

Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

Boise
Idaho Falls
Pocatello
Twin Falls

01039725

Eugene C. Thomas
John W. Barrett
R. B. Rock
Richard C. Fields
John S. Simko
John C. Ward
D. James Manning
Gary T. Dance
Larry C. Hunter
Randall A. Peterman
Mark S. Prusynski
Stephen R. Thomas
Glenna M. Christensen
Gerald T. Husch
Scott L. Campbell
Robert B. Burns

Michael E. Thomas
Patricia M. Olsson
Bradley J. Williams
Lee Radford
Michael O. Roe
David S. Jensen
James L. Martin
C. Clayton Gill
Michael W. McGreaham
David P. Gardner
Julian E. Gabiola
Angela Schaer Kaufmann
Kimberly D. Evans Ross
Paul D. McFarlane
Jon A. Stenquist
Tyler J. Henderson

Jason G. Murray
Mark C. Peterson
Andrew J. Waldera
Tyler J. Anderson
Dylan B. Lawrence
Russell G. Metcalf
Benjamin C. Ritchie
Rebecca A. Rainey

Robert E. Bakes, *of counsel*
Morgan W. Richards, *of counsel*

Willis C. Moffatt, 1907-1980
Kirk R. Helvie, 1956-2003

October 26, 2006

US Bank Plaza Building
101 S Capitol Blvd 10th Fl
PO Box 829
Boise Idaho 83701 0829

208 345 2000
800 422 2889
208 385 5384 Fax
www.moffatt.com

Phillip J. Rassier
Idaho Department of Water Resources
Deputy Attorney General
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

Re: L & S Partnership Transfer No. 5400
MTBR&F File No. 22898.0

Dear Phil:

First, thank you for taking the time to return my telephone call yesterday. I appreciate your responsiveness.

As I indicated, I am enclosing a complete set of the documentation I previously provided to Michael Creamer, counsel for Mark Gates. I also informed you that Mike orally communicated to me that Mr. Gates will not oppose my client's efforts to have the Idaho Department of Water Resources correct the erroneous portions of the approval for this transfer, issued by the Department in March 2001. He requested that I keep him informed of our efforts to accomplish this goal. I am providing him with a copy of this correspondence, without the enclosures, in order to do so.

Please review the material and contact me to discuss the possible approaches to resolve this matter. My client has requested that I obtain a satisfactory resolution as soon as reasonably possible.

I look forward to your response and cooperation.

Very truly yours,


Scott L. Campbell

Phillip J. Rassier
October 26, 2006
Page 2

SLC/dll

Enclosures

cc: Michael C. Creamer (w/o encls.)
Steve Aslett Sr. (w/o encls.)

WATER RIGHTS PURCHASE AGREEMENT

On March 5, 1998, McCaleb Estates, Inc. (hereinafter "McCaleb"), an Idaho corporation, and L&S Partnership (hereinafter "L&S"), an Idaho general partnership, hereby enter into the following water rights purchase agreement (hereinafter "Agreement").

W I T N E S S E T H

* * * *

Whereas, McCaleb owns water right no. 34-04035C, as judicially confirmed in the Partial Decree issued on December 23, 1997 by the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls in Case No. 39576, In Re: SRBA (Exhibit A); and

Whereas, L&S owns real property in Custer County which currently possesses no water rights and L&S desires to purchase water right no. 34-04035C and transfer it to its real property, under the terms and conditions contained herein; and

Whereas, McCaleb desires to sell water right no. 34-04035C to L&S under the terms and conditions contained in this Agreement.

TERMS OF SALE

1. L&S shall tender to McCaleb the earnest money payment of one thousand dollars (\$1000.00), in the form of a cashiers check, upon execution of this Agreement by McCaleb. Said earnest money payment shall be held in escrow in the trust account of Warren Webber, Esquire, and shall be applied to the unpaid balance of the purchase price of water right no. 34-04035C at the closing of this transaction if all of the terms and conditions hereof are satisfied. If water right no. 34-04035C is not transferred to the real property owned by L&S within twelve (12) months from the date of execution hereof, or as extended by L&S, the earnest money payment of one thousand dollars (\$1000.00) shall be refunded in full to L&S by McCaleb.

2. L&S shall tender to McCaleb the balance of the total purchase price for water right no. 34-04035C in the amount of fourteen thousand dollars (\$14,000.00) in the form of a cashiers check upon satisfactory completion, or written waiver by L&S, of all of the terms and conditions hereof, including, but not limited to, final approval, without appeal, of a transfer application of water right no. 34-04035C (hereinafter "transfer application"), pursuant to Idaho Code Section 42-222, which is acceptable to L&S. The total purchase price shall be the amount of fourteen thousand dollars (\$14,000.00).

3. McCaleb shall cooperate with L&S in the preparation and processing of the transfer application. Cooperation by McCaleb shall include, but is not limited to: (1) execution and delivery of any forms or documents required as part of the transfer application process, which shall include any affidavits requested by counsel for L&S to the extent they contain accurate information; (2) providing any information or data in the possession of McCaleb or its agents or employees which relates to water right no. 34-04035C or the real property to which the water right is presently appurtenant; (3) participating in any required hearings or discovery proceedings as witnesses in support of the transfer application by L&S, which shall include full cooperation with counsel for L&S in any requested meetings preparatory to said hearings or discovery proceedings; (4) assisting in the identification, location, and obtaining the cooperation of witnesses who are not principals, agents, or employees of McCaleb for the prosecution of the transfer application by L&S; and (5) providing accurate copies of executed Quitclaim Deeds from all of the current owners of the lots in McCaleb Estates Subdivision, conveying any and all interests in water right no. 34-04035C to McCaleb.

REPRESENTATIONS AND WARRANTIES

4. McCaleb represents and warrants to L&S that it owns all right, title, and interest in water right no. 34-04035C, free of all liens, mortgages, security interests, or other encumbrances of whatever nature, and has full legal authority to freely convey full legal and equitable title in water right no. 34-04035C to L&S, under the terms and conditions hereof.

5. L&S represents that it possesses sufficient financial resources to tender the unpaid balance of the purchase price for water right no. 34-04035C and will be able to do so at the closing of this transaction when all the terms and conditions hereof have been satisfied.

6. McCaleb agrees to defend and indemnify L&S against any and all legal proceedings, whether they be judicial or administrative in nature, which involve or pertain to the conveyance by McCaleb and the purchase by L&S of water right no. 34-04035C, after the tender of the unpaid balance of the purchase price by L&S and the closing of this transaction.

REMEDIES AND GOVERNING LAW

7. If a judicial action is brought to enforce the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney fees and costs of litigation.

8. This Agreement is entered into in the State of Idaho and the laws of Idaho shall govern the interpretation and enforcement of this Agreement.

9. This Agreement shall constitute a binding contract, enforceable in the state courts of the State of Idaho.

10. All notices, requests, or other written communications shall be delivered to McCaleb and L&S via U.S. Mail or facsimile transmission to the following addresses, which may be subsequently changed by the parties utilizing written notice, as herein provided:

McCaleb Estates, Inc.
c/o Steve Vigiliatoro
PREMIER ~~Prestige Properties~~ *REAL ESTATE CO.*
1135 Yellowstone, Suite D
Pocatello, Idaho 83201
Telephone: (208) 237-5025
Facsimile: (208) 237-3637

L&S Partnership
c/o Steve Aslett
Circle A Construction
212 Highland Avenue
Post Office Box B
Twin Falls, Idaho 83303-0015
Telephone: (208) 734-5533
Facsimile: (208) 734-4238

11. This Agreement shall be binding upon the parties hereto and their heirs, successors, and assigns.

Dated this 26 day of May, 1998.

L&S PARTNERSHIP

By: Steve Aslett
Title: Partner

MCCALEB ESTATES, INC.

By: Steve McCaleb
Title: President

STATE OF IDAHO)
) ss.
County of)

On this 17 day of June, 1998, before me, a notary public, personally appeared Steve Aslett, _____ of L&S Partnership, identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he 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.

Bonnie Templeman
Notary Public for Idaho
Residing at Filer, ID
Commission expires 2/12/02

STATE OF IDAHO)
) ss.
County of Bannock)

On this 26th day of May, 1998, before me, a notary public, personally appeared Steve J. Jiglaturo Fred of McCaleb Estates, Inc., known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he 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.

Angie E. Bo
Notary Public for Idaho
Residing at Pocatello
Commission expires 7-15-99

ELAM & BURKE
A Professional Association
ATTORNEYS AND COUNSELORS AT LAW
KEY FINANCIAL CENTER
702 WEST IDAHO
POST OFFICE BOX 1839
BOISE, IDAHO 83701

SCOTT L. CAMPBELL

TELEPHONE
208-343-5454
FACSIMILE
208-384-8844

January 12, 1999

Mr. Harold Jones
Idaho Department of Water Resources
Eastern Region
900 North Skyline Drive, Suite A
Idaho Falls, Idaho 83402

Re: In the Matter of Application for Transfer of Water Right No. 34-04035C

Dear Harold:

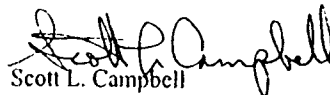
I have enclosed for your consideration the original Application for Transfer of Water Right No. 34-04035C, which was previously submitted to your office in July, 1998, but returned for further information. We are re-submitting this Application to you pursuant to the letter of Steve Vigilantoro, which was recently sent to you. Please note that the filing fee for this Application has previously been paid.

I have also enclosed one copy to be receive-stamped and returned to this office in the enclosed self-addressed, stamped envelope.

Please contact me if you have any questions concerning this matter.

Very truly yours,

ELAM & BURKE
A Professional Association


Scott L. Campbell

SLC:thm G:\Thm\WPDATA\032400104-ltr.wpd
cc: Steve Aslett, Sr.
Steve Aslett, Jr.

RECEIVED
FEB 09 1999
Department of Water Resources
Eastern Region

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED
Transfer No. 5400
FEB 09 1999

ORIGINAL

NOTIFICATION FOR TRANSFER OF WATER RIGHTS

PART 1

Please send all notices & correspondence to
Scott L. Campbell, Elam & Burke, PO Box 1539,
Boise, ID 83701

Name of applicant L & S Partners, c/o Steve Aslett

Post Office address PO Box B, Twin Falls, ID 83303-0015

Phone (208) 734-5533

A. PURPOSE OF TRANSFER

1. ☒ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____

2. Describe the reason for the proposed changes The changes are pursuant to a water rights purchase agreement executed between L & S Partners and McCaleb Estates, Inc.

RECEIVED

~~JUL 27 1998~~

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use	Department of Water Resources Eastern Region
04035C 34-05035C	8/1/60	1.31 cfs/ 229.25 af	Irrigation	4/15	10/15
					to
					to
					to
					to
					to

2. Total amount of water being transferred 1.31 cubic feet per second and/or 229.25 acre-feet per annum.

3. Source of water groundwater _____ cubic feet per second and/or 229.25 acre-feet per annum
tributary to _____

4. Point(s) of Diversion: 2 wells

Lot	%	%	%	Sec.	Twp.	Rge.	County	Local name for diversion
		SW	~~NE~~	01	7N	22E	Custer	
		~~SW~~	NW	01	7N	22E	Custer	
		SE	NE					

5. Lands irrigated or place of use:

5. Lands irrigated or place of use:

[illegible]

Total acres 65.5

T5400

TRANSFER 5400

PART 1

ORIGINAL

6. General Information:

a. Description of diversion system Water will be delivered to the place of use through pipeline from well and pump to sprinklers.

b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? _____ Yes XX No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes.

c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer:
Water will no longer be used on land now irrigated under this water right.

d. Remarks:

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____
And said application is hereby _____, subject to the following limitations and conditions:

Witness my hand this _____ day of _____, 19 _____.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:
 a. Decree No. 34-04035C Decreed to McCaleb Estates, Inc.
 in case of In re SRBA, Case No. 39576 vs. _____
 dated December 23, 1997 in Twin Falls county of Idaho
 b. License No. _____ issued by the Idaho Department of Water Resources.
 c. Claim No. _____ on file with the Idaho Department of Water Resources.
 d. Transfer No. _____ which produced this right.
2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:
☐ Tax Notice ☒ Warranty Deed ☐ Other _____
3. Source of water Groundwater tributary to _____
4. Date or priority 8/1/60
5. Water is used for the following purpose:
 amount: 1.31 cfs for irrigation purposes from _____ to _____
 (cfs/ac-ft)
 amount: _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount: _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
6. Total amount of water under right 1.31 cubic feet per second and/or 229.25 acre-feet per annum.
7. Point(s) of Diversion:

Lot	%	%	%	Sec.	Twp.	Rge.	County	Local name for diversion
	NW	SW	NE	34	7N	24E	Custer	

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
7N	24E	34			10	6.5					30	15			30	16			62.5
7N	24E	35									3								3.0

Total acres 65.5

9. Describe any other water rights used for the same purpose as described above
- 34-0227K and 34-00830C

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?
 No _____ If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

Total acres _____

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)

1. amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

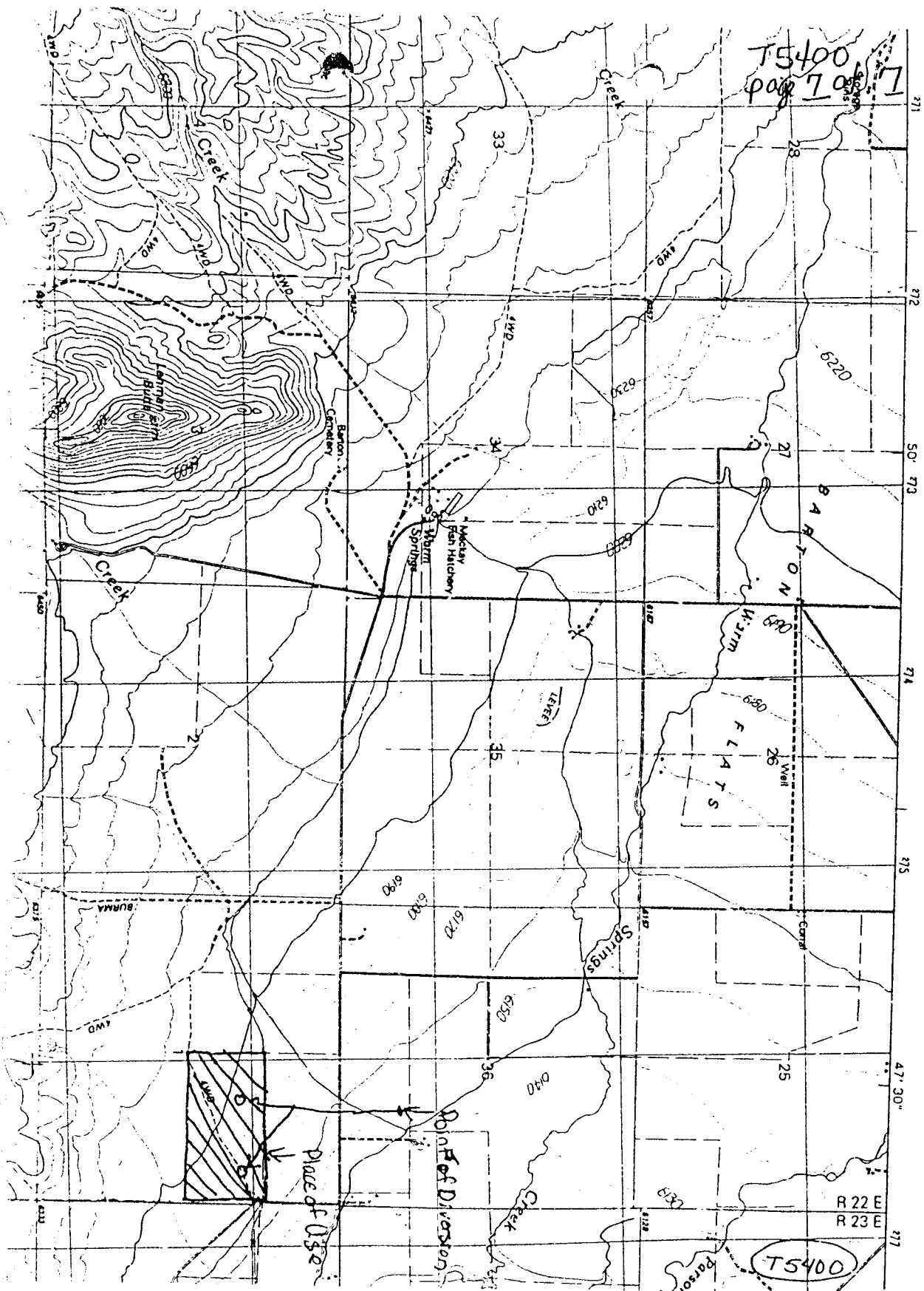
2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

Total acres _____



TS400
page 7 of 17

Topographic map of the Barton area in Florida, showing the proposed route for the Suwannee River Water Management District. The map includes contour lines, roads, and various landmarks. Handwritten annotations include "TS400" and "page 7 of 17" in the top left, and "Point of Diversion" and "Place of Use" with arrows pointing to specific locations on the right side. The map is overlaid with a grid showing coordinates from 171 to 177 and 25 to 27.

Page 5 of 7

APPENDIX XI-E (cont.)

Transfer No. 5400

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 3

- A. Draw a map or attach a USGS map indicating the new point(s) of diversion and/or the new place of use for rights described in part 1. Clearly depict the land by section, township and range number.

Please see Exhibit A appended hereto.

as equal 1 mile. Draw plan in ink.

PART 3

B. CHANGES IN NATURE OF USE

1	New Nature of Use	Amount (cfs/ac-ft)	Hours/days/year	Period of Use
				to
				to

2. Quantity and quality of return flows and location of discharge:

3. Describe effects on other water uses resulting from the proposed change:

I hereby assert that no one will be injured by such change and that this change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willful misrepresentations made in this application may result in voiding its approval.

Subscribed and sworn to before me this 15 day of July, 19 98.

Bonnie Templeman
 (Notary Public)

My commission expires 2/12/02

FOR DEPARTMENT USE ONLY

Transfer contains 405 pages and 7-27-98 attachments

Received by HWT Date 7-27-98 Protest filed by Rosholt Robertson & Tucker

Prelim. check by HWT Fee 100.00 Speckle Aarnestad

Receipted by HWT #602418 Date 7-27-98 Cervens Pursley

Published in Hall's Messenger

Pub. dates 3-4 & 3-11-99

Copies of protest forwarded by _____

Hearing held by _____ Date _____

Watermaster recommendation requested on _____ Recommended for ☒ approval ☐ denial

_____ rec'd. by RDR

Copy of transfer sent to lien holder _____

James P. Speck, Esq.
SPECK & AANESTAD
A Professional Corporation
120 East Avenue
Post Office Box 987
Ketchum, Idaho 83340
Telephone (208) 726-4421
Facsimile (208) 726-0752
Attorneys for Protestants David and Mary Stoecklein

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 5400:)
)
L and S Partners, Applicant.)
)
David Stoecklein and Mary Stoecklein,)
)
Protestants.)
)

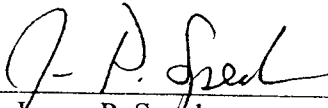
NOTICE OF PROTEST

David and Mary Stoecklein ("Protestants"), by and through their attorneys, Speck & Aanestad, A Professional Corporation, hereby file their Notice of Protest to the approval of Application for Transfer No. 5400. The grounds for this protest are as follows:

1. The Application for transfer violates some or all of the criteria set forth in I.C. § 42-222.
2. For such other and further reasons as may be presented at the hearing on this matter.

Dated this 19 day of March, 1999.

SPECK & AANESTAD
A Professional Corporation
Attorneys for David and Mary Stoecklein

By: 
James P. Speck

CERTIFICATE OF SERVICE

I hereby certify that on the 19 day of March 1999, I served a true and correct copy of the within and foregoing document upon the persons named below in the manner noted:

L and S Partners
c/o Steve Aslett
P.O. Box B
Twin Falls, ID 83303-0015

- ☒ United States Mail, Postage Prepaid
- ☐ Hand Delivery
- ☐ Facsimile, with copy by United States Mail, Postage Prepaid

Mr. Scott L. Campbell
ELAM & BURKE
Key Financial Center
702 West Idaho
P. O. Box 1539
Boise ID 83701

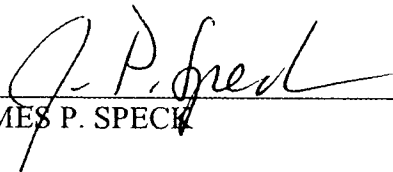
- ☒ United States Mail, Postage Prepaid
- ☐ Hand Delivery
- ☐ Facsimile, with copy by United States Mail, Postage Prepaid

IDAHO DEPARTMENT OF WATER
RESOURCES
Eastern Regional Office
900 N. Skyline, Suite A
Idaho Falls ID 83402

- ☒ United States Mail, Postage Prepaid
- ☐ Hand Delivery
- ☐ Facsimile, with copy by United States Mail, Postage Prepaid

Mr. Karl J. Dreher
Director
IDAHO DEPARTMENT OF WATER
RESOURCES
1301 N. Orchard
P.O. Box 83720
Boise, ID 83720-0098

- ☒ United States Mail, Postage Prepaid
- ☐ Hand Delivery
- ☐ Facsimile, with copy by United States Mail, Postage Prepaid



JAMES P. SPECK

Norman M. Semanko
 ROSHOLT, ROBERTSON & TUCKER
 P. O. Box 1906
 Twin Falls, Idaho 83703-1906
 Telephone: (208) 734-0700
 Facsimile: (208) 736-0041
 nms.99\gates\protest

Attorneys for Mark T. Gates, Trustee

RECEIVED

MAR 19 1999

Department of Water Resources
 Southern Region

BEFORE THE DEPARTMENT OF WATER RESOURCES
 OF THE STATE OF IDAHO

IN THE MATTER OF)
 APPLICATION FOR TRANSFER) NOTICE OF PROTEST
 NUMBER 5400)
 WATER RIGHT NUMBER 34-04035C)
 IN THE NAME OF)
 L & S PARTNERS)
 _____)

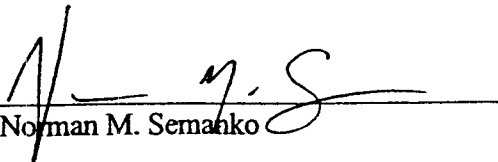
MARK T. GATES, Trustee (hereinafter "Gates"), by and through his attorneys, Rosholt, Robertson & Tucker, files this Notice of Protest to the approval of the above-numbered Application for Transfer filed by L & S Partners. The basis for Gates' protest is as follows:

1. The proposed change in use of the waters described in the aforesaid application violates all or portions of the criteria set forth in Idaho Code Sections 42-108 and/or 42-222(1); and;

2. For such other and further reasons as may be set forth at the hearing on this matter.

1
2 DATED this 19th day of March 1999.

3 ROSHOLT, ROBERTSON & TUCKER

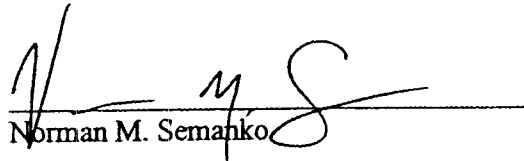
4
5 By: 
6 Norman M. Semanko

7
8
9 CERTIFICATE OF MAILING

10 I hereby certify that on this 19th day of March, 1999, I served a copy of the foregoing
11 NOTICE OF PROTEST, by depositing same in the United States mail, postage prepaid, in an
12 envelope, addressed to the following:
13

14 L & S Partners
15 c/o Steve Aslett
16 P.O. Box B
Twin Falls, ID 83303-0015

17 Scott L. Campbell
18 Elam & Burke
19 P.O. Box 1539
Boise, ID 83701

20
21 
22 Norman M. Semanko
23
24
25
26

Michael C. Creamer
GIVENS PURSLEY LLP
P.O. Box 2720
277 No. 6th Street, Suite 200
Boise, Idaho 83701
(208) 388-1200
(208) 388-1201 Fax
S:\Clients\4562\4\Pleadings\Transfer Protest.wpd

Attorneys for 6X Ranch, LLC

BEFORE THE DIRECTOR

IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of the Application of L & S
Partners to Transfer Water Right No. 34-
04035C

**6X RANCH, LLC'S PROTEST TO
APPLICATION TO TRANSFER**

6X RANCH, LLC ("Protestant"), through its attorneys Givens Pursley LLP, hereby Protests the Application for Transfer of Water Right No. 34-04035C filed by L& S Partners ("Applicant").

The grounds for this Protest are as follows:

1. Protestant holds water rights from, among others, the Big Lost River, Warm Springs Creek, Parsons Creek and Pole Stackyard Creek, and certain ground water rights, all of which have points of diversion and places of use in the immediate vicinity of the proposed new point of diversion for water right no. 34-04035C.

2. If granted the proposed transfer may:

- a. result in injury to Protestant's water rights;
- b. result in an enlargement of Water Right No. 34-04035C;
- c. increase the consumptive use of Water Right No. 34-04035C; and
- d. not be able to be administered by the watermaster and Department without appropriate conditions to protect the priorities and uninterrupted delivery of Protestant's ground and surface water rights.

CERTIFICATE OF SERVICE

I hereby certify that on March 19, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names.

Scott L. Campbell
Elam & Burke, P.A.
702 W. Idaho, 10th Floor
P.O. Box 1539
Boise, ID 83701-1539

☐ U.S. Mail ☐ Fax ☒ Hand Delivery ☐ FedEx

Mr. Karl Dreher, Director
Idaho Department of Water Resources
1301 North Orchard Street
Boise, ID 83706

☐ U.S. Mail ☐ Fax ☒ Hand Delivery ☐ FedEx

Mr. Ronald Carlson, Manager
Idaho Department of Water Resources
900 North Skyline Drive
Idaho Falls, ID 83402-6105

☒ U.S. Mail ☒ Fax ☐ Hand Delivery ☐ FedEx


Michael C. Creamer

Protestant 6X Ranch, LLC reserves the right to state other and additional grounds as facts and its interests may later appear through discovery or otherwise.

DATED this 19th day of March, 1999.

GIVENS PURSLEY LLP

By: 

Michael C. Creamer
Attorneys for 6X Ranch, LLC

ELAM & BURKE
A Professional Association
ATTORNEYS AND COUNSELORS AT LAW
Established in 1928

KEY FINANCIAL CENTER
702 WEST IDAHO
POST OFFICE BOX 1539
BOISE, IDAHO 83701

TELEPHONE
208-343-5454

FACSIMILE
208-384-5844

SCOTT L. CAMPBELL

E-mail: slc@elamburke.com

June 11, 1999

Harold Jones
Idaho Department of Water Resources
Eastern Region
900 North Skyline Drive, Suite A
Idaho Falls, ID 83402

*Re: Application for Permit No. 5400 (Water Right No. 34-04035C)
McCaleb Estates Water Rights Purchase*

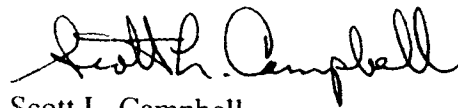
Dear Harold:

Enclosed please find the Amended Application for Transfer of Water Right in the above-referenced matter. I am sending you an original and one copy to be conformed and returned to me. Please note that the filing fee has previously been paid in this matter.

Thank you very much for your cooperation and your assistance, and please feel free to contact me if you have any questions.

Very truly yours,

ELAM & BURKE
A Professional Association



Scott L. Campbell

ADS:pw
Enclosures

cc: Steve Aslett

AMENDED **APPLICATION FOR TRANSFER OF WATER RIGHT**

PART 1

Please send all notices and correspondence to: Scott L. Campbell, Elam & Burke, P.A.
P.O. Box 1539, Boise, ID 83701

Name of applicant L & S Partners, c/o Steve Aslett Phone (208) 734-5533

Post Office address P.O. Box B, Twin Falls, ID 83303-0015

A. PURPOSE OF TRANSFER

1. ☒ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____
2. Describe the reason for the proposed changes The changes are pursuant to a water rights purchase agreement executed between L & S Partners and McCaleb Estates, Inc.

