IRRIGATION	03/15 to 11/15	0.60 CFS	135.0 AF

LOCATION OF POINT(S) OF DIVERSION:

WNNE, Sec. 31, Township 04N, Range 01E
ADA County

PLACE OF USE: IRRIGATION

<u>TWN RGE SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
04N 01E 31	SWNE 30			30

Total number of acres irrigated: 30

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.
5. This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 4.5 afa per acre for the lands above.

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SEP 18 1990

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JUN 02 2004

Exhibit A

Agency - Summer 2000

7/18/00
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JUN 02 2004

Exhibit B

GIVENS PURSLEY LLP
277 North Sixth Street, Suite 200
P.O. Box 2720
Boise, Idaho 83701-2720
Attn: Jeffrey C. Fereday

WATER RIGHT GRANT DEED AND ASSIGNMENT

FOR VALUE RECEIVED, Grantor Renata Ham and Stonecreek Turf of Meridian, Idaho, hereby grant, bargains, sells, and conveys unto Grantee, Touchmark of the Treasure Valley, LLC, whose address is 3805 E. Franklin Road, P.O. Box 1355, Meridian, Idaho 83680, all of Grantor's right, title, and interest in and to the following portions of licensed irrigation ground water right no. 63-9972:

The approximately 6.7 percent (2/30) portion of water right no. 63-9972 that is appurtenant to a total of 2 acres in: the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$, section 31, T4N, R1E, Boise Meridian, in Ada County:

This portion of ground water right no. 63-9972 is referred to herein as the "Water Right."

Grantor hereby further assigns to Grantee all of Grantor's right, title, and interest in and to the above-described portion of the license for ground water right no. 63-9972 issued by the Idaho Department of Water Resources, a copy of which is attached hereto as Exhibit A, together with a like portion of Grantor's right, title, and interest in and to any claim for the Water Right filed in the Snake River Basin Adjudication, Fifth Judicial District, in the State of Idaho, in and for the County of Twin Falls, Case No. 39576. The Water Right conveyed by this Deed is subject to all conditions and limitations specified on such license or that may be imposed by the SRBA Court.

Grantor hereby covenants to Grantee that Grantor has ceased to divert and use the Water Right on the above-described acres or otherwise. Grantor makes no other guarantees or warranties as to the Water Right, its transferability, or its yield upon transfer, change, or exchange.

[End of Text]

JUN 02 2004

TO HAVE AND TO HOLD the Water Right unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor has caused her name to be subscribed to this Grant Deed effective the ____ day _____ of 2003.

GRANTOR

RENATA HAM
STONECREEK TURF,
a sole proprietorship

Renata Ham

Renata Ham, Proprietor, Stonecreek Turf

STATE OF IDAHO)
) ss.
County of Ada_)

On this ____ day of _____, 2003, before me, a Notary Public in and for the State of Idaho, personally appeared Renata Ham, known or identified to me to be the person who executed the above Grant Deed, and acknowledged to me that she executed the same on her own behalf and on behalf of Stonecreek Turf, a sole proprietorship.

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

Notary Public for Idaho
Residing at: _____
My commission expires: _____

JUN 02 2004

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AUG 04 2003

WATER RESOURCES
WESTERN REGIONSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of Applicant Touchmark of the Treasure Valley, LLC Phone 208-888-2277
Mailing address P.O. Box 1355, Meridian, ID 83682
2. Source of water supply Groundwater which is a tributary of _____
3. Location of point of diversion is Township 3N Range 1E Sec. 16 in the NW $\frac{1}{4}$,
NE $\frac{1}{4}$, NW $\frac{1}{4}$, Govt. Lot _____, B.M., Ada County; additional points of
diversion if any: NWNE Section 16, T3N, R1E; pond is located in SENW Section 16, T3N, R1E
4. Water will be used for the following purposes:
- | |
|---|
| Amount <u>0.70 cfs</u> for <u>Aesthetic</u> purposes from <u>01/01</u> to <u>12/31</u> (both dates inclusive) |
| (cfs or acre-feet per annum) |
| Amount <u>10 afa</u> for <u>Aesthetic Storage</u> purposes from <u>01/01</u> to <u>12/31</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) |
5. Total quantity to be appropriated is (a) 0.70 and/or (b) 10.0
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 two wells with electric pumps and pipe to pond. Pond is membrane lined with a surface area of 1.7 acres and an average depth of 6 feet
- b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total
reservoir capacity 10 acre-feet
- c. Proposed well diameter is 8 inches; proposed depth of well is 200 feet
- d. Is ground water with a temperature of greater than 85°F being sought? no
- e. If well is already drilled, when? October 1979; Drilling firm Stevens and Sons
Well was drilled for (well owner) Ed Bews; Drilling Permit No. _____
7. Time required for completion of works and application of water to proposed beneficial use is 5 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. Aesthetic use is for a 1.7-acre pond with average depth of 6 feet and a capacity of 10 acre feet.

