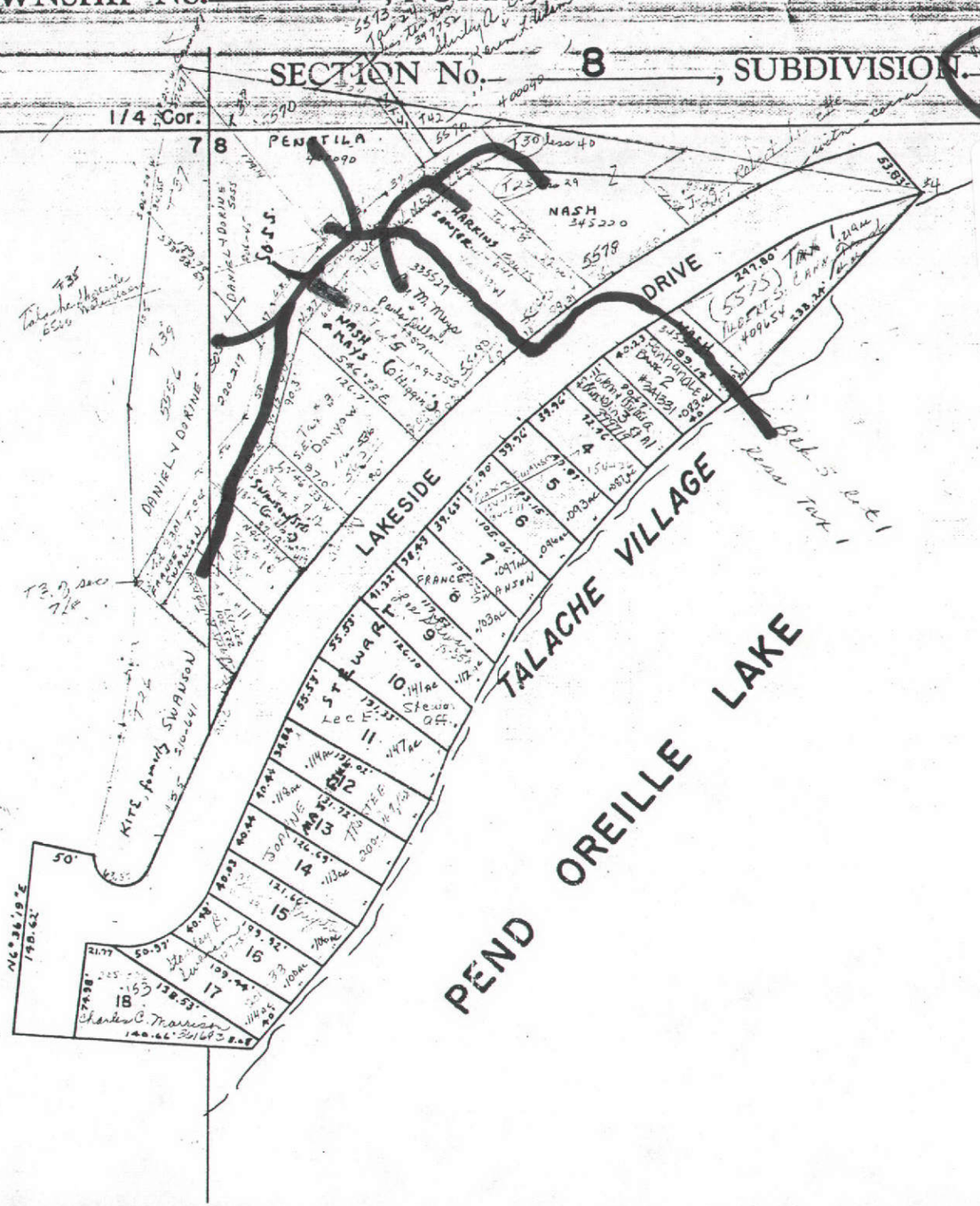
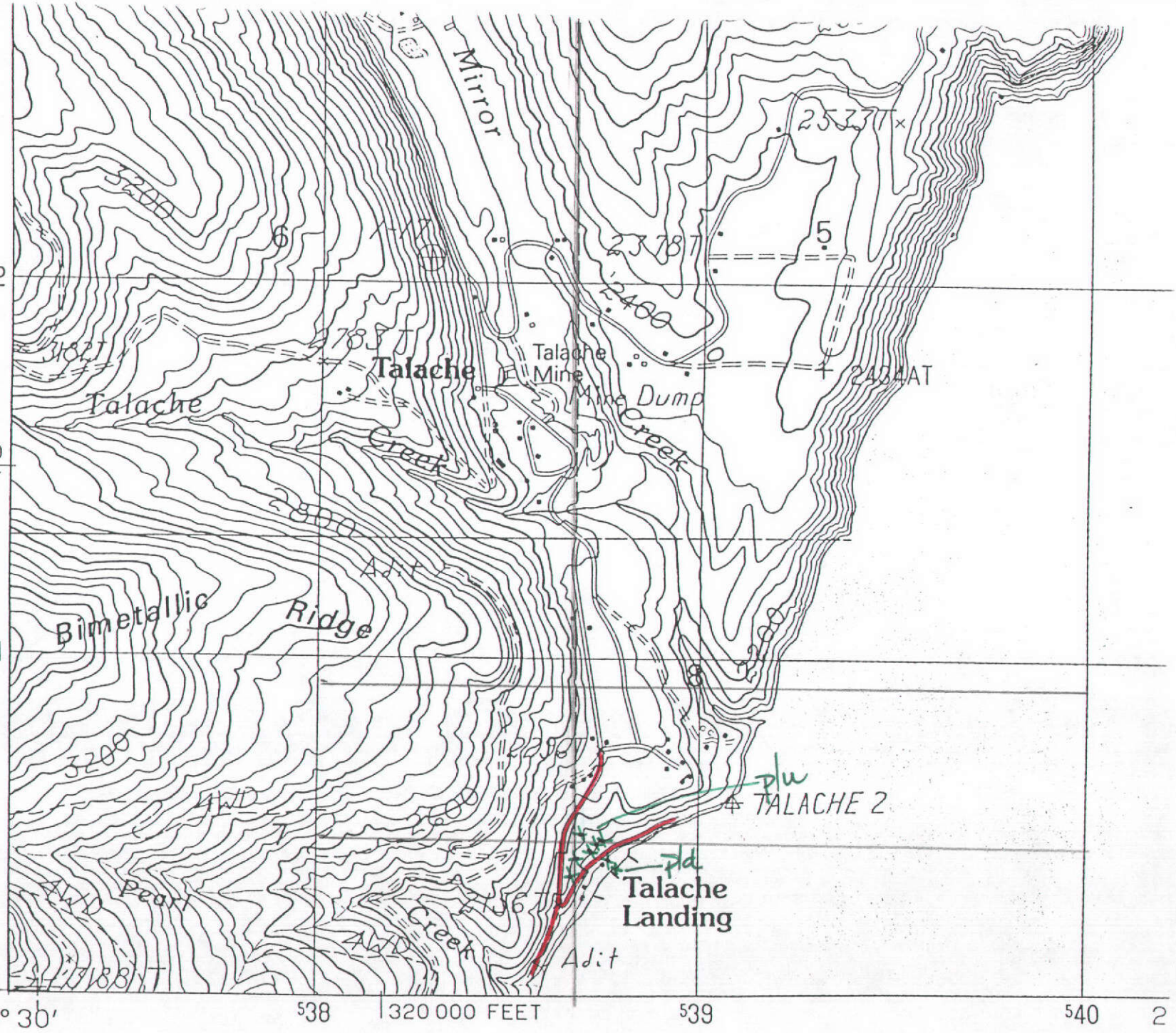
TOWNSHIP No. 55 , NORTH, RANGE No. 1 , West , BOISE MERIDIAN, ID.