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
<u>34-04035C</u>	<u>8/1/60</u>	<u>1.31 cfs/ 229.25 af</u>	<u>Irrigation</u>	<u>4/15 to 10/15</u>
_____	_____	_____	_____	_____ to _____
_____	_____	_____	_____	_____ to _____
_____	_____	_____	_____	_____ to _____

2. Total amount of water being transferred 1.31 cubic feet per second and/or 229.25 acre-feet per annum.

3. Source of water ground water tributary to _____

4. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		SE	SE	6	8N	22E	Custer	

5. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
8N	22E	6													20			40	60
		7	5.5																5.5

Total acres 65.5

PART 1

6. General Information:

a. Description of diversion system Water will be delivered to the place of use through a pipeline from the well and a pump to the sprinklers.

b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? _____ Yes XX No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes.

c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer:
Water will no longer be used on the land now irrigated under this water right.

d. Remarks:

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examineu Application for Transfer of Water Rights No. _____
And said application is hereby _____, subject to the following limitations and conditions:

Witness my hand this _____ day of _____, 19 _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

a. Decree No. Partial 34-04035C Decreed to McCaleb Estates, Inc.
 in case of In re SRBA Case No. 39576 vs. _____
 dated December 23, 1997 in Twin Falls county of Idaho

b. License No. _____ issued by the Idaho Department of Water Resources.

c. Claim No. _____ on file with the Idaho Department of Water Resources.

d. Transfer No. _____ which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☐ Tax Notice

☒ Warranty Deed

☐ Other _____

3. Source of water Ground water tributary to _____

4. Date or priority 8/1/60

5. Water is used for the following purpose:

amount 1.31 cfs for irrigation purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

6. Total amount of water under right _____ cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
	NW	SW	NE	34	7N	24E	Custer	

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
7N	24E	34			10	6.5					30	16			30	16			62.5
7N	24E	35										3							3.0

Total acres 65.5

9. Describe any other water rights used for the same purpose as described above 34-0227K and
34-00830C

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?
 No _____ If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

Total acres _____

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)

1. amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
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 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

Total acres _____

PART 3**B. CHANGES IN NATURE OF USE**

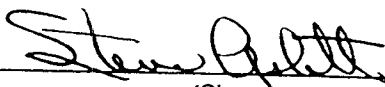
1	<u>New Nature of Use</u>	<u>Amount</u> (cfs/ac-ft)	<u>Hours/days/year</u>	<u>Period of Use</u>
	_____	_____	_____	_____ to _____
	_____	_____	_____	_____ to _____

2. Quantity and quality of return flows and location of discharge:

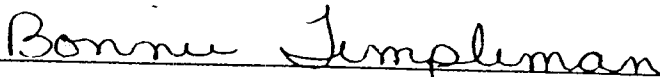
3. Describe effects on other water uses resulting from the proposed change:

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willful misrepresentations made in this application may result in voiding its approval.



(Signature of Applicant)

Subscribed and sworn to before me this 7 day of June, 19 99.


(Notary Public)

My commission expires 2/12/02**FOR DEPARTMENT USE ONLY**

Transfer contains _____ pages and _____ attachments

Received by _____ Date _____ Protest filed by _____

Prelim. check by _____ Fee _____

Receipted by _____ Date _____

Published in _____ Copies of protest forwarded by _____

Pub. dates _____ Hearing held by _____ Date _____

Watermaster recommendation requested on _____ Recommended for ☐ approval ☐ denial

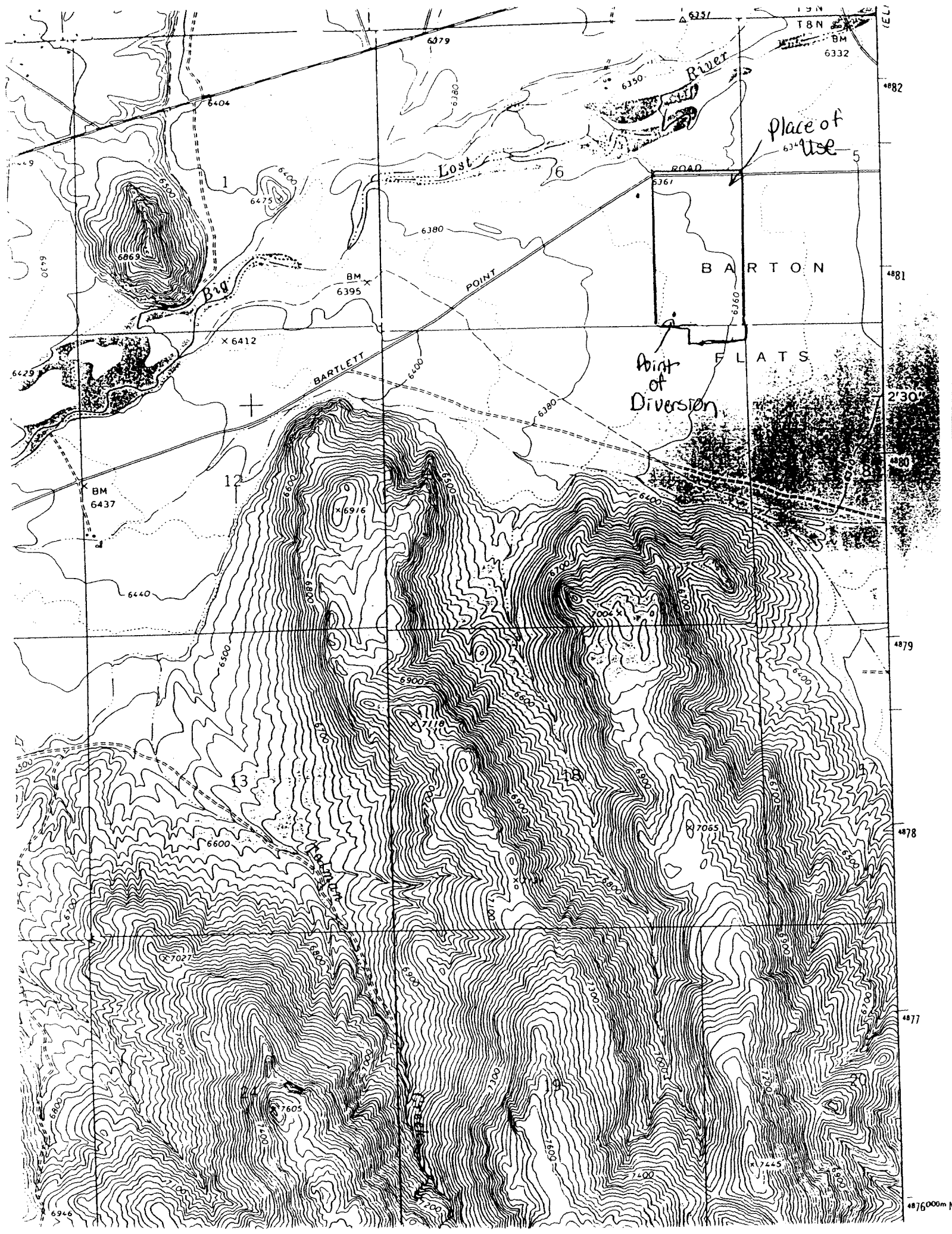
_____ rec'd. _____ by _____

Copy of transfer sent to lien holder _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 3

- A. Draw a map or attach a USGS map indicating the new point(s) of diversion and/or the new place of use for rights described in part 1. Clearly depict the land by section, township and range number.

Please see Exhibit A, appended hereto.



AMENDED

COPY

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1

Please send all notices and correspondence to: Scott L. Campbell, Elam & Burke, P.A.
P.O. Box 1539, Boise, ID 83701

Name of applicant L & S Partners, c/o Steve AslettPhone (208) 734-5533Post Office address P.O. Box B, Twin Falls, ID 83303-0015

RECEIVED

JUN 14 1999

A. PURPOSE OF TRANSFER

1. ☒ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____
2. Describe the reason for the proposed changes The changes are pursuant to a water rights purchase agreement executed between L & S Partners and McCaleb Estates, Inc.

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- | 1. Right Number | Priority | Amount (cfs/ac-ft) | Nature of Use | Period of Use |
|-----------------|----------|------------------------|---------------|---------------|
| 34-04035C | 8/1/60 | 1.31 cfs/
229.25 af | Irrigation | 4/15 to 10/15 |
| | | | | to |
| | | | | to |
| | | | | to |
2. Total amount of water being transferred 1.31 cubic feet per second and/or 229.25 acre-feet per annum.
3. Source of water ground water tributary to _____
4. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		SE	SE	6	8N	22E	Custer	

5. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
8N	22E	6													20			40	60
		7	5.5																5.5

Total acres 65.5

Page _____ of _____

Transfer No. _____

PART 1

YES

6. General Information:

- a. Description of diversion system Water will be delivered to the place of use through a pipeline from the well and a pump to the sprinklers.

- b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? _____ Yes XX _____ No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes.

- c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer:
Water will no longer be used on the land now irrigated under this water right.

- d. Remarks:

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____

And said application is hereby _____, subject to the following limitations and conditions:

Witness my hand this _____ day of _____, 19 _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. Partial 34-04035C Decreed to McCaleb Estates, Inc.
 in case of In re SRBA Case No. 39576 vs. _____
 dated December 23, 1997 in Twin Falls county of Idaho
 b. License No. _____ issued by the Idaho Department of Water Resources.
 c. Claim No. _____ on file with the Idaho Department of Water Resources.
 d. Transfer No. _____ which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☐ Tax Notice ☒ Warranty Deed ☐ Other _____

3. Source of water Ground water tributary to _____

4. Date or priority 8/1/60

5. Water is used for the following purpose:

amount 1.31 cfs for irrigation purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

6. Total amount of water under right _____ cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
	NW	SW	NE	34	7N	24E	Custer	

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
7N	24E	34			10	6.5					30	16			30	16			62.5
7N	24E	35										3							3.0

Total acres 65.5

9. Describe any other water rights used for the same purpose as described above 34-0227K and
34-00830C

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

No _____ If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED*(If the entire right is to be changed by the applicant, omit part B and C.)*

1. amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
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 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
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Total acres _____

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)

1. amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

Total acres _____

PART 3**B. CHANGES IN NATURE OF USE**

1	<u>New Nature of Use</u>	<u>Amount</u> (cfs/ac-ft)	<u>Hours/days/year</u>	<u>Period of Use</u>
	_____	_____	_____	_____ to _____
	_____	_____	_____	_____ to _____

2. Quantity and quality of return flows and location of discharge:

3. Describe effects on other water uses resulting from the proposed change:

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willful misrepresentations made in this application may result in voiding its approval.

Steve R. Pitt

(Signature of Applicant)

Subscribed and sworn to before me this 7 day of June, 19 99.

Bonnie J. Impleman

(Notary Public)

My commission expires 2/12/02

FOR DEPARTMENT USE ONLY

Transfer contains _____ pages and _____ attachments

Received by _____ Date _____ Protest filed by _____

Prelim. check by _____ Fee _____

Receipted by _____ Date _____

Published in _____ Copies of protest forwarded by _____

Pub. dates _____ Hearing held by _____ Date _____

Watermaster recommendation requested on _____ Recommended for ☐ approval ☐ denial

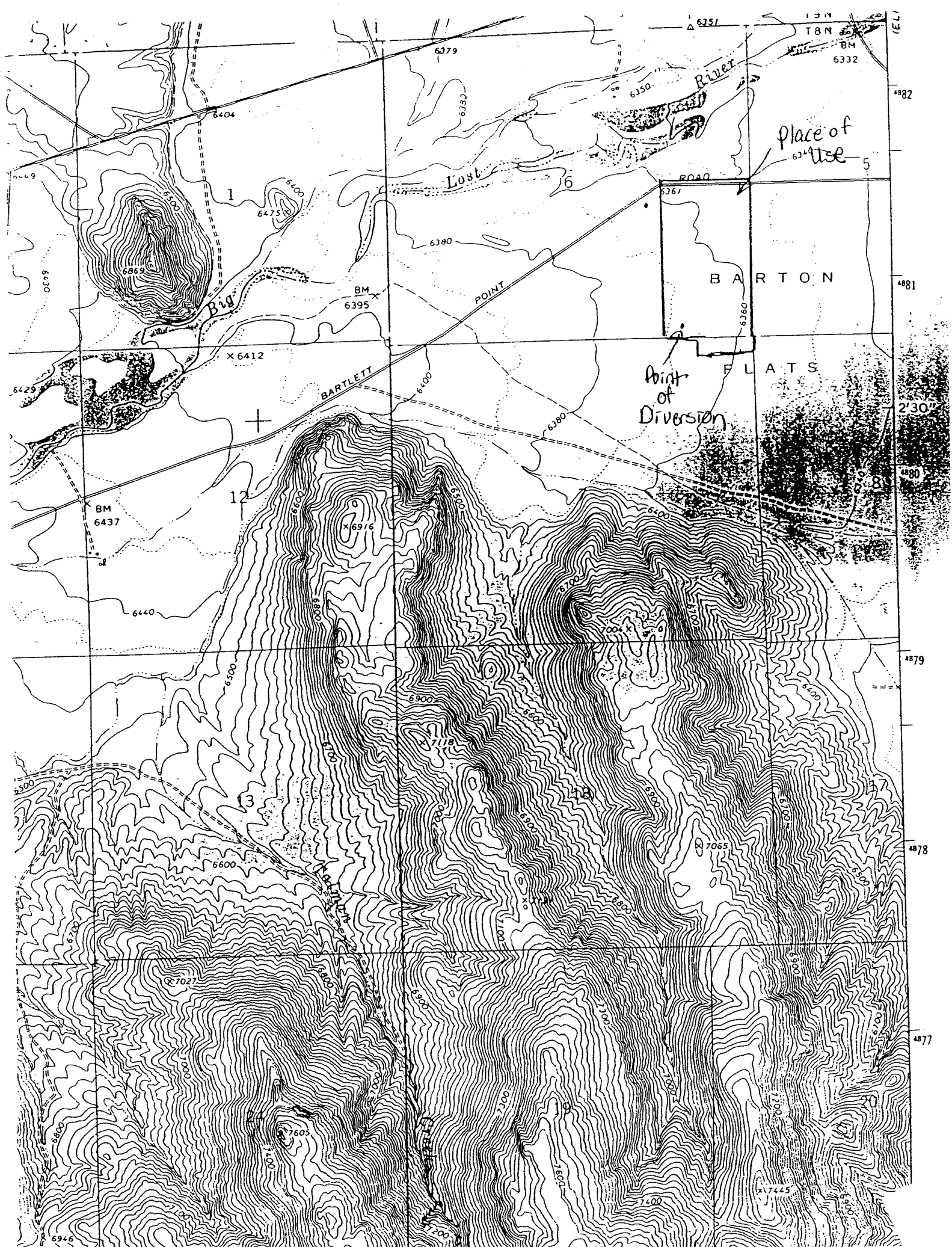
_____ rec'd. _____ by _____

Copy of transfer sent to lien holder _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 3

- A. Draw a map or attach a USGS map indicating the new point(s) of diversion and/or the new place of use for rights described in part 1. Clearly depict the land by section, township and range number.

Please see Exhibit A, appended hereto.



ELAM & BURKE
A Professional Association
ATTORNEYS AND COUNSELORS AT LAW
Established in 1928

KEY FINANCIAL CENTER
702 WEST IDAHO
POST OFFICE BOX 1539
BOISE, IDAHO 83701

TELEPHONE
208-343-5454

FACSIMILE
208-384-5844

SCOTT L. CAMPBELL

July 1, 1999

James P. Speck
Speck & Aanestad
PO Box 987
Ketchum, ID 83340

Michael C. Creamer
Givens Pursley
277 North 6th Street, Suite 200
Post Office Box 2720
Boise ID 83701

Norman M. Semanko
Rosholt Robertson & Tucker
142 3rd Avenue North
Post Office Box 1906
Twin Falls ID 83303-1906

Re: L&S Partners' Application for Transfer No. 5400 (McCaleb Estates)
Water Right No. 34-04035C

Dear Counsel:

I am enclosing for your review a copy of a report regarding Groundwater Hydrology in the Upper Lost River Basin prepared by Sherl Chapman. There are two items of significance in that report. First, as you no doubt know by now, L&S Partners have filed an amended transfer application for the above-referenced water right. The point of diversion is now proposed to be transferred to the Southeast $\frac{1}{4}$ Southeast $\frac{1}{4}$, Section 6, Township 8N, Range 22E. That location is above the Mackay Reservoir, while the current point of diversion is located below the Mackay Dam and Reservoir. Additionally, the new point of diversion and place of use is several miles from your clients' properties.