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JUN 02 2004

9. 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	
3N	1E	16								J									

Total number of acres to be irrigated _____

10. Describe any other water rights used for the same purposes as described above. _____

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: Pond will be filled initially with water rented from the State Water Bank. Pond level will be maintained with groundwater (see attached mitigation plan). Existing well is in the NWNENW. Proposed well is in the NWNE. Both wells are also diversion points for irrigation water right 63-31383. Water-bearing zone to be appropriated is 50 to 480 feet, but the new well will not exceed 200 feet total depth. Diversion volume from wells will be limited to 7.0 afa.

13. **MAP OF PROPOSED PROJECT REQUIRED** - Attach an 8½"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.

 CHIEF OPERATING OFFICER
Signature of Applicant (and title, if applicable)

Received by LG Date 8/4/03 Time 12:18 Preliminary check by DAAJ
Fee \$ 25000 Receipted by LG # W030798 Date 8/4/03
Publication prepared by _____ Date _____ Published in _____
Publication approved _____ Date _____

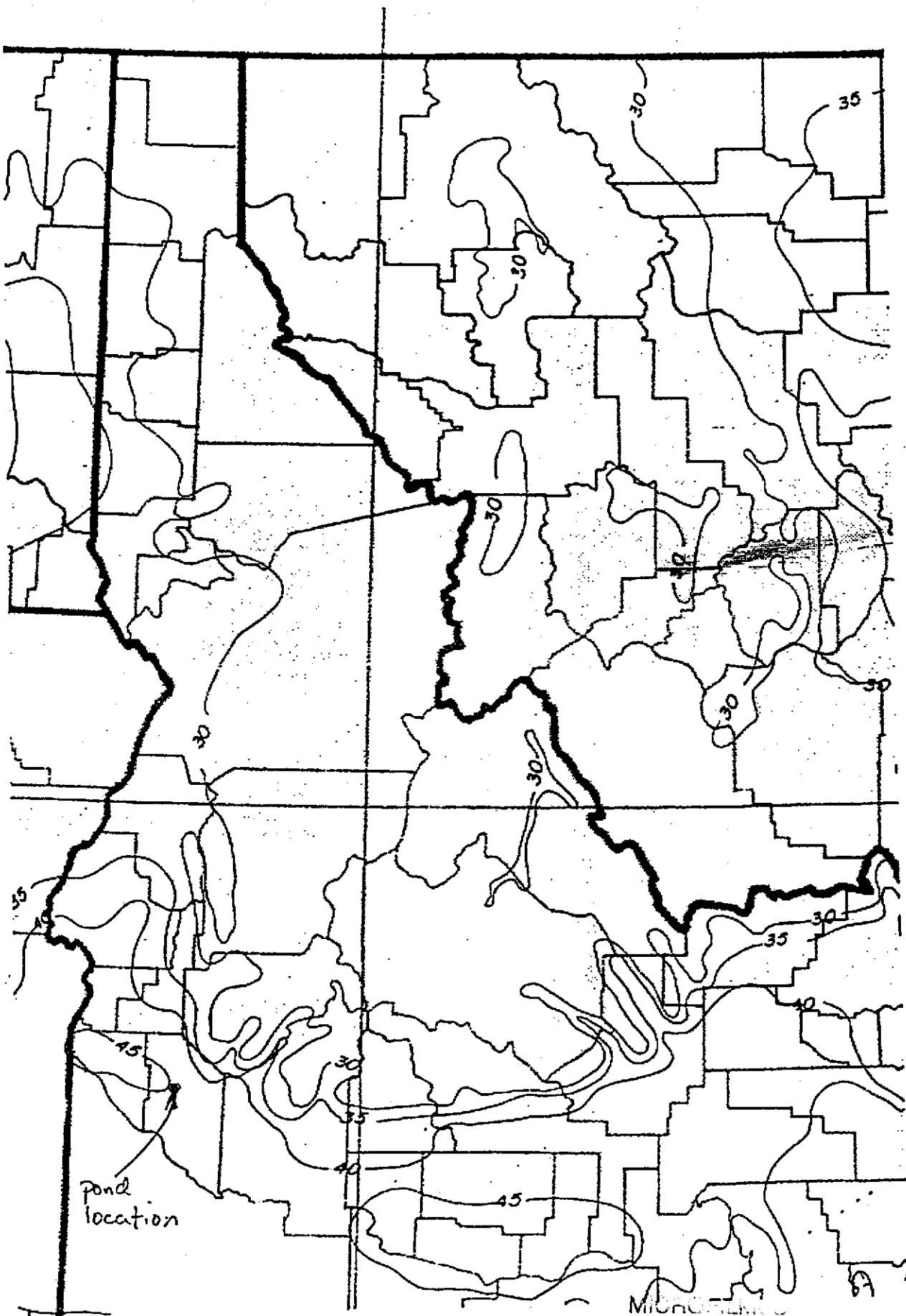
MICROFILMED

JUN 02 2004

Mitigation Plan for Water Right Application by Touchmark of the Treasure Valley, LLC

As a part of the attached application for permit to appropriate groundwater for aesthetic purposes, Touchmark of the Treasure Valley, LLC, proposes the following mitigation plan to prevent injury to other water rights.