SECTION No. 8 , SUBDIVISION Gov't Lot 2



NW 1/4 SW 1/4

MICROFILMED
MAR 26 1997



MICROFILMED
DEC 2 9 1999

PRODUCED BY THE UNITED STATES GEOLOGICAL SURVEY

SECTION No. 8, SUBDIVISION. Gov't

1/4 Cor.

7 8

RECEIVED
AUG 26 1997
NORTHERN REGION
IDWR

96-08857
Nash
T55N R01W Sec 7,8

DRIVE

LAKESIDE VILLAGE

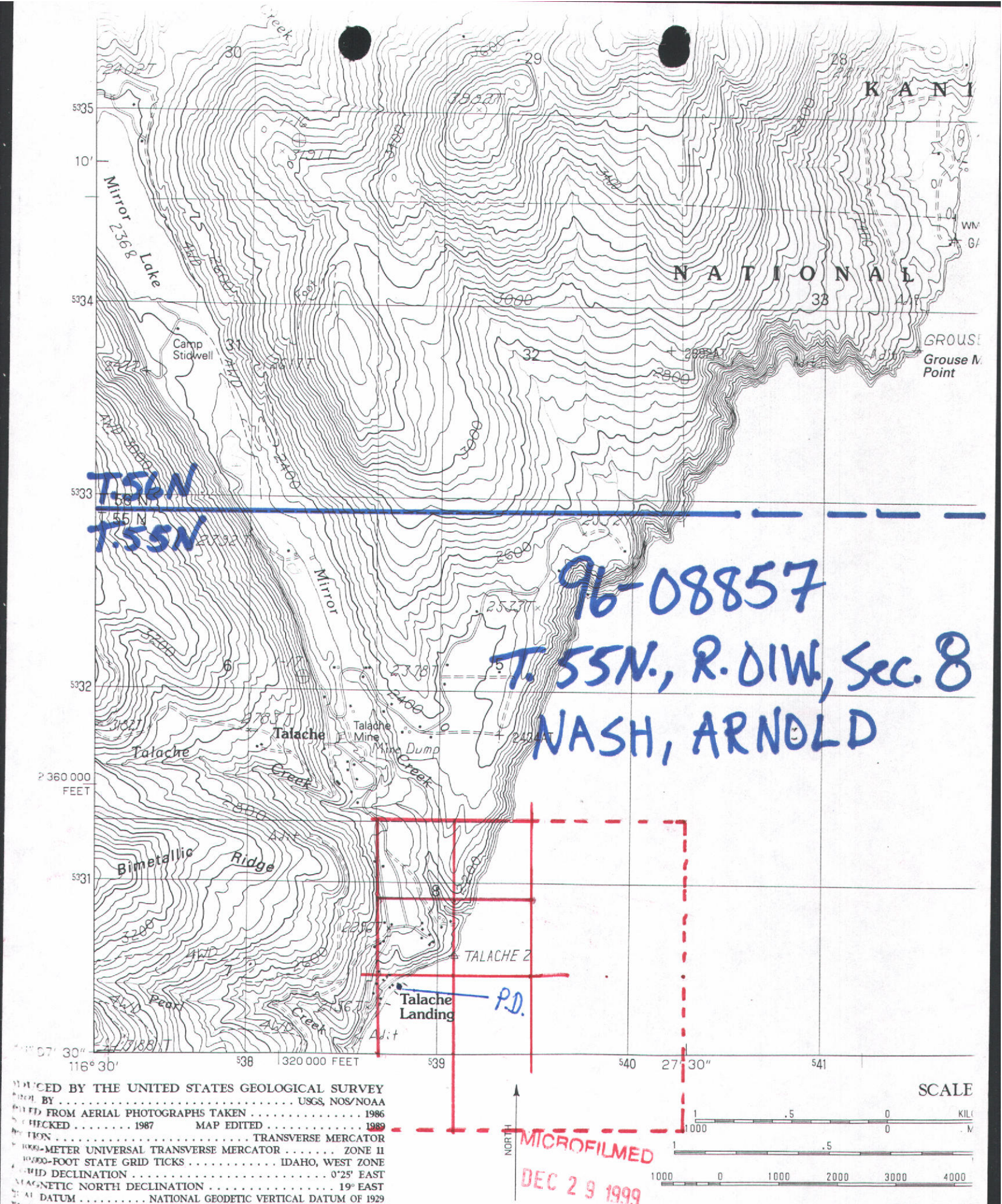
TALACHE

PEND OREILLE LAKE

destroyed 1986 pipe (temp)
1987 permit
1991 pipe
1995 water right
1995 water right, no encroachment permit, not yet built