The second, and perhaps more significant item to note regarding Mr. Chapman's report is that:

I believe the Department of Water Resources will treat any application for transfer to move a point of diversion from below Mackay Dam to above as a transfer within the same aquifer system. Certainly they will take into account any potential injury to other water rights as they must but it is clear to me, based on my review of the literature and my oral communications with Department hydrologists, that the potential for injury is essentially non-existent.

Letter to Counsel
July 1, 1999
Page 2

I would ask that you carefully consider Mr. Chapman's report and any effect it may have on the above-referenced transfer application. Please advise me of your clients' positions on this revised transfer as soon as possible. I look forward to a speedy and satisfactory resolution to this matter.

Very truly yours,

ELAM & BURKE
A Professional Association

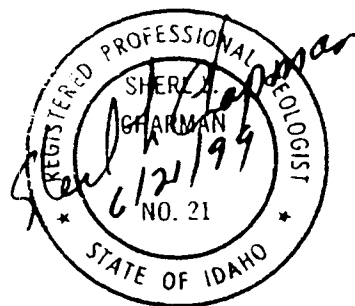

Scott L. Campbell

SLC:thm G:\Thm\WPDATA\3524\00149-counsel.wpd
cc: clients

JUN 22 1999

Sheri L. Chapman Consulting, Inc.

410 S. Orchard / Suite 144 / Boise, Idaho 83705 / Phone (208) 344-0690
Fax (208) 344-2744 / Email chapmaninc@rmci.net



TO: Mr. Steve Aslett

FROM: Sheri L. Chapman, President

DATE: June 21, 1999

SUBJECT: GROUND WATER HYDROLOGY - UPPER LOST RIVER BASIN

Mr. Steve Aslett is proposing a change in point of diversion for a well located in the SWNE, Sec. 34, T7N, R24E below Mackay Dam and Reservoir to a point in SESE, Sec. 6, T8N, R22E above Mackay Reservoir for irrigation. A primary question that must be answered to satisfy both the Department of Water Resources and those concerned about impacts to the ground water system is whether or not there will be any change in the overall impact to the ground water system in the Big Lost River drainage and more specifically if there will be an impact to water rights. I was requested to conduct a brief investigation to determine whether or not these concerns could be addressed with data or reports that currently exist. In order to accomplish the objective, records of the Idaho Department of Water Resources, the U.S. Geological Survey and my private files were researched. The results of this reconnaissance indicated that there are three (3) primary sources of information available that help to assess the probability of impact.

The first is a modeling project conducted by Ms. Sally Goodell, formerly of the U.S. Geological Survey. Ms. Goodell conducted a detailed analysis of the ground water and surface water systems from Mackay Dam south in the Big Lost River basin. Ms. Goodell spent approximately two (2) years developing the model, which resulted in a report that is yet unpublished by the U.S. Geological Survey. Pertinent information in the report relates to the question of hydrologic continuity between the aquifers north of Mackay Dam and Reservoir and those south. Ms. Goodell's study indicated that there had to be hydraulic continuity between the two systems since there was a ground water component entering the modeled area below Mackay Dam. This does not appear to be verified with field measurements but it is the only way the model was able to replicate what was happening below the dam.

The second source of information is a memorandum dated July 31, 1997 from Shane Bendixsen to Matt Howard relating to Cedar and Rock Creek drainages in the Big Lost River basin. The primary question that needed to be addressed in Mr. Bendixsen's report was whether or not there was hydraulic continuity throughout the Big Lost River basin and whether or not cessation of diversions above Mackay Reservoir would impact

Mr. Steve Aslett
June 21, 1999
Page 2

diversions below Mackay Reservoir. He indicates in his memo that surface waters from the intermittent streams above Mackay Reservoir enter the ground water system or is consumptively used for irrigation and that all water from intermittent streams in the Thousand Springs area leaves as ground water and is tributary to the Big Lost River. He does state clearly that "in conclusion, data are not available to precisely predict what measurable impact ceasing the diversions of Rock and Cedar Creek will be to natural available flow below Mackay Reservoir. Any reasonable estimate would have to involve a large data collection effort followed by some type of numeric modeling. Even then the results would be inconclusive." Since the ground and surface waters are interconnected in the Big Lost River basin this conclusion may be applied to the ground water system and impacts of diversions above and below Mackay Reservoir as well. Mr. Bendixsen in oral communication indicated that he believes the Big Lost ground water system is hydraulically connected throughout.

The most comprehensive report prepared for the Big Lost River basin is titled "Water Resources in the Big Lost River Basin - South/Central Idaho" by E. G. Crosthwaite, C. A. Thomas, and K. L. Dyer which was published in 1970 by the U.S. Geological Survey. This report entailed several years of field data collection effort, seismic and gravity geophysical surveys, pumping well tests and surface water measurements. One of the primary questions the authors attempted to answer was whether or not the ground and surface water are interrelated and whether or not there was hydraulic continuity between the upper and lower portions of the Big Lost River basin. The authors found that the valley fill, consisting of sand, gravel, silt and clay, known as alluvium, is on the order of 2,000-3,000 feet in thickness above Mackay Reservoir and ranges from about 5,000 feet in thickness at Mackay to approximately 2,500 feet in thickness near the mouth of the valley. They found that the alluvium thinned considerably at the Mackay narrows near Mackay Dam but is still approximately 115 feet thick, more than enough to convey significant quantities of ground water. Additionally, the authors concluded that "surface and ground water are so closely related that neither can be considered as a separate source of supply. The river alternately loses water to and gains water from the alluvial deposits in the main valley. These deposits also serve as conduits through which large amounts of water move down valley and into the Snake Plain Aquifer." (emphasis added)

The authors found that groundwater occurs primarily under water table conditions in the valley. They also found that the water table typically was within a few feet of land surface and essentially uninterrupted from the upper portion of the valley to the mouth of the basin. It is important to note that ground water under water table

conditions typically is less responsive to stress and the impacts of pumping do not travel very far in a permeable aquifer such as that that exists in the Big Lost River basin. In fact, the authors of the report conclude that "the amount of depletion of the water resource caused by pumping is so small when compared to the total water supply that it is impractical to compute stream flow depletion." This statement can also be applied to impacts on the ground water system because of the overall water supply and the limited amount of pumping, particularly in the upper basin.

Another factor that needs to be taken into account is the consumptive irrigation requirement of crops. When water is pumped from an aquifer and applied to cropland a portion of the water is consumed or depleted from the hydrologic system while the balance either runs off as overland flow or percolates back to the ground water system. In this area of the Big Lost River basin overland runoff is minimal because of the porous character of the substrate and therefore it is expected that water pumped and applied to cropland in excess of the consumptive irrigation requirement will percolate back to the ground water system near the area from which it was pumped. In this area of the Big Lost River basin the consumptive irrigation requirement is 1.2 acre feet per acre, a relatively small amount.

In summary, the hydrologists employed by the Idaho Department of Water Resources and the authors of the U.S. Geological Survey reports conclude that there is hydraulic continuity between the aquifers above and below Mackay Dam. The alluvium is at least 115 feet thick at its thinnest point and it appears that the ground water surface is at or near land surface throughout the entire basin. The authors of the 1970 U.S.G.S. report conclude that this alluvium acts as a "conduit" to convey water from the upper portion of the basin to its mouth where it enters the Snake Plain Aquifer. For these reasons I believe the Department of Water Resources would treat any application for transfer to move a point of diversion from below Mackay Dam to above as a transfer within the same aquifer system. Certainly they will take into account any potential injury to other water rights as they must but it is clear to me, based on my review of the literature and my oral communications with Department hydrologists, that the potential for injury is essentially non-existent.

If there are any questions regarding this report or additional information is required, please contact Sheri L. Chapman.

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ATTORNEYS AND COUNSELORS AT LAW
Established in 1928

KEY FINANCIAL CENTER
702 WEST IDAHO
POST OFFICE BOX 1539
BOISE, IDAHO 83701

TELEPHONE
208-343-5454

FACSIMILE
208-384-5844

SCOTT L. CAMPBELL

July 29, 1999

Mr. Ronald D. Carlson
Regional Director
Eastern Region
Idaho Department of Water Resources
900 North Skyline Drive
Idaho Falls, ID 83402-1718

Re: Application for Transfer No. 5400 (McCaleb Estates Water Rights Purchase)
Application for Transfer No. 5456 (Bumps Property)

Dear Ron:

The purpose of this letter is to ask for your assistance regarding the above-referenced transfer applications. Specifically, my clients have encountered no small amount of difficulty in obtaining prehearing and hearing dates regarding those applications, and have come to the conclusion that definite action by the Idaho Department of Water Resources ("Department") is in order.

A brief factual background is appropriate. On or about April 23, 1999, Aslett Ranches resubmitted its transfer application, which has been designated Application for Transfer No. 5456 to transfer water rights number 34-00469 and 34-00471. That Application has been protested by 6X Ranch, LLC; Mark T. Gates, Trustee; and David Stoecklein.

On or about June 11, 1999, L & S Partners (another Aslett entity) submitted an Amended Application for Transfer of Water Right, for Water Right No. 34-04035C. That Application has been designated No. 5400, and has been protested by the same parties who protested Application for Transfer No. 5456.

There has been repeated correspondence in this matter in an attempt to schedule a prehearing conference. Rather than listing the various letters and responses, I have attached copies of that correspondence for your reference. As is readily apparent, the Asletts have attempted to move forward with their Applications for Transfer, by at the least scheduling a prehearing conference. However, they have been unsuccessful due to the inability or unwillingness of the other parties to make themselves available for such a conference (even though a range of three months was offered).

July 28, 1999

Page 2

On Tuesday, July 27, 1999, Angela Schaer who is an attorney assisting me in this matter, spoke with Harold Jones regarding the difficulty in scheduling a prehearing conference in this matter. Mr. Jones seemed to have some reservations about scheduling a prehearing conference absent the agreement of all the parties. While the Asletts certainly understand the difficulty in doing so, they further believe that the Department has the authority and the duty to order the parties and/or their representatives to be present at a prehearing conference.

Notably, if this were an Application for Permit, rather than an Application for Transfer, a potential delay such as that encountered in this matter would be impermissible. Idaho Code section 42-203A(4) requires that hearing (much less prehearing conference) upon any protest filed to an application for permit must be held within sixty (60) days from the day such protest is received. Idaho Code section 42-222(1), unfortunately, does not bear the same requirement, but from a logical and due process perspective, there is no reason why a transfer hearing should not be held in a similarly timely fashion.

The Department's Rules of Procedure further contemplate that matters should be heard in a timely fashion. Rule 52 states that "[t]he rules in this chapter will be liberally construed to secure just, speedy and economical determination of all issues presented to the agency" IDAPA 37.01.01.052 (emphasis added). Rule 413 provides that hearing officers have the authority to issue notices of prehearing conference and hearing. IDAPA 37.01.01.413. In addition, Rule 5210 provides that:

The presiding officer may by order or notice issued to all parties convene a prehearing conference in a contested case for the purposes of formulating or simplifying the issues, obtaining concessions of fact or identification of documents to avoid unnecessary proof, scheduling discovery (when discovery is allowed), arranging for the exchange of proposed exhibits or prepared testimony, limiting witnesses, discussing settlement offers or making settlement offers, scheduling hearings, establishing procedure at hearings, and addressing other matters that may expedite orderly conduct and disposition of the proceeding or its settlement.

IDAPA 37.01.01.510. Those rules, when combined, provide more than ample authority for the hearing officer in this matter to order the parties and/or their representatives to appear at a prehearing conference.

Frankly, the Asletts are committed to being present, or to at least having their counsel present with the authority to act on their behalf, at a prehearing conference whenever so ordered by the hearing officer. Further, the Asletts have taken steps to attempt to schedule a prehearing conference at a date and time mutually agreeable to everyone. While three of the parties have been able to agree to August 19, 1999, for such a conference, the fourth party would not agree,

July 28, 1999

Page 3

and further indicated his unavailability until the end of September. The Asletts should not be forced to endure additional substantial delays for a prehearing conference to be conducted.

Therefore, the Asletts respectfully request that the Department issue a notice of prehearing conference in this matter, and order the parties and/or their representative attend. The Asletts would further request that in order that the prehearing conference be meaningful, the order further state that if the parties themselves are not present at the prehearing conference, their representatives are given full authority to bind the parties as to additional scheduling in this matter.

If you have any questions or concerns, please do not hesitate to contact me. In the meantime, I look forward to your response.

Very truly yours,

ELAM & BURKE
A Professional Association


Scott L. Campbell

SLC:pw G:\Thm\WPDATA\3524\carlson 7-28 ltr.wpd

Enclosures

cc: Steve Aslett (w/ enclosures)
Steve Aslett, Jr. (w/ enclosures)
Karl Dreher (w/ enclosures)
Harold Jones (w/ enclosures)
Allen Merritt (w/ enclosures)
Norman Semanko (w/ enclosures)
Michael Creamer (w/ enclosures)
James Speck (w/ enclosures)

ELAM & BURKE
A Professional Association
ATTORNEYS AND COUNSELORS AT LAW
Established in 1928

KEY FINANCIAL CENTER
702 WEST IDAHO
POST OFFICE BOX 1539
BOISE, IDAHO 83701

TELEPHONE
208-343-5454

FACSIMILE
208-384-5844

SCOTT L. CAMPBELL

June 29, 1999

SENT VIA FACSIMILE

James P. Speck
Speck & Aanestad
PO Box 987
Ketchum, ID 83340

Norman M. Semanko
Rosholt Robertson & Tucker
142 3rd Avenue North
Post Office Box 1906
Twin Falls ID 83303-1906

Michael C. Creamer
Givens Pursley
277 North 6th Street, Suite 200
Post Office Box 2720
Boise ID 83701

Re: L&S Partners' Application for Transfer No. 5400 and
Aslett Ranches' Application for Transfer No. 5456

Dear Counsel:

I am in the process of obtaining a date for a pre-hearing conference in the above-referenced matters. I have secured with Allen Merritt, Idaho Department of Water Resources, Southern Region, the date and time of July 23, 1999, at 10:00 AM, for the pre-hearing conference. If this date and time is not acceptable to you, please advise me by the close of business on June 30, 1999.