1. The application for permit proposes appropriation of 0.7 cfs for aesthetic use in a pond with a total storage volume of 10 acre feet.
2. For purposes of mitigation, groundwater diverted for aesthetic use under the proposed permit is assumed to be 100 percent consumptive. The groundwater will replace evaporation losses from the pond. Annual evaporation losses in the Meridian area are estimated at approximately 45 inches (see annual free water surface evaporation map, attached). The 45 inches of evaporation from the proposed 1.7 acre pond surface results in an annual evaporation loss of 6.4 acre feet.
3. To mitigate for the consumptive use associated with the proposed groundwater diversion, the applicant shall purchase and retire (or transfer to mitigation use) a 2-acre portion of water right license 63-9972.
4. For purposes of mitigation, the consumptive use associated with water right license 63-9972 will be 3.5 acre feet per acre, based on Idaho Department of Water Resources criteria. Thus, retirement of 2 acres of 63-9972 will offset up to 7.0 acre feet annually of water use under the proposed permit.
5. As a result of this mitigation plan, no detrimental impacts to existing water rights are anticipated.



REQUEST TO PROCESS

COMPLETE REQUEST IF YOU WANT YOUR APPLICATION TO BE PROCESSED USING ONE OF THE
THREE ALTERNATIVES BELOW

Name of Applicant Touchmark of the Treasure Valley
Mailing Address P.O. Box 1355
Meridian, ID 83682
Application No. _____
(if known) _____

RECEIVED

DEC 19 2003

WATER RESOURCES
WESTERN REGION

 IN LOCAL PUBLIC INTEREST

Yes, I want my application processed and before it is advertised, I will amend my application to demonstrate that the proposed appropriation is in the local public interest including the need to preserve flows in the Snake River during the migration periods of anadromous fish.

 X PROPOSE MITIGATION NOW

Yes, I want my application processed and before it is advertised, I will ~~amend my application to~~ include proposed mitigation to offset anticipated depletions in the Snake River during periods of anadromous fish migration.

 WILL AGREE TO MITIGATION IN THE FUTURE IF NECESSARY

Yes, I want my application processed at this time, and I will accept a condition of approval that will require mitigation should the Director of the Idaho Department of Water Resources determine that mitigation is necessary to offset depletions from this appropriation to flows in the Snake River during periods of anadromous fish migration. I understand that mitigation is not required now but may be needed in the future. I also understand that the Director will not require mitigation until I have an opportunity to review the process by which the need for mitigation is established and the amount of water required is quantified.