1997, no water right, no encroachment permit

1976 Guild,
1983 water right, probably no encroachment permit



PRODUCED BY THE UNITED STATES GEOLOGICAL SURVEY
PRINTED BY ..... USGS, NOS/NOAA
PHOTOGRAPHED FROM AERIAL PHOTOGRAPHS TAKEN 1986
FIELD CHECKED ..... 1987 MAP EDITED 1989
PROJECTION ..... TRANSVERSE MERCATOR
1000-METER UNIVERSAL TRANSVERSE MERCATOR ..... ZONE 11
10,000-FOOT STATE GRID TICKS ..... IDAHO, WEST ZONE
GRID DECLINATION ..... 0°25' EAST
MAGNETIC NORTH DECLINATION ..... 19° EAST
VERTICAL DATUM ..... NATIONAL GEODETIC VERTICAL DATUM OF 1929
HORIZONTAL DATUM ..... 1927 NORTH AMERICAN DATUM

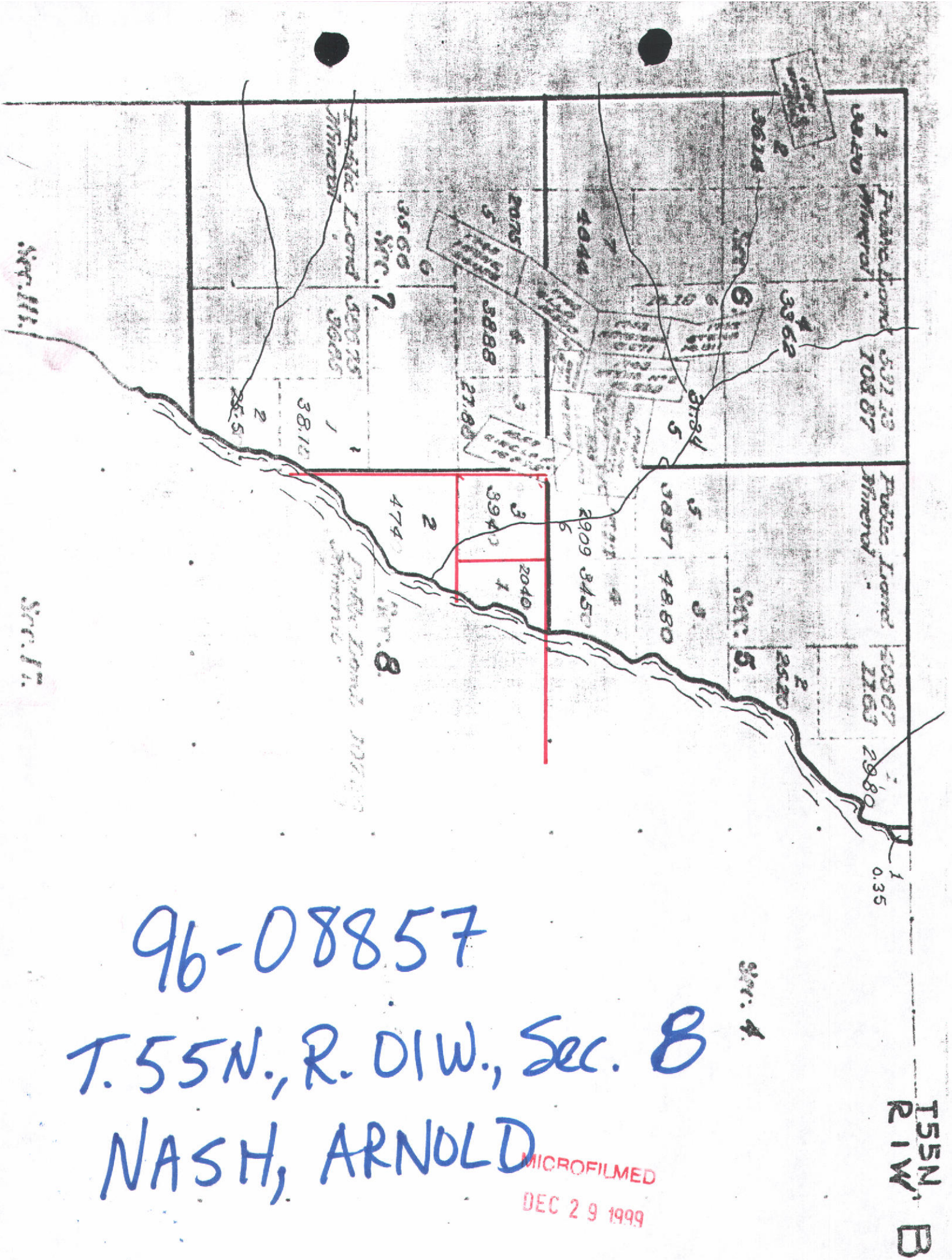
To place on the predicted North American Datum of 1983, move the projection lines as shown by dashed corner ticks (167 meters north and 77 meters east)