Thank you for your cooperation in this matter. If you have any questions, please do not hesitate to contact me.

Very truly yours,

ELAM & BURKE
A Professional Association


Scott L. Campbell

SLC:thm G:\Thm\WPDATA\5524\00148-counsel.wpd
cc: clients

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208-384-5844

SCOTT L. CAMPBELL

July 1, 1999

SENT VIA FACSIMILE

Mr. Harold Jones
Idaho Department of Water Resources
Eastern Region
900 North Skyline Drive, Suite A
Idaho Falls, Idaho 83402

Allen D. Merritt, Regional Manager
Idaho Department of Water Resources
Southern Region
1341 Fillmore Street, Suite 200
Twin Falls, ID 83301

Re: L&S Partners' Application for Transfer No. 5400 and
Aslett Ranches' Application for Transfer No. 5456

Dear Harold and Allen:

As you are aware, I have been attempting to secure a date and time for a pre-hearing conference in the above-referenced matters. Please note that July 23, 1999, at 10:00 AM, is not acceptable to Jim Speck and his client, as indicated in a letter I received from Mr. Speck via facsimile on June 29, 1999 (copy attached).

By copy of this correspondence to Mr. Speck, Norm Semanko, and Mike Creamer, I am requesting apposing counsel to immediately advise you and me of their available dates for July, August, and September, 1999, so that we may secure a date and go forward with these matters.

Thank you for your attention to these matters.

Very truly yours,

ELAM & BURKE
A Professional Association


Scott L. Campbell

SLC:thm G:\Thm\WPDATA\3524\00150-IDWR.wpd

cc: Clients
James Speck
Norm Semanko
Michael Creamer

Chartered
ATTORNEYS AT LAW

JOHN A. ROSHOLT
J. EVAN ROBERTSON
JAMES C. TUCKER
GARY D. SLETTE
JERRY V. JENSEN
JOHN K. SIMPSON
NORMAN M. SEMANKO
PATRICK D. MADIGAN
TIMOTHY J. STOVER

Twin Falls Office
142 3rd Ave. North
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

Boise Office
1221 WEST IDAHO, SUITE 600
P.O. BOX 2139
BOISE, IDAHO 83701-2139
TELEPHONE (208) 336-0700
FAX (208) 344-6034

July 7, 1999

Scott L. Campbell
Elam & Burke, PA
P.O. Box 1539
Boise, ID 83701-1539

RE: L & S Partners' Application for Transfer No. 5400 and
Aslett Ranches' Application for Transfer No. 5456

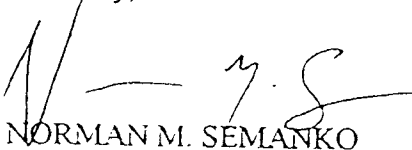
Dear Scott:

In response to your letter to Harold Jones and Allen Merritt of the Idaho Department of Water Resources, dated July 1, 1999, I have forwarded a copy of your letter to our client, Mark Gates, asking for his available dates during July, August and September for a pre-hearing conference. I will respond with the dates that we are both available as soon as possible.

Also, in response to your other letter of July 1, addressed to "Counsel", I have not received a copy of the Amended Application for Permit No. 5400 referred to in your letter. Please send me a copy at your earliest convenience.

Thank you for your cooperation.

Sincerely,



NORMAN M. SEMANKO

NMS/jl

cc: Michael Creamer
James Speck
Mark Gates
Harold Jones, IDWR
Allen Merritt, IDWR

(nms)/gates/campbell)

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Established in 1928

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208-343-5454

FACSIMILE
208-384-5844

SCOTT L. CAMPBELL

E-mail: slc@elamburke.com

July 14, 1999

VIA FACSIMILE

Harold Jones
Idaho Department of Water Resources
Eastern Region
900 North Skyline Drive, Suite A
Idaho Falls, ID 83402

Re: *Application for Permit No. 5400 (McCaleb Estates Water Rights Purchase)*
Application for Permit No. 5456 (Bumps Property)

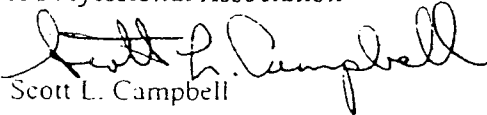
Dear Harold:

I have received only one response to my correspondence of July 1, 1999, to counsel for the objectors in the above-referenced matters. Norm Semanko replied to my correspondence recently, indicating that he and his client were available on August 16 and 19, 1999. I request the Department schedule a prehearing conference on either one of those two dates. Since Mr. Speck and Mr. Creamer have not responded to my correspondence, I believe that they are available for a conference on those days, or they will make the necessary arrangements to attend such a conference. If they object to those dates, I request that the Department schedule this matter as soon as possible on some alternative date and allow the operation of the Rules of Practice and Procedure to govern the attendance and participation of the parties. I do not believe it is fair to my client that this matter be delayed unnecessarily because the protestants are unwilling to agree upon a date for prehearing conference.

Thank you for your anticipated cooperation.

Very truly yours,

ELAM & BURKE
A Professional Association


Scott L. Campbell

SLC:pw

cc: Norman M. Semanko
Michael C. Creamer
James P. Speck
Steve Aslett

ROSHOLT, ROBERTSON & TUCKER
Chartered
ATTORNEYS AT LAW

JOHN A. ROSHOLT
J. EVAN ROBERTSON
JAMES C. TUCKER
GARY D. SLETTE
JERRY V. JENSEN
JOHN K. SIMPSON
NORMAN M. SEMANKO
PATRICK D. MADIGAN
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Twin Falls Office
142 3rd Ave. North
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JUL 12 1999
Boise Office
1221 WEST IDAHO, SUITE 600
P.O. BOX 2139
BOISE, IDAHO 83701-2139
TELEPHONE (208) 336-0700
FAX (208) 344-6034

July 9, 1999

Scott L. Campbell
Elam & Burke, PA
P.O. Box 1539
Boise, ID 83701-1539

RE: Aslett and L&S Partners Pre-hearing Conference

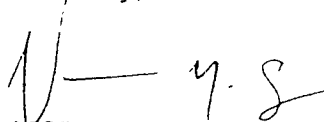
Dear Scott:

In response to your request, Mark Gates and I are both available for a pre-hearing conference on the following dates in July, August and September:

July – none
August 16, 19
September – none

Please let us know as soon as possible whether the pre-hearing conference will be held on one of these dates.

Sincerely,


NORMAN M. SEMANKO

NMS/jl

cc: Michael Creamer
James Speck
Mark Gates
Harold Jones, IDWR
Allen Merritt, IDWR

SPECK & AANESTAD

A PROFESSIONAL CORPORATION

ATTORNEYS

120 EAST AVENUE

POST OFFICE BOX 987

KETCHUM, IDAHO 83340

JUL 16 1999

JAMES P. SPECK
DOUGLAS J. AANESTAD
BENJAMIN W. WORST

TELEPHONE
(208) 726-4421
FACSIMILE
(208) 726-0752

July 15, 1999

Scott L. Campbell
Elam & Burke, P.A.
Post Office Box 1539
Boise, Idaho 83701-1539

Re: Aslett & L & S Partners Prehearing Conference

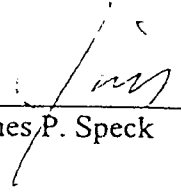
Dear Scott:

In response to your request, Dave Stoecklein and I are both available for a prehearing conference in these matters on only September 20, 21, 27-30, 1999, during the months of July, August and September, 1999.

Thank you.

Sincerely yours,

SPECK & AANESTAD
A Professional Corporation

By: 
James P. Speck

JPS:jal

cc: Client (via fax)

Mike Creamer (via fax)

Norman Semanko (via fax)

Hill Jones, IDWR (via fax)

Allen Merritt, IDWR (via fax)

cc: MS Date: 7/15/99

GIVENS PURSLEY LLP

LAW OFFICES

277 North 6th Street, Suite 200
PO Box 2720, Boise, Idaho 83701
TELEPHONE: 208 388-1200
FACSIMILE: 208 388-1300

Gary G. Allen
Christopher J. Beeson
Michael C. Creamer
Thomas E. Dvorak
Ray Lewis Elgren
Jeffrey C. Fereday
L. W. Grant III
Richard W. Jenkowiak
Karl T. Klein
David R. Lombardi

Kimberly D. Matoney
Kenneth A. McClure
Cynthia A. Melillo
Christopher H. Meyer
L. Edward Miller
Patrice J. Miller
Judson B. Montgomery
Angela K. Nelson
W. Hugh O'Riordan
Kenneth L. Pursley

Conley Weir
Stephanie C. Westermeyer
Robert D. White

Raymond D. Givens
James A. McClure
OF COUNSEL

July 19, 1999

VIA FACSIMILE

Scott L. Campbell
Elam & Burke, P.A.
702 W. Idaho, 10th Floor
P.O. Box 1539
Boise, ID 83701-1539

Matter: In the Matter of L&S Partners
Our File: 4562-4

Dear Scott:

I have been out of my office for an extended period, and have just returned today. Both I and Mr. Blake Quinn would be available for a prehearing conference on the Aslett and L&S Partners applications on the following dates:

August 19th
September 14th and 15th

Please let me know when a final date has been scheduled regarding this matter.

Sincerely,



Michael C. Creamer

MCC:dr

S:\Clients\4562-4\Corr\Letter to Scott Campbell Re Available Dates.wpd

cc: Peter Anderson (via facsimile)
James Speck (via facsimile)
Norman Semanko (via facsimile)
Blake Quinn (via facsimile)

Real Estate Purchase and Sale Agreement

Purchase Price \$ 1,850,000.00 One Million Eight fifty & no/100 ----- Dollars

Seller: Aslett Ranches

Buyer: Robert Unger and or assigns

Property Address: Zollinger Road

Legal Description: See Attached Exhibit 'A'

City: NA

County: Custer

State: Idaho

Buyer hereby agrees to buy, and Seller agrees to sell, the property on the following terms and conditions:

Terms The purchase price is payable as follows:

\$ 1,850,000 Cash, cashier's check, or certified funds at closing, including Earnest Money.

----- Seller Financing - See Financing/Other Terms.

----- Other

\$ 1,850,000 Total Purchase Price - Not including closing costs.

Earnest Money \$ 50,000 Fifty Thousand & no/100 ----- Dollars

Evidenced By: To Be Held By:

☒ Personal Check ☐ Listing Broker

☐ Cashier's Check ☐ Selling Broker

☐ Promissory Note ☒ Title Company

Other Remarks:

Earnest Money to be deposited in trust account upon acceptance of this agreement by all parties.

Offer Expires On Date: November 14, 1999 Time: 5:00 PM

Closing Date November 30, 1999 **Possession Date:** ☐ On the closing date ☒ March 1, 2000

Inspections

N/A ☒

This offer is contingent upon Buyer's inspection of the premises and acceptance of the condition of the premises. Buyer shall have the right to conduct inspections, tests, surveys and other studies ("inspections") at Buyer's sole cost. Seller shall provide reasonable access for such inspections. Buyer shall indemnify Seller and hold Seller harmless from all injury, loss or liability regarding such inspections. If Buyer has not waived or satisfied this contingency in writing on or before then this Agreement shall terminate and the earnest money shall be refunded to Buyer (less any expenses incurred on behalf of Buyer pursuant to the "Costs Paid By" section of this agreement), unless on Buyer's request Seller extends the deadline in writing prior to expiration of the above deadline, in which case the new deadline shall control this contingency.

Financing This Agreement is contingent upon Buyer securing the following financing:

N/A ☒

Buyer agrees to make a best effort to obtain such financing and to make written application within business days after acceptance of this agreement by both parties. If Buyer has not waived or satisfied this contingency in writing on or before

this Agreement shall terminate and the earnest money shall be refunded to Buyer (less any expenses incurred on behalf of Buyer pursuant to the "Costs Paid By" section of this agreement), unless on Buyer's request Seller extends the deadline in writing prior to expiration of the above deadline, in which case the new deadline shall control this contingency.

New Loan ☐ Type of Loan: Conv. ☐
Assume Existing ☐ FHA ☐
Total Points _____ VA ☐
Amount _____ Fixed Rate ☐
Maximum % Rate _____ Adj. Rate ☐
Years _____

Other Terms:

Seller will require an IRS Section 1031 tax-deferred exchange at closing of escrow with no cost or tax liability to Buyer

Document # 22184

Date November 12, 1999

Sale of Buyer's PropertyN/A ☒

This offer is contingent on the closing of a sale of Buyer's property located at:

Listed By:

If Buyer has not waived or satisfied this contingency in writing on or before

then this Agreement shall terminate and the earnest money shall be refunded to Buyer (less any expenses incurred on behalf of Buyer pursuant to the "Costs Paid By" section of this agreement), **unless** on Buyer's request Seller extends the deadline in writing prior to expiration of the above deadline, in which case the new deadline shall control this contingency.

Bump ClauseN/A ☒

Seller shall have the right to continue to offer the herein premises for sale and to accept offers until such time as said contingencies have been waived or removed by Buyer. Should Seller receive another acceptable offer to purchase, Seller shall give Buyer written notice of such new offer. In the event the Buyer does not waive or satisfy all contingencies in writing within

after the receipt of such notice then this Agreement shall terminate and all deposits returned to Buyer less expenses incurred on behalf of Buyer pursuant to the "Costs Paid By" section of this agreement. In the event the Buyer does waive or remove the contingencies, the Buyer shall proceed to purchase the premises under the remaining terms and conditions of this Agreement, notwithstanding that the terms of the new offer may be more or less favorable. Notice shall be considered given on the earlier of either personal delivery of notice to the Buyer or his/her representative or two calendar days following the date of mailing evidenced by the postmark on the envelope containing such notice. All notices shall be sent to the addresses shown on this Agreement.

Other ContingenciesN/A ☐

See Exhibit 'B'

If Buyer has not waived or satisfied this/these contingency(ies) in writing on or before

then this Agreement shall terminate and the earnest money shall be refunded to Buyer (less any expenses incurred on behalf of Buyer pursuant to the "Costs Paid By" section of this agreement), **unless** on Buyer's request Seller extends the deadline in writing prior to expiration of the above deadline, in which case the new deadline shall control this contingency.

Lead-Based Paint The subject property is *target housing* (built prior to 1978) regarding lead-based paint and/or lead-based paint hazards: NO ☒ YES ☐. If "YES", then the Lead-Based Paint Contingency Addendum must be attached to and made a part of this contract.

Included Items (In addition to para 4 on pg 3.)

All water & mineral rights owned by Seller. All irrigation equipment, corrals, panels, chutes, fixtures & appliances in house. All interest in

Excluded Items

Livestock, Farming Equipment and rolling stock, stock piled feed

Copper Basin grazing Assoc.