Signature

 CHIEF OPERATING OFFICER

Date

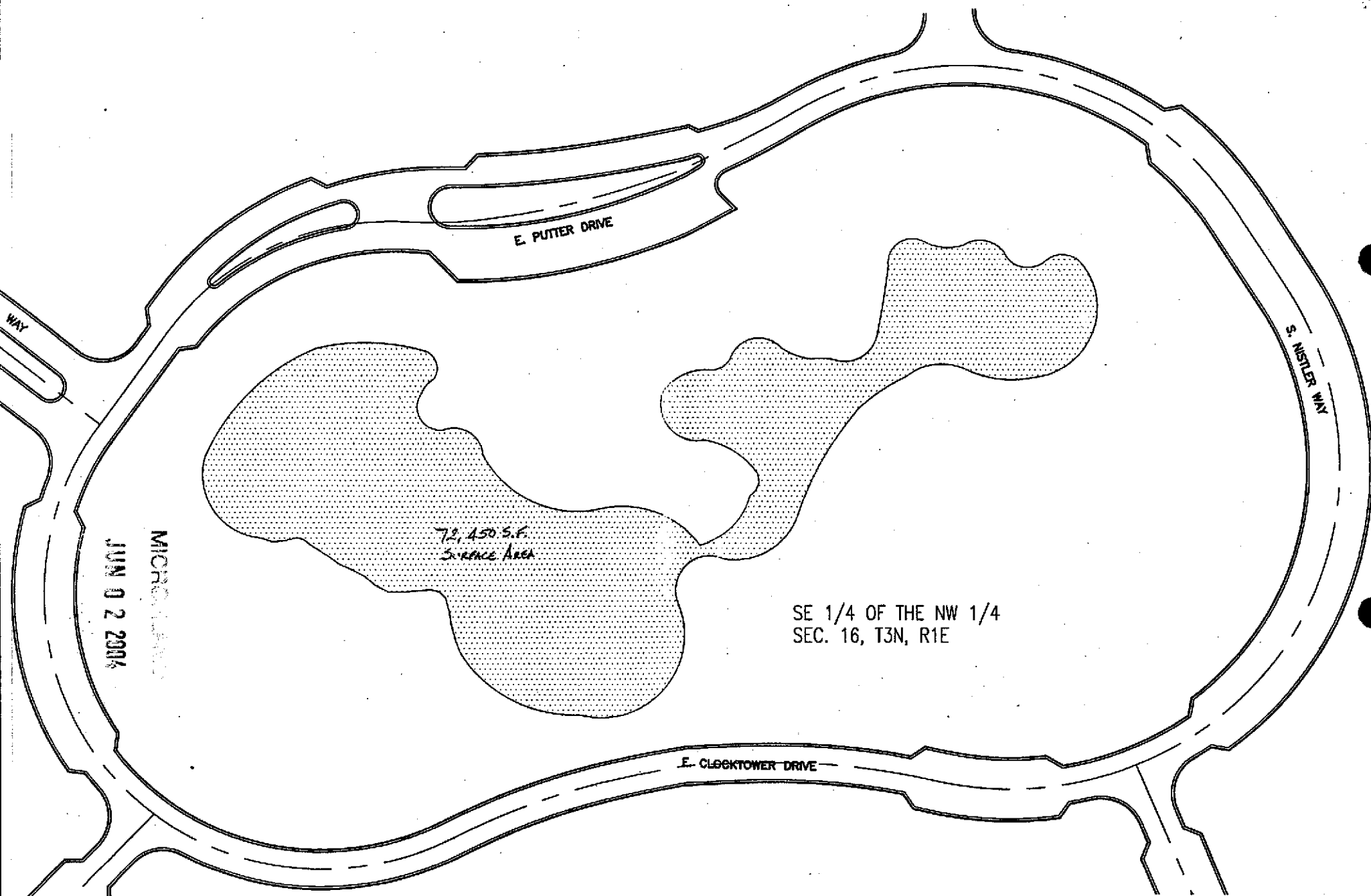
JULY 28, 2003

Please return this form to:

Idaho Dept. of Water Resources
Western Regional Office
2735 Airport Way
Boise, ID 83705-5082

RECORDED

JUN 02 2004



E. PUTTER DRIVE

S. NUTTER WAY

72,450 S.F.
Surface Area

SE 1/4 OF THE NW 1/4
SEC. 16, T3N, R1E

E. CLOCKTOWER DRIVE

MICRO PLANT

JUN 02 2004



Idaho Secretary of State Viewing Business Entity

[[New Search](#)] [[Back to Summary](#)]

[[Get a certificate of existence for TOUCHMARK OF THE TREASURE VALLEY, LLC \(TBID\)](#)]

TOUCHMARK OF THE TREASURE VALLEY, LLC (TBID)

5150 SW GRIFFITH DR
BEAVERTON, OR 97005

Type of Business: LIMITED LIABILITY COMPANY

Status: EXISTING, ANREPT SENT 03 Feb 2003

State of Origin: OREGON

Date of 20 Apr 1998

Origination/Authorization:

Current Registered Agent: WERNER G NISTLER, JR.
3805 E FRANKLIN RD
BOISE, ID 83642

File Number: W5975

Date of Last Annual 21 Feb 2003

Report:

Amendments:

Amendment 0 filed **20 Apr** REG. OF
1998 FOREIGN

[View Document Online](#)
[Download \(TIFF format\)](#)

Amendment 1 filed **07 Sep** NAME CHANGED TO
1999 TOUCHMARK OF THE
TREASURE VALLEY, LLC
(TBID)

[View Document Online](#)
[Download \(TIFF format\)](#)

Annual Reports:

Report for year 1998 ANNUAL REPORT [View Document Online](#)
[Download \(TIFF format\)](#)

Report for year 1999 ANNUAL REPORT [View Document Online](#)
[Download \(TIFF format\)](#)

Report for year 2001 ANNUAL REPORT [View Document Online](#)
[Download \(TIFF format\)](#)

Report for year 2002 ANNUAL REPORT [View Document Online](#)
[Download \(TIFF format\)](#)

Report for year 2002 CHNG OFF/DIR [View Document Online](#)
[Download \(TIFF format\)](#)

Report for year 2003 ANNUAL REPORT [View Document Online](#)
[Download \(TIFF format\)](#)

MICROSOFT

JUN 02 2004



RECEIVED 15 11:00

STATE OF IDAHO

Touchmark® Living Centers, Inc.5150 SW Griffith Drive • Beaverton, OR 97005 • 503-646-5186 • 503-644-3568 FAX • www.touchmark.com