There may be private inholdings within the boundaries of any

PROVISIONAL MAP
Produced from original manuscript drawings. Infor-

To convert feet to
To convert meters t

MICROFILMED
DEC 2 9 1999



96-08857

T. 55N., R. 01W., Sec. 8

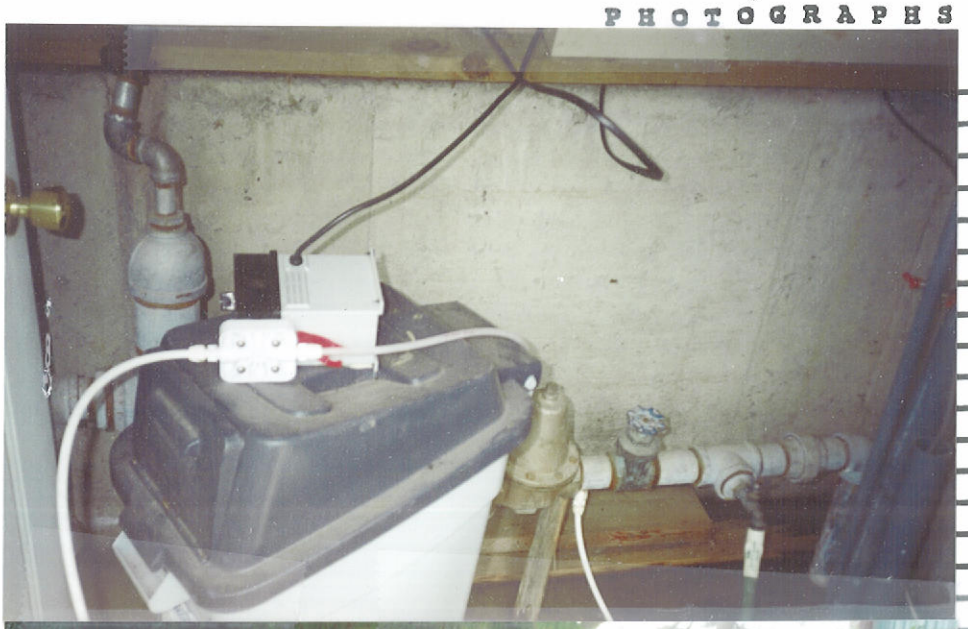
NASH, ARNOLD

MICROFILMED
DEC 2 9 1999

PERMIT # 96-08857

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
FIELD REPORT SUPPLEMENT

PHOTOGRAPHS



Pump house

Point of diversion, located T55N R01W Sec. 8 Govt lot 2 NWSW Lot 1 less tax 1 Nash



P.U. Nash - Tax 25-30



P.U. Sawyer + Harkins Tax 8

MICROFILMED
DEC 29 1999

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
FIELD REPORT SUPPLEMENT

PERMIT # ~~96-08857~~



P.U. Mays + Dillon
Tax 6



P.U.
Johnson Tax 10 + 11



P.U. Gay
tax 38

MICROFILMED
DEC 2 9 1999

PERMIT # 96-08857

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
FIELD REPORT SUPPLEMENT

PHOTOGRAPHS



P.U. Gay
tax 37.