Costs To Be Paid By	Appraisal	Loan Assumpt	Title Ins.	Well Inspt.	Septic Inspt.	Septic Pumping	Closing Agent Fee	Assess-ments	Survey	
Buyers	☐	☐	☐	☐	☐	☐	☐	☐	☒	☐
Sellers	☐	☐	☒	☐	☐	☒	☐	☐	☐	☐
Share Equally	☐	☐	☐	☐	☐	☐	☒	☐	☐	☐
N/A	☒	☒	☐	☒	☒	☐	☐	☐	☐	☐

Document #22184

Date November 12, 1999

Additional Terms

See Exhibit 'B'

Agents

Listing Agent Stoney Burke
 Agency Hall & Hall
 Phone 208-622-4133

Selling Agent Stoney Burke
 Agency Hall & Hall
 Phone 208-622-4133

Responsible Closing Broker/Office: Hall & Hall
 Responsible Closing Agency/Title Co: Blaine County Title, Ketchum Idaho

Representation Confirmation

Each party signing this document confirms that he or she has received, read and understood the Agency Disclosure Brochure and has elected the relationship confirmed above. In addition, each party confirms that the broker's agency office policy was made available for inspection and review. EACH PARTY UNDERSTANDS THAT HE OR SHE IS A "CUSTOMER" AND IS NOT REPRESENTED BY A BROKER UNLESS THERE IS A SIGNED WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.

In this transaction, the brokerage(s) involved had the following relationship(s) with the BUYER(S) ("agent" or "nonagent" or "limited dual agent"):

Listing Broker acted as a(n): non-agent for the Buyer.
 Selling Broker acted as a(n): n/a for the Buyer.

In this transaction, the brokerage(s) involved had the following relationship(s) with the SELLER(S) ("agent" or "nonagent" or "limited dual agent"):

Listing Broker acted as a(n): agent for the Seller.
 Selling Broker acted as a(n): n/a for the Seller.

Other Standard Terms

1. **Withdrawal of Offer** - Buyer can withdraw offer at any time before written acceptance by notifying selling broker's office in writing.

2. **Closing Date** - On or before the closing date, Buyer and Seller shall deposit with the closing agency all funds and instruments necessary to complete the sale. Closing means the date on which all documents are either recorded or accepted by an escrow agent and the sale proceeds are available to Seller. Taxes, insurance, and assessments (using the last available assessment as a basis), rents, interest and reserves, liens, encumbrances or obligations assumed and utilities shall be pro-rated as of the Closing date.

3. **Closing Costs** - Costs in addition to those listed may be incurred by Buyer and Seller. Unless otherwise agreed herein, or provided by law or required by lender, Buyer shall purchase Seller's reserve account if Seller's loan is assumed.

4. **Included Items** - All attached floor coverings, attached television antennae, attached plumbing, bathroom and lighting fixtures, window screens, window coverings, screen doors, storm windows, storm doors, garage door opener(s), transmitter(s), exterior trees, plants, or shrubbery, water heating apparatus and fixtures, attached fireplaces and free-standing fireplaces, awnings, ventilating, cooling and heating systems, built-in and drop-in ranges (but excepting all other ranges), fuel tanks and irrigation fixtures and equipment, and any and all water and water rights, and all ditches and ditch rights that are appurtenant thereto shall be included in the sale unless otherwise provided herein.

5. **Disclosure** - If required by Title 55, Chapter 25 Idaho Code, Seller shall within ten (10) days after the execution of this agreement provide to the Buyer "Sellers' Property Disclosure Form" and Buyer shall have three (3) business days from receipt of the disclosure report to rescind the offer based upon information contained in the report.

Document # 22184

Date November 12 1999

6. Existing Loans - Within three (3) business days of acceptance, Seller shall provide Buyer with all Notes and Deeds of Trust or other financing documents to be assumed or taken subject to. Within five (5) business days of receipt thereof, Buyer shall in writing notify Seller of his/her approval or disapproval of the terms of said documents. Buyer's approval shall not be unreasonably withheld.

7. Business Day - "Business Day" in this agreement shall mean Monday through Friday, excluding Saturday and Sunday, and excluding holidays as defined by Idaho Code, Section 67-5302(12).

8. Counterparts/Facsimile Transmission - This agreement may be executed in one or more counterparts, each is deemed to be the original hereof, and all of which together constitute one and the same instrument. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission shall be the same as delivery of the original. At the request of either party, or the Closing Agency, the parties will confirm facsimile transmitted signatures by signing an original document.

9. Title Insurance - The Seller shall within a reasonable time after closing furnish to the Buyer a title insurance policy in the amount of the purchase price of the premises showing marketable and insurable title subject to the liens, encumbrances and defects elsewhere set out in this agreement to be discharged or assumed by the Buyer. Prior to closing the transaction, the Seller shall furnish to the Buyer a commitment of title insurance policy showing the condition of the title to said premises. Buyer shall have five (5) business days from the receipt of the commitment or until twenty-four (24) hours prior to the closing, whichever is less, within which to object to the condition of the title as set forth in the commitment. If the Buyer does not object, the Buyer shall be deemed to have accepted the conditions of the title.

10. Extended Coverage Title Policy - A standard policy of title insurance does not cover certain potential problems or risks such as liens (i.e., a legal claim against premises for payment of some debt or obligation), boundary disputes, claims of easement, and other matters of claims if they are not of public record at the time of closing. However, under Idaho law such potential claims against the premises may have become a legal obligation before the purchase of the home and may not yet be of public record until after the purchase. Title Insurance companies may be able to issue an "extended coverage" policy for an additional premium.

In addition to the premium for extended coverage title policy, there may be other costs involved, i.e., survey, additional closing fees. Such a policy may protect the Buyer against such problems. It is recommended that the Buyer talk to a title insurance company about what it offers in the way of extended coverage. Only the policy itself shows exactly what type of coverage is offered, so contact a title company for particulars.

11. Title Conveyance - Title of Seller is to be conveyed by warranty deed, unless otherwise provided, and is to be marketable and insurable except for rights reserved in federal patents, state or railroad deeds, building or use restrictions, building and zoning regulations and ordinances of any governmental unit, and rights of way and easements established or of record. Liens, encumbrances or defects to be discharged by Seller may be paid out of purchase money at date of closing. No liens, encumbrances, defects, except those which are to be discharged or assumed by Buyer or to which title is taken subject to, shall exist unless otherwise specified in this agreement.

12. Default by Buyer - If the Buyer defaults in the performance of this agreement, Seller will have the option of (1) accepting the Earnest Money as liquidated damages and this agreement shall terminate; or ~~(2) pursuing any other lawful right or remedy to which the Seller may be entitled.~~ In the case of option (1), Seller shall make demand upon the holder of the Earnest Money, upon which demand said holder shall pay from the Earnest Money the costs incurred by or on behalf of Seller and Buyer related to the transaction, as set forth in the "Costs Paid By" section above, and said holder shall pay any balance of the Money, one-half (1/2) to the Seller and one-half (1/2) to the Seller's broker, provided that the amount to be paid to the Seller's broker shall not exceed the broker's agreed to commission. Seller and Buyer specifically acknowledge and agree that if Seller elects to accept the Earnest Money as liquidated damages, such shall be the Seller's sole and exclusive remedy, and such shall not be considered a penalty or forfeiture.

13. Default by Seller - It is agreed that if the title of said premises is not marketable, or cannot reasonably be made so within twenty (20) business days after notice containing a written statement of defects is delivered to the Seller, or if the Seller, having approved the sale fails to consummate the same as herein agreed, the Buyer has the option of: (1) having the Earnest Money returned to the Buyer and the Seller shall pay for the cost of title insurance, escrow and legal fees, if any, and this agreement shall terminate; or (2) pursuing any other lawful right or remedy to which the Buyer may be entitled.

Document # 22184

Date November 12, 1999

EXHIBIT 'B'

- 1) Buyer and Seller acknowledge that the Real Estate Broker, John A. Burke d.b.a. as Hall & Hall, L.L.C. represents the Seller, however, the Seller will not be liable to the Broker for payment of a Real Estate commission concerning this transaction.
- 2) Buyer & Seller agree that the Seller will continue in possession of the subject property until March 1, 2000. During the period from closing on or about November 30, 1999 to March 1, 2000, Seller shall be responsible for all costs incurred while continuing the ranching operation on the subject property. The only exception shall be that the Buyer will be responsible for the Real Estate taxes after close of escrow and mortgage payments if Buyer chooses to place a mortgage on the property. Seller shall continue to keep the property fully insured with a continuance of their existing insurance policy or a replacement policy with equal coverage. Seller shall include Buyer in liability coverage and hold Buyer harmless from any of Seller's actions while occupying the subject property. Seller shall continue to maintain subject property in the manner following normal procedures regarding care and maintenance of the subject property. The consideration for this occupancy after closing consist of \$10.00 and other valuable consideration. *Tennison Agreement reflecting exhibit 'B' Paragraph 2) shall be signed At close of escrow.* * *Box*
M.A.
- 3) Buyer & Seller acknowledge that Seller has committed to an agreement concerning the delivery of surface water rights to Seller's property. A copy of this proposed agreement is attached hereto as Exhibit 'C'. Buyer agrees to accept property subject to this agreement however, Seller shall be responsible for all legal fees required to finalize this agreement.
- 4) Seller agrees to release all Seller's interest in the Copper Basin Grazing Association which includes, but is not limited to the use of grazing preference on U.S. Forest Service Lands, B.L.M. Allotments and State of Idaho leases. Seller shall assist Buyer in this transfer to the best of Seller's ability, which may occur subsequent to close of escrow.
- 5) Buyer and Seller acknowledge this agreement and is conditioned upon Buyers review and acceptance of the following items within seven (7) days of execution of this agreement by all parties.
 - a. review of preliminary title report.
 - b. verification of property boundaries.
 - c. verification of quantity and quality of water rights.
 - d. verification of personal property that Seller intends to exclude from this sale.
 - e. review an approval of ditch use agreement, Exhibit 'C'
 - f. *review and verification re. transferability of* *Box*
of range rights or permissive non-use
of range rights. *M.A.*

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION	)	
FOR PERMIT NO. 34-07591 AND	)	
APPLICATION FOR TRANSFER NO.	)	
5400 (L&S PARTNERS), APPLICATION	)	PRELIMINARY ORDER
FOR TRANSFER NO. 5456 (ASLETT	)	
RANCHES) AND APPLICATIONS FOR	)	
TRANSFER NOS. 5001 AND 5004	)	
(DAVID AND MARY STOECKLEIN)	)	

On October 12, 1999, the Idaho Department of Water Resources (Department) received a document entitled Stipulation, Settlement, and Joint Motion for Order ("Stipulation") in the above referenced matter. A conference call between representatives of the parties and the department was held on November 15, 1999. Based upon the Stipulation and the understandings reached in the conference call, the Department enters the following Preliminary Order:

1. The protests of Mark T. Gates, Trustee; Blake Quinn, on behalf of 6X Ranch LLC; and David and Mary Stoecklein, or any partnership or entity in which David and/or Mary Stoecklein is a partner, officer, or stockholder, to Application for Transfer No. 5400 in the name of L&S Partners, are hereby deemed withdrawn with prejudice.
2. The protests of Mark T. Gates, Trustee; Blake Quinn; and David and Mary Stoecklein, or any partnership or entity in which David and/or Mary Stoecklein is a partner, officer, or stockholder, to Application for Transfer No. 5456 (formerly application for Transfer No. 4906) in the name of Aslett Ranches, are hereby deemed withdrawn with prejudice.
3. Application for Permit No. 34-07591, in the name of L&S Partners, is hereby deemed withdrawn with prejudice.
4. The protests of Aslett Ranches to Applications for Transfer Nos. 5001 and 5004 are hereby withdrawn with prejudice.
5. The remaining terms of the Stipulation are deemed accepted by the Idaho Department of Water Resources, and the parties thereto are hereby ordered to comply with the terms stated therein.

6. Doug Rosenkrance, when providing the services described in the Stipulation, is acting in a personal capacity and not as the Water District No. 34 Watermaster. The selection of Doug Rosenkrance is a mutual decision of the parties. The parties agree that the services performed are separate from the normal duties and responsibilities of the watermaster. Additionally, all costs associated with the study provided for in the Stipulation, including compensation to Mr. Rosenkrance, shall be borne by the parties to the Stipulation and shall be kept separate from the Water District No. 34 budget.

7. The parties consent to IDWR proceeding with administrative processing of water rights transfers and permits before completion of the study provided that any approvals include the following condition:

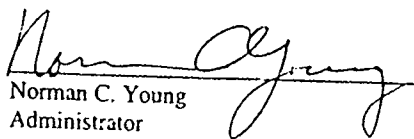
Condition No. __ This approval is specifically conditioned upon the terms and limitations contained in the Stipulation, Settlement, and Joint Motion for Order filed with the Department on October 12, 1999, In the Matter of Application for Permit No. 34-07591, In the Name of L&S Partners, numerous other captioned matters, and the Preliminary Order of the Department issued on November 18, 1999. This approval is subject to any future modifications resulting from or required by the terms of that Stipulation, the Preliminary Order of the Department, and the actions taken pursuant thereto.

8. Issuance of this Preliminary Order does not commit IDWR to approval of the applications now pending. IDWR will evaluate each application in accordance with applicable law and act accordingly.

9. The Stipulation and this Preliminary Order do not prevent including procedures in the plan of study needed to determine canal losses based upon conditions as they existed prior to the changes that will occur if the pending applications are approved.

10. Nothing in the Stipulation or this Preliminary Order prevents the Department from fulfilling its statutory duties and obligations in the administration and regulation of water rights.

Dated this 18th day of November, 1999.


Norman C. Young
Administrator

CERTIFICATE OF SERVICE

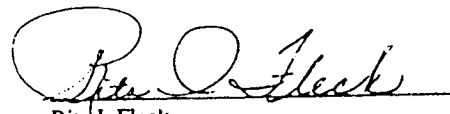
I hereby certify that on the 18th day of November, 1999, I served a true and correct copy of the within and foregoing document upon the persons named below by U. S. mail, postage prepaid:

Mr. Scott L. Campbell
Elam & Burke
Key Financial Center
702 West Idaho
P. O. Box 1539
Boise, ID 83701

James P. Speck
Speck & Aanestad
P. O. Box 987
Ketchum, ID 83540

Michael C. Creamer
Givens Pursley
P. O. Box 2720
Boise, ID 83701

Norman M. Semanko
Rosholt, Robertson & Tucker
P. O. Box 1906
Twin Falls, ID 83303-1906


Rita J. Fleck
Administrative Assistant

CUSTER COUNTY

PAGE 05/06



Order No. 99009224
This form furnished by
Blaine County Title Associates

WARRANTY DEED

For Value Received **ASLETT RANCHES PARTNERSHIP, AN IDAHO GENERAL PARTNERSHIP**

the Grantor hereby grants, bargains, sells, conveys and warrants unto **CUSTER SPRINGS LLC, AN IDAHO LIMITED LIABILITY COMPANY**

the Grantee whose current address is: **24121 SW NEWLAND ROAD, WILSONVILLE, OR 97070**

the following described premises, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE INCORPORATED HEREIN.