Date: February 27, 2002 MEMO Page 1 of 1

To: Idaho Secretary of State (208) 334-2300 Phone (208) 334-2282 Fax
Pete T. Cenarrusa
700 West Jefferson
P.O. Box 83720
Boise, ID 83720-0080

cc: Phone Fax

From: Werner G. Nistler, Jr. 503-646-5186 Phone 503-644-3568 Fax
Chairman & CEO

Subject: Touchmark of the Treasure Valley, LLC
Registration No. W 5975

Ladies and Gentlemen:

In connection with the above-mentioned entity, the name of the Managing Member has been changed to:

Touchmark, LLC
5150 SW Griffith Drive
Beaverton, OR 97005

Please update your records accordingly, all other information remains the same. If you should have any questions or require additional information, please contact Terri Gates at 503-646-5186.

Thank you for your assistance with this matter.

Very truly yours,

Werner G. Nistler, Jr.
Chairman & CEO of Managing Member
wgn@tlcmail.com

dyg #111111
W-5975

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J 2 2004



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

April 13, 2004

TOUCHMARK OF THE TREASURE VALLEY LLC
PO BOX 1355
MERIDIAN ID 83682

RE: Permit No. 63-31829

Permit Approval Notice

Dear Permit Holder:

The Department of Water Resources has issued the enclosed permit authorizing you to establish a new water right. Please be sure to thoroughly review the conditions of approval and remarks listed on your permit.

The permit is a PRELIMINARY ORDER issued by the Department pursuant to Section 67-5243, Idaho Code. It can and will become a final order without further action by the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

As a permit owner you must commence the excavation or construction of the diverting works within one year of the date the permit was issued, and you must proceed diligently until the project is completed. The date shown under condition no. 1 is the date when the project must be completed.

The Department will send you a 'Proof Due Notice' approximately 60 days prior to the above referenced date requesting you to file either a Proof of Beneficial Use form or a Request for Extension of Time form.

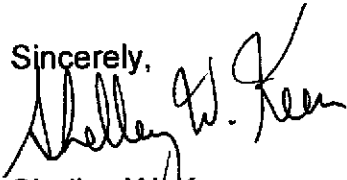
The right to drill a well is not a part of this permit to appropriate water. Beginning in July of 1987, a statute was enacted which requires a drilling permit for new well construction and deepening of existing wells. If the well(s) proposed for use under this water right permit were drilled or deepened after July 1, 1987, a separate drilling permit must be obtained from this Department. Please contact the Ground Water Protection Section located here at this office or our regional office nearest you.

APR 22 2004

Also, please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at 208-327-7946.

Sincerely,



Shelley W. Keen

Water Rights Supervisor

SWK:klf

Enclosure(s)

cc: SCANLAN ENGINEERING

MICROFILMED

JUN 02 2004

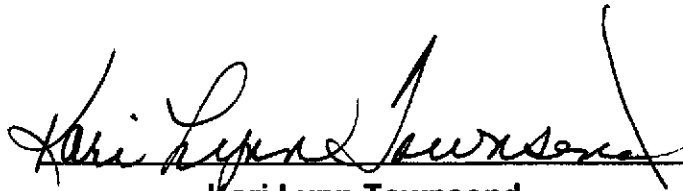
CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2004 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(Approved Permit) to the person(s) listed below:

RE: WATER RIGHT NO. 63-31829

**SCANLAN ENGINEERING
TERRY SCANLAN
600 E RIVER PARK LN STE 105
BOISE ID 83706**

**TOUCHMARK OF THE TREASURE VALLEY LLC
PO BOX 1355
MERIDIAN ID 83682**


**Kari Lynn Townsend
Secretary**

MICROFILMED

JUN 02 2004

**EXPLANATORY INFORMATION
TO ACCOMPANY A
PRELIMINARY ORDER**

The accompanying order or approved document is a "Preliminary Order" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the Department of Water Resources (department) unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. The department 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 with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the department or the Idaho Water Resource Board (Board) is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

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 IDAPA Rules 37.01.01302 and 37.01.01303 (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.