P.U. Gay
tax 39

MICROFILMED
DEC 29 1999

STATEMENT BY DOMESTIC CORPORATION

THIS STATEMENT MUST BE FILED WITH CALIFORNIA SECRETARY OF STATE (SECT. 3301, CORPORATION CODE)
(PLEASE READ THE INSTRUCTIONS ON THE BACK OF THE FORM BEFORE COMPLETING)

1. THE CORPORATION NAMED HEREIN, ORGANIZED UNDER THE LAWS OF THE STATE OF CALIFORNIA, MAKES THE FOLLOWING STATEMENT:

a. (Number and street of its principal executive office) 48 San Miguel Avenue	b. (City and state) Salinas, Monterey Calif.	c. (Zip code) 93901
d. (Number and street of its principal business office in California, if any) P.O. Box 577	e. (City and state) Salinas, California	f. (Zip code) 93901

2. THE NAMES AND COMPLETE ADDRESSES OF THE FOLLOWING OFFICERS ARE:

a. PRESIDENT: Name Charles R. Kimes			
b. (Business or residence address) 48 San Miguel Avenue	c. (City and state) Salinas, California		d. (Zip code) 93901
e. VICE-PRESIDENT: Name			
f. (Business or residence address)	g. (City and state)		h. (Zip code)
i. SECRETARY: Name Bill C. Comer			
j. (Business or residence address) 48 San Miguel Avenue	k. (City and state) Salinas, California		l. (Zip code) 93901
m. TREASURER: Name Kenneth E. Comer			
n. (Business or residence address) 48 San Miguel Avenue	o. (City and state) Salinas, California		p. (Zip code) 93901

3. By Charles R. Kimes (Signature of an officer)

4. Date 21 March 1972 Type President

DO NOT WRITE IN THIS SPACE

Edmund G. Brown
EDMUND G. BROWN JR.
SECRETARY OF STATE

FILED
SACRAMENTO, CALIF.
Apr 3 1972

72 010554

SALACHE LAND COMPANY (CORPORATION)
48 SAN MIGUEL AVENUE
SALINAS, CALIF. 93901

FU 2094 MAR 30 72 3.00

FILING FEE - SEE INSTRUCTIONS

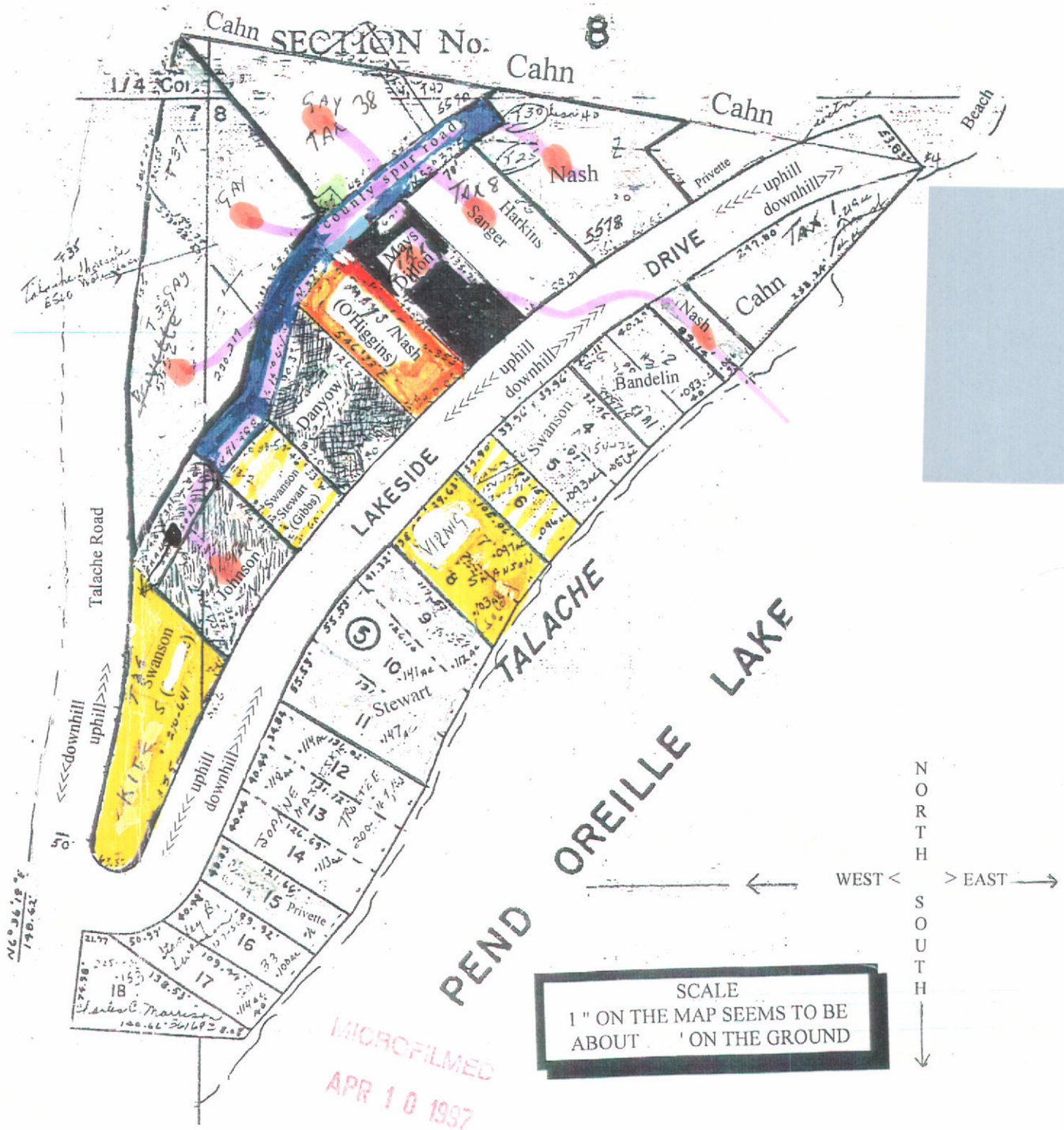
2.