0220020

Blaine County Reg. of
[Signature]

Time **4:45 P.M.**

12/11/99
Ethel M. Park, Clerk

[Signature]
Clerk

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, their heirs 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 said premises are free from all encumbrances and that he will warrant and defend the same from all lawful claims whatsoever.

Dated: **November 22, 1999**

ASLETT RANCHES PARTNERSHIP, AN IDAHO GENERAL PARTNERSHIP

(Partnership Name)

By *[Signature]*
MARVIN ASLETT

By *[Signature]*
LARRY ASLETT

State of **IDAHO**

County of **BLAINE**

By *[Signature]*
STEVE ASLETT

On this **20th** day of **November**, 1999, before me, the undersigned, a Notary Public, in and for said State, personally appeared **MARVIN ASLETT, LARRY ASLETT AND STEVE ASLETT**

known to me, or identified to me on the basis of satisfactory evidence, to be **GENERAL PARTNERS** of the Partnership that executed the within instrument and acknowledged to me that such partnership executed the same.

WITNESS MY HAND AND OFFICIAL SEAL.

[Signature]

Notary Public
Residing at: **KETCHUM**
Commission Expires: **July 09, 2002**



CLUSTER COUNTY

PAGE 06/06

220020

BCT #99009334

EXHIBIT A

PARCEL I:

TOWNSHIP 7 NORTH, RANGE 22 EAST, BOISE MERIDIAN, CUSTER COUNTY, IDAHO.
SECTION 1: LOTS 1, 2, 3 AND SE1/4NW1/4

PARCEL II:

TOWNSHIP 7 NORTH, RANGE 23 EAST, BOISE MERIDIAN, CUSTER COUNTY, IDAHO.
SECTION 6: LOTS 3 AND 4

TOWNSHIP 8 NORTH, RANGE 23 EAST, BOISE MERIDIAN, CUSTER COUNTY, IDAHO.
SECTION 31: LOT 4 AND E1/4SW1/4.

PARCEL III:

TOWNSHIP 8 NORTH, RANGE 22 EAST, BOISE MERIDIAN, CUSTER COUNTY, IDAHO.
SECTION 36: S1/2SE1/4 AND SE1/4SW1/4.

EXCEPTING THEREFROM A 1/3 INTEREST IN THE FOLLOWING TRACT OF LAND:
TOWNSHIP 8 NORTH, RANGE 22 EAST, BOISE MERIDIAN, CUSTER COUNTY, IDAHO.
SECTION 36: A PARCEL OF LAND LOCATED IN THE SE1/4SE1/4, BEING MORE
SPECIFICALLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NW CORNER OF SAID SE1/4SE1/4;
THENCE DUE EAST 100 FEET;
THENCE DUE SOUTH 100 FEET;
THENCE DUE WEST 100 FEET;
THENCE DUE NORTH 100 FEET TO THE POINT OF BEGINNING.

PARCEL IV:

TOWNSHIP 7 NORTH, RANGE 23 EAST, BOISE MERIDIAN, CUSTER COUNTY, IDAHO.
SECTION 6: THAT PORTION OF SE1/4NW1/4 LYING ON THE NORTH SIDE OF THE
NOW EXISTING BOUNDARY FENCE RUNNING EAST TO WEST, BETWEEN GRANTOR
AND GRANTEE.

Together, without warranty any and all appurtenant water rights.



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

March 23, 2000

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

L & S PARTNERS
C/O STEVE ASLETT
PO BOX B
TWIN FALLS ID 83303-0015

RE: Water Right 34-04035C (Transfer 5400)

Dear Mr. Aslett:

Enclosed is the copy of your approved Transfer of Water Right for the above referenced water right (Transfer 5400). Please be sure to thoroughly read the Conditions and Remarks listed on the transfer. Also, please be advised that the accompanying transfer approval should be considered and treated as a **preliminary order** of the department issued pursuant to section 67-5243, Idaho Code. Enclosed are instructions for responding to **Preliminary Orders** if you are in disagreement with the approved transfer.

Please note that as of July 1, 1996, water right owners are required to report any change of water right ownership and any change of mailing address of the owner of a water right to the department. Notice of the change must be provided to the department within 120 days of the change. Change reporting forms are available from any office of the department.

Please feel free to contact the department if you have questions.

Sincerely,

Camela S. Stegge
for Jeff Peppersack, Manager
Water Right Permits Section

JP:klt

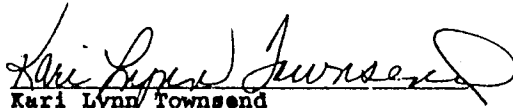
Enclosures

CERTIFICATE OF MAILING

I hereby certify that on the 22nd day of March, 2000 I mailed a true and correct copy, postage prepaid, of the foregoing TRANSFER APPROVAL to the person(s) listed below:

RE: WATER RIGHT 34-04035C (Transfer 5400)

L & S PARTNERS
C/O STEVE ASLETT
PO BOX B
TWIN FALLS ID 83303-0015


Kari Lynn Townsend
Secretary

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

In Re SRBA

Water Rights: 34-4035C AND
OVERLAPPING RIGHTS 34-830C
AND 34-227K

Case No. 39576

NOTICE OF COMPLETED
ADMINISTRATIVE
PROCEEDING

IDWR has completed the following Administrative proceeding:

☐ Address change

☐ Substitution of Party

☒ I.C. § 42-222 transfer 5400

☒ point of diversion ☒ place of use

☐ period of use ☐ nature of use

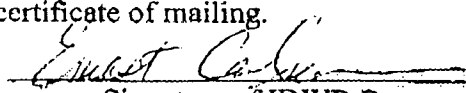
☐ split of water right ☒ change in ownership

☒ other: 34-830C and 34-227K Relinquished.
Quantity added to 34-4035C.

IDWR certifies that it has completed its investigation into the changes to the elements of the water rights listed above as set forth in the attached *Amended Director's Reports* for said water rights. No other changes have been made to the elements of these water rights except as set forth above.

IDWR has served copies of the *Notice of Completed Administrative Proceeding* and *Amended Director's Report(s)* on the claimant(s), prior claimant(s) and all parties in the subcases affected, if any, as reflected on the attached certificate of mailing.

DATED: April 12, 2001



Signature of IDWR Representative

CERTIFICATE OF MAILING

I certify that on April 13, 2001, I mailed the original and copies of this form to the following persons, postage prepaid and addressed as follows:

1. Original to:
Clerk of the District Court
Snake River Basin Adjudication
PO Box 2707
Twin Falls ID 83303-2707
2. One copy to:
Claimant/Seller for Substitution of Party or attorney of record:
MCCALAB ESTATES INC
C/O STEVE VIGILIATORO
1135 YELLOWSTONE STE D
POCATELLO ID 83201
3. One copy to:
Claimant/Purchaser for Substitution of Party, or attorney of record:
L & S PARTNERS
C/O STEVE ASLETT
PO BOX B
TWIN FALLS ID 83303-0015
4. One copy to:
Each party in the subcase, or attorney of record
5. One copy each to:
Chief Natural Resources Division
Office of the Attorney General
PO Box 44449
Boise ID 83711-4449
6. One Copy to:
United States Dept of Justice
Environment & Natural Resource Div
550 West Fort Street MSC 033
Boise ID 83724

Cheri Vandemoelen
Signature of person or attorney mailing the form

04/09/2001

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 34-4035C
 NAME AND ADDRESS: L & S PARTNERS
 C/O STEVE ASLETT
 PO BOX B
 TWIN FALLS ID 833030015

SOURCE: GROUND WATER TRIBUTARY:

QUANTITY: 1.310 CFS
 229.30 AFY

PRIORITY DATE: 08/01/1960

POINT OF DIVERSION:

T07N R22E S1 SWNE Within CUSTER County
 T07N R22E S1 SENE Within CUSTER County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	04/01 10/31	1.310 CFS 229.30 AFY

PLACE OF USE:

IRRIGATION Within CUSTER County
 T07N R22E S01 SWNE 40.0 T07N R22E S01 SENE 25.5

65.5 ACRES TOTAL

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

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

THIS APPROVAL IS SPECIFICALLY CONDITIONED UPON THE TERMS AND LIMITATIONS CONTAINED IN THE STIPULATION, SETTLEMENT, AND JOINT MOTION FOR ORDER FILED WITH THE DEPARTMENT ON OCTOBER 12, 1999, IN THE MATTER OF APPLICATION FOR PERMIT 34-07591, IN THE NAME OF L & S PARTNERS, NUMEROUS OTHER CAPTIONED MATTERS, AND THE PRELIMINARY ORDER OF THE DEPARTMENT ISSUED ON NOVEMBER 18, 1999. THIS APPROVAL IS SUBJECT TO ANY FUTURE MODIFICATIONS RESULTING FROM OR REQUIRED BY THE TERMS OF THAT STIPULATION, THE PRELIMINARY ORDER OF THE DEPARTMENT, AND THE ACTIONS TAKEN PURSUANT THERETO.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

04/9/2001

IDAHO DEPARTMENT OF WATER RESOURCES
CLAIMS / RIGHTS NOT RECOMMENDED

W.R. NUMBER	NAME AND ADDRESS	CLAIM DISPOSITION	REASON
34-227K	MC CALAB ESTATES INC C/O STEVE VIGILIATORO 1135 YELLOWSTONE SUITE D POCATELLO ID 83201	Disallowed	DECREE RELINQUISHED CLAIMANT RELINQUISHED DECREE AS CONDITION OF APPROVAL FOR TRANSFER NO. 5400.

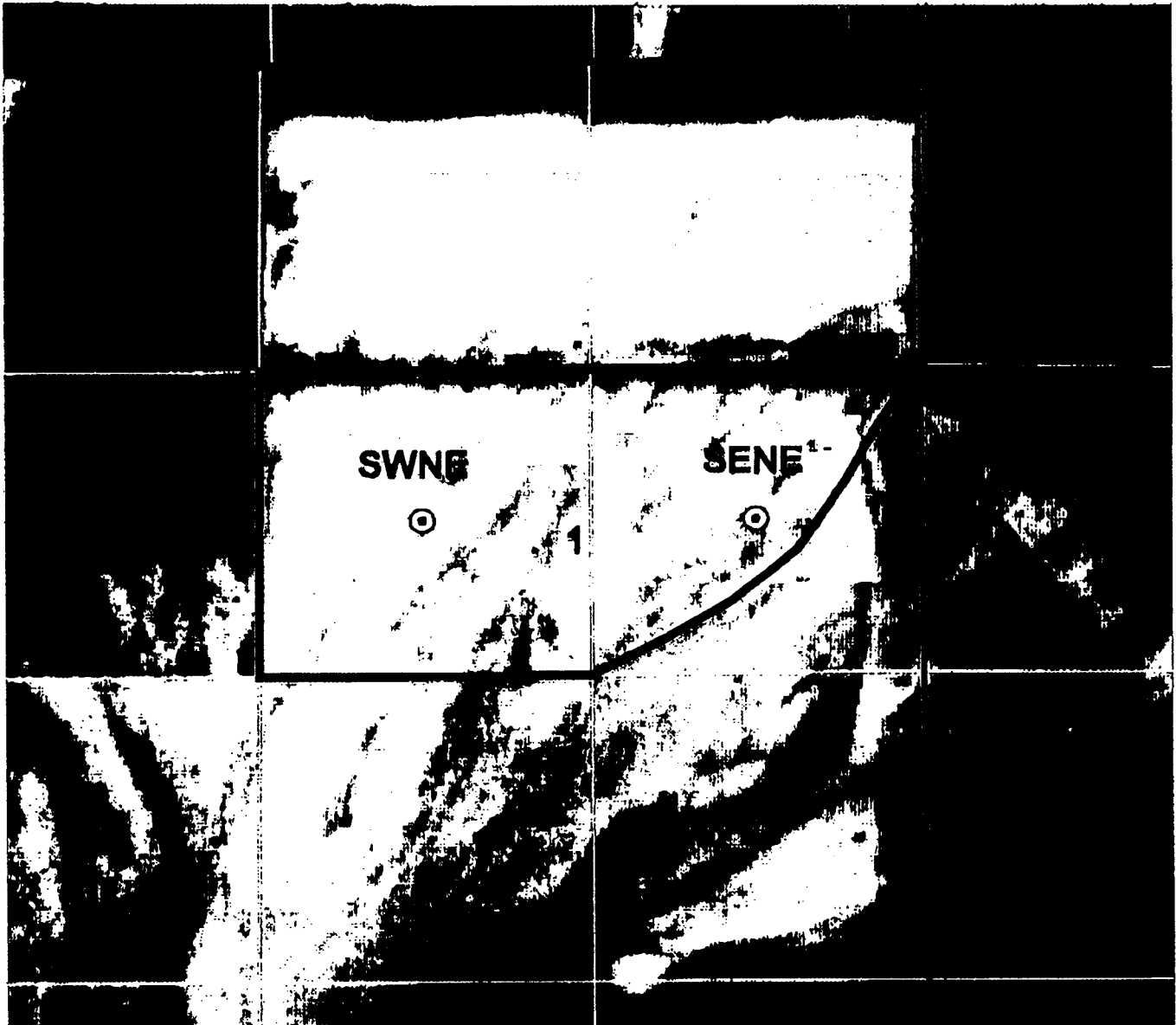
04/9/2001

IDAHO DEPARTMENT OF WATER RESOURCES
CLAIMS / RIGHTS NOT RECOMMENDED

W.R. NUMBER	NAME AND ADDRESS	CLAIM DISPOSITION	REASON
34-830C	MC CALAB ESTATES INC C/O STEVE VIGILIATORO 1135 YELLOWSTONE SUITE D POCATELLO ID 83201	Disallowed	DECREE RELINQUISHED CLAIMANT RELINQUISHED DECREE AS CONDITION OF APPROVAL FOR TRANSFER NO. 5400

IDAHO DEPARTMENT OF WATER RESOURCES

34-04035C



POINT OF DIVERSION- PLACE OF USE



229375
 Custer County Reg. of
Blaine County Title
 Time 3:24 P.M. Date 6/5/2004
 Ethel M. Peck, Clerk
Deane B. Peck \$ 60.00
 Deputy

WARRANTY DEED

For Value Received CUSTER SPRINGS, LLC, an Idaho limited liability company

the Grantor hereby grants, bargains, sells, conveys and warrants unto MARM SPRINGS CARRIE RANCH, LLC, an Idaho limited liability company

the Grantee whose current address is:

the following described premises, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE INCORPORATED HEREIN.