Comment
Letters

IDAHO DEPARTMENT OF WATER RESOURCES
APPROPRIATION APPLICATION ANALYSIS SHEET

Initial review by DAN. Date 12-11 Application # 63-9824

REQUIRED INFORMATION

- ☒ Name (for corporation or partnership, names & addresses for director, officers, &/or other partners must be included)
☒ Address
☒ Source (see USGS quad for source names)
☒ P/D (10 acres for spring, lot & block descriptions for subdivisions, local name)
☒ County
☐ Quantity (flow & /or volume) Government Lots
☒ Period of use NO P/D
☒ Nature of use (list details in appl. Item 8 if non-irrigation) NO P/U
☒ Description of diverting works
☒ Time required for beneficial use of water
☒ P/U
☒ Map (show T, R, S, QQ &/OR QQQ)
☒ Subdivision plat (if > 1 home restricted area ≥ 5 homes non-restricted area)
☒ Signature (if corporation, partnership, municipality, need title of signatory)
☒ Correct fee paid

ADDITIONAL INFORMATION

yes ADVERTISE REMARKS (Yes or No)

YES NO

- ☒ P/D overlap (explain) 63-31383 uses same wells for
☒ P/U overlap (explain) irrigation purposes on same lands.
☒ Critical groundwater area (send letter) Nampa meridian irrigation
☒ Ground water management area (send letter) rights also overlaid A.H.
☒ Drilling concern area (send letter)
☒ 1992 moratorium (send letter) mitigation is proposed.
☒ Surface water source, IDFG comment letter
☒ Protected river or minimum flow reach, notify water planning bureau
☒ E-mail to Dam Safety staff (if any storage)
☒ Mitigation plan: "request to process form" in file:
☒ Immediate = closed areas, acceptable plan required & submitted
☐ Future = open areas, plan not required
☒ Send power requirement letter &/or fish farm requirement letter
☒ Power residency affidavit
☐ Diversion greater than 5 cfs or 500 af or irrigation greater than 200 acres (if YES, attach large diversion supplementary analysis sheet)

REQUEST ADDITIONAL INFORMATION FROM APPLICANT

Date Requested _____ Date Response Received _____

PROCESSING

APPLICATION # 63-31829

YES NO

- ☒ ☐ In form for advertising
☐ ☒ Statewide advertising (> 10 cfs &/or 1000 af)
☒ ☐ Fee amount, receipt number, & date recorded on application

COMMENT LETTERS

YES NO

- ☐ ☒ IDEQ
☐ ☒ District Health
☐ ☒ IDFG
☐ ☒ IDL

YES NO

- ☐ ☒ US BLM
☐ ☒ US Forest Service
☐ ☒ Water Dist #
☐ ☒ Water Planning Bureau
☒ ☐ Other

FINAL REGIONAL PROCESSING REVIEW

CITY OF MERIDIAN
660 E. WATER TOWER LANE, STE 200
MERIDIAN, ID 83642

YES NO

- ☒ ☐ Affidavit of publication received
☒ ☐ Application published correctly? If not, record action taken

- ☒ ☐ Publication dates & paper recorded on application
☒ ☐ Final date for protest 2-23-04
☐ ☒ Protests received
☐ ☒ Recommendations attached
☐ ☐ Measuring device required
☐ ☐ Water delivered by water master? District #
☐ ☐ Special conditions of approval or cover letter

Std. Conditions, 046,

Recommended Date of Priority 12/19/2003

Recommendation ☒ Approve ☐ Deny by J. Nester Date 4/1/04

ADDITIONAL INFORMATION

☒ See attached proof report, note Legal Notice Remarks &/or Comments

☒ Shapefile completed (optional: attach with proof report)

The Idaho Statesman

P.O. Box 40, Boise, Idaho 83707-0040
LEGAL ADVERTISING PROOF OF PUBLICATION

Account #	DTI#	Identification	Amount:
047628	1025854	APPLICATION FOR PERMIT	\$164.60
Attention:	P.O. #	Run Dates	
SUE KREGER		FEBRUARY 5, 12, 2004	
IDAHO DEPT. WATER RESOURCES WEST 2735 AIRPORT WY. BOISE, ID 83705			Number of Lines 3 X 30
			Affidavit 1
			Legal # 18500

LEGAL NOTICE

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

TOUCHMARK OF THE TREASURE VALLEY LLC

PO BOX 1355

MERIDIAN ID 83682

Point(s) of Diversion

Use:

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Source GROUND WATER
Source GROUND WATER
0.7 CFS
10 AFA
0.7 CFS

ADA County
ADA County
01/01 To 12/31
01/01 To 12/31
01/01 To 12/31

NW1/4NW S16 T03N R01E
NW1/4NW S16 T03N R01E
AESTHETIC
AESTHETIC STORAGE
DIVERSION TO STORAGE

0.7 CFS

08/04/2003

AESTHETIC

SENW

AESTHETIC STORAGE

SENW

Water bearing zone to be appropriated is from 50 to 480 feet. Mitigation is proposed for consumptive use. Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec 42-203A, Idaho Code. Any protest against the approval of this application must be filed with the Director, Dept. of Water Resource, Western Region, 2735 Airport Wy., Boise ID 83705 together with a protest fee of \$25.00 for each application on or before 02/23/2004. The protest must also contain a copy of the protest to the applicant.