MICROFILMED
APR 10 1972

TOWNSHIP No. 55 NORTH, RANGE No. 6

1 West BOISE MERIDIAN, I.

SUBDIVISION Gov't Lot 2



MICROFILMED
APR 10 1997

454051

STATE OF IDAHO)
ss
County of Bonner)

Frances L. Swanson being first duly sworn, deposes and says:

That she is the declarant in the above entitled matter and has read the above and foregoing acknowledgment, knows the contents thereof and that the same is true as affiant verily believes.

Frances L. Swanson
Frances L. Swanson, Affiant.

SUBSCRIBED AND SWORN to before me this 5th day of OCTOBER ~~September~~, 1994.

Notary Public in and for the State of Idaho, residing at
My Commission expires 4-12-97

State of Idaho)
ss
County of Bonner)

I, Marie Scott, County Recorder in and for the County and State aforesaid, do hereby certify that the foregoing instrument is a true and correct copy of the original thereof recorded in my office by instrument number

454051

In Testimony Whereof, I have hereunto set my hand and affixed my official seal this the 22 day of December 1994

MARIE SCOTT
County Recorder, Bonner County, Idaho

Wendi Liddell
By Deputy

MICROFILMED
APR 10 1997

453477

REVOCATION OF EASEMENT ORIGINALLY GRANTED IN ERROR

Robert B. Goebel, individually, and on behalf of Talache Land Company, Inc., a defunct corporation, now revokes and rescinds that certain easement as contained in the easement under Recorder's File No. 449888, recorded in the Bonner County Recorder's Office on August 2, 1994, which describes the following real property:

The existing 10' of Lots 1, 2, 3, 4, 5, 6, 7, and 8 of Block 5, Talache Village, Bonner County, Idaho.

The undersigned revokes the easement for the reason that it was granted in error and that Talache Land Company, Inc., has no power or authority to convey any easement and that Robert B. Goebel does not have the power or authority to convey the easement as granted.

IN WITNESS WHEREOF, Robert B. Goebel has set his hand and seal this 30 day of SEPTEMBER, 1994.

Robert B. Goebel
ROBERT B. GOEBEL

STATE OF WASHINGTON)
) ss.
County of SPOKANE)

On this day personally appeared before me Robert Goebel, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 30 day of SEPTEMBER, 1993.

Rae L. Mortell
NOTARY PUBLIC in and for the State of WASHINGTON Residing at SPOKANE
Commission Expires 4-1-97

State of Idaho)
) ss
County of Bonner)

I, Marie Scott, County Recorder in and for the County and State aforesaid, do hereby certify that the foregoing is a true and correct copy of the original thereof recorded in my office by Instrument No. 453477

In Testimony Whereof, I have hereunto set my hand and affixed my official seal this 22 day of December, 1994