Parcel Number:

SUBJECT TO: Current General Taxes, a lien in the process of assignment, not yet due or payable. Easements, restrictions, reservations, provisions of record, and encumbrances, if any.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, their heirs 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 said premises are free from all encumbrances and that he will warrant and defend the same from all lawful claims whatsoever.

Dated: June 11, 2004

CUSTER SPRINGS, LLC, an Idaho
 limited liability company

By [Signature]
 ROBERT UNGER

By _____

State of IDAHO

ss.

County of BLAINE

On this 11 day of June, 2004, before me, the undersigned, a Notary Public, in and for said State, personally appeared ROBERT UNGER

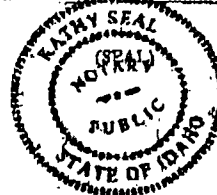
known to me, and/or identified to me on the basis of satisfactory evidence, to be the MANAGER of the Limited Liability Company that executed the instrument; and the foregoing instrument was signed on behalf of said company by authority of consent of its members and acknowledged to me that executed the same.

WITNESS MY HAND AND OFFICIAL SEAL.

[Signature]
 Notary Public KATHY SEAL.

Residing at: KETCHUM

Commission Expires: July 08, 2008



File No. 1002468 Blaine County Title Association
 WARRANTY DEED (LLC)
 No. 012001 (1/1/2003)

09/21/2006 15:27 208875 6

CLUSTER COUNTY

PAGE 03/03

BCT #04012468

REVISED COMMITMENT

ATTACHED LEGAL DESCRIPTION

Order No.: B48702

The S1/4NE1/4, SE1/4NW1/4, and Government Lots 1, 2 and 3, Section 1, Township 7 North, Range 22 E.B.M., Custer County, Idaho.

Government Lots 3, 4 and 8 and a parcel of land located in the SE1/4NW1/4, Section 8, Township 7 North, Range 23 E.B.M., Custer County, Idaho, more particularly described as follows: Beginning at the NE Corner of said Lot 8, run thence S. 88°52'02" E. along the northerly boundary of said SE1/4NW1/4 a distance of 1340.48 feet to the NE corner of said SE1/4NW1/4; Thence S. 00°07'02" E. along the easterly boundary of said SE1/4NW1/4 a distance of 137.35 feet; Thence S. 89°10'00" W. a distance of 1338.15 feet to a point on the westerly boundary of said SE1/4NW1/4; Thence N. 00°27'30" W. along said westerly boundary a distance of 183.34 feet to the point of beginning.

The SE1/4SW1/4 and the S1/4SE1/4, Section 36, Township 8 North, Range 22 E.B.M., Custer County, Idaho.

EXCEPTING THEREFROM a 1/3 interest in the following tract of land: Beginning at the NW corner of the SE1/4SE1/4 of said Section 36; run thence N. 88°25'39" E. along the northerly boundary of said SE1/4SE1/4 a distance of 100.00 feet; Thence S. 00°34'21" E. a distance of 100.00 feet; Thence S. 89°25'39" W. a distance of 100.00 feet; Thence N. 00°34'21" W. a distance of 100.00 feet to the POINT OF BEGINNING.

The E1/4SW1/4 and Government Lot 4, Section 31, Township 8 North, Range 23 E.B.M., Custer County, Idaho.

Together with all appurtenances, including but not limited to, decreed water right nos. 34-00467, 34-00468, 34-00469, 34-00471, 34-07243A, 34-10021 and 34-10426.

ALTA Plain Language Commitment Legal Description
(B48702, PFD/B48702/30)



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

March 21, 2005

WARM SPRINGS CREEK RANCH LLC
C/O MARK GATES
600 EMERSON ST
PALO ALTO CA 94301

RE: Water Right No. 34-4035C
Change in Ownership

Dear Mr. Gates:

The Department of Water Resources acknowledges receipt of the additional information you submitted in support of your Notice of Change in Water Right Ownership filed on September 13, 2004 for the water right no. referenced above. The Snake River Basin Adjudication (SRBA) Court issued a partial decree describing the water right with a place of use different than your property as described in the documentation you originally submitted.

In order to process your change in ownership, we need documentation to show that you own the water right or the property described as the place of use for the water right. If you believe that the SRBA Court issued the partial decree with an error in the description of the place of use, you may be able pursue one of the following options with the Court.

- 1) Motion to set-aside – a motion filed with the SRBA Court which, if granted, would provide a process to correct the partial decree. You would need to provide justification for the correction.
- 2) Motion to file late claim – a motion filed with the SRBA Court which, if granted, would allow you to file a new claim for your existing water use. A late claim would be investigated for validity and accuracy by the Department.

Please contact Danni Smith of this office at 287-4910 if you have questions related to the SRBA. Ms. Smith can assist you with the SRBA Court's processes.

As additional alternatives, you could pursue one of the following options with the Department.

- 1) New Appropriation – an application for permit filed with the Department to develop a new water right. If a permit is approved, the priority date is the date that the application is filed. Some areas of the state are closed to new development. Please note that a water right permit is not required for certain domestic uses from a ground water source.

- 2) Water Right Transfer – an application filed with the Department to change an existing water right. In this case, the purpose of the transfer would be to change the place of use (and possibly the point of diversion) to your property description. You would need to provide evidence of ownership or authorization from the current owner of record before the Department could process the application.

If you choose to file an application for permit or transfer with the Department, you may be able to apply any fees submitted with your Notice of Change in Water Right Ownership to the application. Please contact staff from the Water Right Permits section of this office if you have additional questions related to the applications described above.

Please let us know within 30 days how you plan to proceed. If we do not hear from you within 30 days we will return your Notice of Change in Water Right Ownership and all attachments and refund any fees submitted with your notice. Enclosed at this time is a copy of the partial decree for your review. The remaining eight water rights listed on the ownership change form have been processed separately and you should receive confirmation of that fact shortly.

Sincerely,



Kandice McDermott
Records Analyst

/klm
Enclosure



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

~~March 21, 2005~~ APRIL 20, 2005

WARM SPRINGS CREEK RANCH LLC
C/O MARK GATES
600 EMERSON ST
PALO ALTO CA 94301

2ND REQUEST!!

RE: Water Right No. 34-4035C
Change in Ownership

Dear Mr. Gates:

The Department of Water Resources acknowledges receipt of the additional information you submitted in support of your Notice of Change in Water Right Ownership filed on September 13, 2004 for the water right no. referenced above. The Snake River Basin Adjudication (SRBA) Court issued a partial decree describing the water right with a place of use different than your property as described in the documentation you originally submitted.

In order to process your change in ownership, we need documentation to show that you own the water right or the property described as the place of use for the water right. If you believe that the SRBA Court issued the partial decree with an error in the description of the place of use, you may be able pursue one of the following options with the Court.

- 1) Motion to set-aside – a motion filed with the SRBA Court which, if granted, would provide a process to correct the partial decree. You would need to provide justification for the correction.
- 2) Motion to file late claim – a motion filed with the SRBA Court which, if granted, would allow you to file a new claim for your existing water use. A late claim would be investigated for validity and accuracy by the Department.

Please contact Danni Smith of this office at 287-4910 if you have questions related to the SRBA. Ms. Smith can assist you with the SRBA Court's processes.

As additional alternatives, you could pursue one of the following options with the Department.

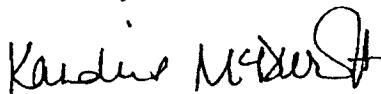
- 1) New Appropriation – an application for permit filed with the Department to develop a new water right. If a permit is approved, the priority date is the date that the application is filed. Some areas of the state are closed to new development. Please note that a water right permit is not required for certain domestic uses from a ground water source.

- 2) Water Right Transfer -- an application filed with the Department to change an existing water right. In this case, the purpose of the transfer would be to change the place of use (and possibly the point of diversion) to your property description. You would need to provide evidence of ownership or authorization from the current owner of record before the Department could process the application.

If you choose to file an application for permit or transfer with the Department, you may be able to apply any fees submitted with your Notice of Change in Water Right Ownership to the application. Please contact staff from the Water Right Permits section of this office if you have additional questions related to the applications described above.

Please let us know within 30 days how you plan to proceed. If we do not hear from you within 30 days we will return your Notice of Change in Water Right Ownership and all attachments and refund any fees submitted with your notice. Enclosed at this time is a copy of the partial decree for your review. The remaining eight water rights listed on the ownership change form have been processed separately and you should receive confirmation of that fact shortly.

Sincerely,



Kandice McDermott
Records Analyst

/klm

Enclosure

MEMORANDUM

To: File 34-4035C

From: Cynthia Bridge Clark

Date: May 16, 2005

Re: Transfer 5400 not recognized in amended partial decree.

Scott King contacted the department regarding 34-4035C. A partial decree was issued on the right in 1998. Transfer 5400 was approved on March 23, 2000 changing the place of use and point of diversion. An amended partial decree changing the season of use was then issued in 2002 that did not recognize the approved transfer. The owners of the water right filed a notice of change in ownership. However, they own the land associated with the place of use recognized by the transfer, but not the land identified on the partial decree. Additionally, the owners would like to put the right in the water supply bank.

I discussed the possibility of updating the water right record to reflect the transfer and decree with Scott King. He said he would inform the owner's attorneys at Givens Pursley of our conversation, and asked that I wait until they have determined how they want to proceed.

Clark, Cynthia (Bridge)

From: Hamlin Nygard, Susan
Sent: Monday, May 08, 2006 11:35 AM
To: Clark, Cynthia (Bridge)
Subject: RE: Water right 34-4035C

-----Original Message-----

From: Hamlin Nygard, Susan
Sent: Tuesday, May 24, 2005 1:58 PM
To: Clark, Cynthia (Bridge)
Cc: Michael C. Creamer (E-mail)
Subject: RE: Motion to Set Aside, Water Bank

Cynthia, Here is a brief procedural history: The partial decree was issued Jan 2, 1998. Due to the remand from the Supreme Court, the Period of Use element was corrected through a nunc pro tunc order issued on Jan 28 2002. This order only changed the period of use for the water right and had the effect though the nunc pro tunc issuance to be as if it were issued on the original decreed date. There was a post decree transfer (#5400) that changed the point of diversion, place of use and change in ownership that was completed on March 23, 2000. It appears that the department drafted an NCAP (Notice of Completed Administrative Proceeding) for this transfer, but it was not filed with the SRBA court. There was some confusion early on in these test basins (like Basin 34) on how to handle the post decree transfers and notice to the court, especially when the season of use issue was still outstanding. However the court addressed that concern by issuing the season of use element with the Nunc pro tunc effect, thus not reopening all the elements to the water rights. Generally IDWR does not file NCAPs with the court for water rights which are already decreed, and that is the situation here. So it looks as if the database needs to be corrected.

If the attorneys have questions they may give me a call. Susan

-----Original Message-----

From: Clark, Cynthia (Bridge)
Sent: Tuesday, May 24, 2005 10:51 AM
To: 'Brad V. Sneed'; Scott King
Cc: Hamlin Nygard, Susan
Subject: RE: Motion to Set Aside, Water Bank

Brad and Scott,

I left a message with Mike Creamer yesterday to discuss the McCalab Estate water right. I posed our questions to department attorneys last week to verify whether the court records need to be updated. I think you are correct with regard to processing the Notice of Change in Ownership once the water right records are updated. I will get back to you once the attorneys have had a chance to review the right.

Thank you,

Cynthia

-----Original Message-----

From: Brad V. Sneed [mailto:bvs@givenspursley.com]
Sent: Monday, May 23, 2005 3:52 PM
To: Scott King; Cynthia Bridge Clark

Subject: RE: Motion to Set Aside, Water Bank

Scott/Cynthia:

I just looked at the SRBA records on-line and they still show McCalab Estate as owning 34-4035C. I guess the problem is that the NCAP was somehow lost after IDWR mailed it to the SRBA Court on April 13, 2001. If that is the case, then can IDWR make it right by simply sending the original NCAP to the SRBA Court with an explanation that the NCAP was first submitted over 4 years ago?

Thereafter, once the SRBA Court fixes this first mistake, then Warm Springs can submit its Notice in Change of Ownership with a copy of the deed showing that L&S sold the property to Warm Springs.

Can we get this fixed this way?

Brad Sneed

--- Original Message---

To: "Terry Scanlan" , "Brad V. Sneed"

Cc: "Mark Gates" , "Blake Quinn" ,

From: "Scott King"

Sent: 5/16/2005 11:05AM

Subject: Motion to Set Aside, Water Bank

>> Hello all,

>>

>> Regarding the apparent SRBA court mistake of not reflecting the approved

>> transfer in its 2nd partial decree for 34-4035C, Cynthia Bridge-Clark

>> from IDWR suggested that IDWR may be able to simply 'update their

>> records' to reflect the transferred POU/POD. She suggested that this

>> could likely be done in place of the Motion to Set Aside contemplated

>> for filing with the SRBA court. Then, the ownership change could be

>> completed, and the water bank application for the groundwater right

>> could be filed.

>>

>> Please let me know if you would like me to request this change.

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>> Scott

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>> _____

>> Scott N. King, P.E.

>> SPF Water Engineering, LLC

>> 600 East River Park Lane, Suite 105

>> Boise, Idaho 83706

>> phone: 208-383-4140 x209

>> fax: 208-383-4156

>> email: sking@spfwater.com

>> web page: www.spfwater.com

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MEMORANDUM

Date: July 07, 2006
To: Water Right File 34-4035C
From: cclark
Re: Database correction

The department received a Notice of Ownership Change form on September 13, 2004 from Warm Springs Creek Ranch, LLC. The partial decree issued in the Snake River Basin Adjudication (SRBA) did not correspond with evidence of ownership provided by the applicant, therefore additional information was requested. Upon further review, it was determined that the elements of the water right reflected on the original decree were superceded by a post decree transfer.

The SRBA partial decree was issued on January 2, 1998. Transfer No. 5400 was approved on March 23, 2000 that changed the point of diversion, place of use and ownership. The Period of Use element was then corrected through a Nunc pro tunc order issued on January 28, 2002. Though the department drafted a Notice of Completed Administrative Proceeding (NCAP) after the transfer was approved, it was not filed with the court because NCAPs are not generally processed for water rights that are already decreed. The January 28, 2002 order effected the season of use on the original decree, however, the decree did not capture the changes approved by the transfer.

SRBA staff attorneys agreed that the database should be updated to reflect the changes implemented through the transfer. A copy of the transfer approval has been added to the file along with correspondence regarding the procedural history of the right. The ownership change request should be reviewed based on the right as defined by approved transfer no. 5400.