18500

RECEIVED
FEB 17 2004
WATER RESOURCES
WESTERN REGION

JANICE HILDRETH, being duly sworn, deposes and says: That she is the Principal Clerk of *The Idaho Statesman*, a daily newspaper printed and published at Boise, Ada County, State of Idaho, and having a general circulation therein, and which said newspaper has been continuously and uninterruptedly published in said County during a period of twelve consecutive months prior to the first publication of the notice, a copy of which is attached hereto: that said notice was published in *The Idaho Statesman*, in conformity with Section 60-108, Idaho Code, as amended, for:

TWO

☒ consecutive weekly ☐ single
☐ consecutive daily ☐ odd skip
insertion(s)

beginning issue of: FEBRUARY 5, 2004

ending issue of: FEBRUARY 12, 2004

Janice Hildreth

STATE OF IDAHO)
)

COUNTY OF ADA)
)

On this 12 day of FEBRUARY in the year of 2004 before me, a Notary Public, personally appeared before me Janice Hildreth known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that she executed the same.

Notary Public for Idaho
Residing at: Boise, Idaho
My Commission expires: 6/30/06

Dorinda Z. Bughman

NOTARY PUBLIC
IDAHO
FEB 17 2004



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

January 29, 2004

CITY OF MERIDIAN
660 E WATER TOWER LN STE 200
MERIDIAN ID 836423

Re: Water Right Application(s)

Dear Interested Party:

Enclosed is a copy of application(s) that may be of interest to you. Please review the application(s) and submit any comments you may have.

This office normally completes the processing of an application within a six-week period and is required to take final action shortly thereafter. However, if you desire to file a formal protest against the approval of this application(s), your written protest along with the \$25.00 protest fee must be received in this office by February 23, 2004.

If you have any questions regarding the application(s), please contact this office.

Sincerely,
Sue Kreger *sk*
Administrative Assistant

Encl. Copy of Application(s)

RECEIVED

JAN 30 2004

**IDAHO DEPARTMENT OF WATER RESOURCES
WESTERN REGION
2735 AIRPORT WAY
BOISE ID 83705**

January 28, 2004

Legal Notice Department
IDAHO STATESMAN
PO BOX 40
BOISE ID 83707

RE: Application for Permit No. 63-31829 and
Application for Transfer Nos. 70900, 70901, 70905, 70919, and 70964

Dear LEGAL NOTICE DEPARTMENT:

Enclosed you will find five legal notices which we wish to have published in your newspaper on the dates indicated (once a week for two consecutive weekly issues). If you cannot publish the notices on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office before 02/23/2004. Your cooperation is appreciated.

Sincerely

Sue Kreger
Administrative Assistant

RECEIVED
JAN 29 2004

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

63-31829

TOUCHMARK OF THE TREASURE VALLEY LLC

PO BOX 1355

MERIDIAN ID 83682

Point(s) of Diversion NWNENW S16 T03N R01E ADA County Source GROUND WATER

Point(s) of Diversion NWNE S16 T03N R01E ADA County Source GROUND WATER

Use: AESTHETIC 01/01 To 12/31 0.7 CFS

Use: AESTHETIC STORAGE 01/01 To 12/31 10 AFA

Use: DIVERSION TO STORAGE 01/01 To 12/31 0.7 CFS

Total Diversion: 0.7 CFS

Date Filed: 08/04/2003

Place Of Use: AESTHETIC

T03N R01E S16 SENW

Place Of Use: AESTHETIC STORAGE

T03N R01E S16 SENW

Remark: Water bearing zone to be appropriated is from 50 to 480 feet. Mitigation is proposed for consumptive use.

Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec 42-203A, Idaho Code.

Any protest against the approval of this application must be filed with the Director, Dept. of Water Resource, Western Region,

2735 Airport Wy, Boise ID 83705 together with a protest fee of \$25.00 for each application on or before 02/23/2004. The protestant must also send a copy of the protest to the applicant.

KARL J DREHER, Director

Published in the Idaho Statesman on February 5 and 12, 2004.

SCANLAN ENGINEERING

Groundwater and Environmental Engineering

December 18, 2003

RECEIVED

DEC 19 2003

WATER RESOURCES
WESTERN REGION

Dan Nelson
Senior Water Right Agent
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705

Subject: Application for Permit for Pond for Touchmark of the Treasure Valley

Dear Dan:

In response to your letter of December 12, 2003, I have enclosed a revised application for permit by Touchmark of the Treasure Valley for an aesthetic pond near Meridian. The revised application includes "diversion to storage" as a use. The application also includes a revised mitigation plan that agrees to retire 2.2 acres of existing irrigation water right rather than 2.0 acres. The larger amount of water right is based on (1) 2.91 afa per acre annual consumptive use, (2) a 1.7-acre pond surface area, and (3) 45 inches of annual gross free water surface evaporation.

The mitigation plan has been revised for sake of expediency. We do not wish to delay processing of the application by arguing over 0.2 acre feet of mitigation. Nonetheless, I would like to comment on the Department's policy regarding mitigation for ponds.

- First, the application that was submitted previously used the standard consumptive use volume of 3.5 acre feet per acre for mitigation purposes because I understood that the Western Region IDWR policy was to recognize the standard volume for purposes of mitigation plans (but not for transfers). In fact, at your request in May 2003 I revised the mitigation plan for application for permit 63-31494 upward from 3.0 acre feet historical consumptive use volume to 3.5 acre feet per acre IDWR standard consumptive use volume. Now, it seems that I am doing the exact opposite for the Touchmark application.
- Second, the Department's policy of requiring mitigation for gross evaporation rather than net evaporation is excessive. A pond surface in this area will receive approximately 11 inches precipitation annually, 2/3 of which falls during the non-growing season. Therefore, the net evaporation from a pond surface is less than 3 feet per acre, similar to the consumptive irrigation requirement on a per acre basis.

It seems that a simpler approach for mitigation of consumptive use from ponds would be to consider one acre of irrigation water right as adequate mitigation for one acre of pond surface area.

I hope the enclosed information is adequate for you to continue processing of this application. If you need additional information, please do not hesitate to contact me.

Sincerely,



Terry M. Scanlan, P.E., P.G.

Cc: Donn Reiswig
Jeff Fereday

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JAN 21 2004



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

FAX (208) 334-2348

December 12, 2003

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

TOUCHMARK OF THE TREASURE VALLEY LLC
C/O SCANLAN ENGINEERING
660 EAST RIVER PARK LANE STE 105
BOISE ID 83706

**RE: APPLICATION FOR PERMIT FOR POND FOR TOUCHMARK
OF THE TREASURE VALLEY LLC**

Dear Mr. Scanlan:

In reviewing the application for permit for Touchmark of the Treasure Valley you listed that the pond would loose 45 inches of evaporation from the proposed 1.7 acre pond surface area resulting in an annual evaporation loss of 6.4 acre feet. You then used the old standard of 3.5 acre feet of consumptive use formerly used on all irrigation rights to determine that 2 acres were needed to account for the consumptive use of water.

However, the water right that you are currently using for mitigation has undergone extensive evaluations in several transfers by three separate engineering firms. The actual historic consumptive use calculated by ERO Resources for the VanEss dairy transfer from the this water right lists the historic consumptive use at 2.91 afa per acre, which I feel is a reasonable assessment of the consumptive use for a turf farm.

Therefore, in order to attain the 6.4 acre-feet of consumptive use, your client would need to purchase and retire approximately 2.2 acres of ground.

You also neglected to insert the diversion to storage component on the application for permit. This is needed when you are diverting water from a source to a pond.

If you have any questions or concerns please contact me at the above address.

Respectfully,

Daniel A. Nelson
Sr. Water Right Agent

12-14-03
DEC 14 2003

SCANLAN ENGINEERING

Groundwater and Environmental Engineering

August 2, 2003

Steve Lester
Water Rights Supervisor
Western Region Office
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705

Subject: Application for Permit – Touchmark of the Treasure Valley LLC

Dear Steve:

On behalf of Touchmark of the Treasure Valley, LLC, I am pleased to submit the enclosed application for permit. A check for the \$250 application fee is enclosed.

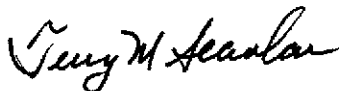
The application for permit is for a nominal 1.7-acre aesthetic pond with a storage volume of 10 acre feet. Initial pond filling can be accomplished through a one-time rental from the State Water Bank of 10 acre feet of a Basin 63 groundwater right.

The evaporation losses from the pond will be replaced with up to 7.0 acre feet annually of groundwater diverted to the pond from one or two wells associated with supplemental irrigation water right 63-31383. Maximum diversion rate for aesthetic use (pond level maintenance) will be 0.7 cfs, the same rate authorized by 63-31383. Retiring a 2-acre portion (0.04 cfs, 9.0 afa) of water right 63-9972 will mitigate the consumptive use (i.e., evaporation) from the pond. A mitigation plan and a copy of the water right purchase and sale agreement are enclosed.

We understand from conversations with IDWR staff that the 2-acre portion of irrigation water right 63-9972 could be transferred to mitigation use rather than formally retired or relinquished. However, we also understand that retirement or relinquishment of the water right will be the most expedient method for obtaining final approval for the application for permit. Therefore, we currently anticipate retiring the 2-acre portion of water right 63-9972 rather than transferring the use to mitigation.

Please contact me with any questions.

Sincerely,



Terry M. Scanlan, P.E.

Cc: Donn Reiswig
Steve Bradbury
Jeff Fereday