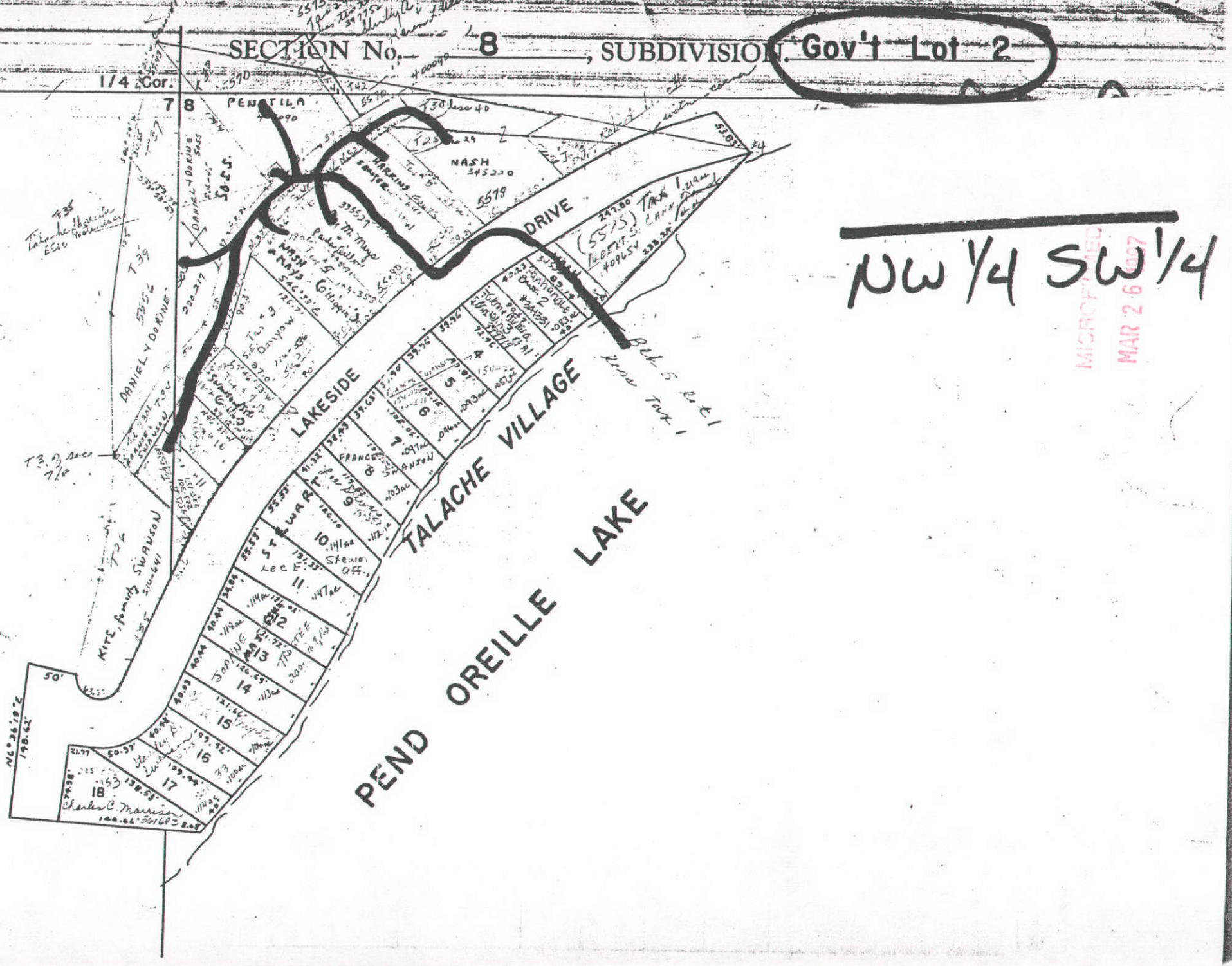
MARIE SCOTT
County Recorder, Bonner County, Idaho
By Heidi Holder Deputy

FILED BY Carolyn
'94 OCT 5 PM 3 08
RECORDER OF BONNER COUNTY, IDAHO
DEP.

MICROFILMED
APR 10 1997

TOWNSHIP No. 55 , NORTH RANGE No. 1 , West , BOISE MERIDIAN, ID.

SECTION No. 8 , SUBDIVISION Gov't Lot 2



MICROFILMED
MAR 26 '97

Composite Map of Old Platting Survey and of Draft of 1994-95 Kiebert Survey

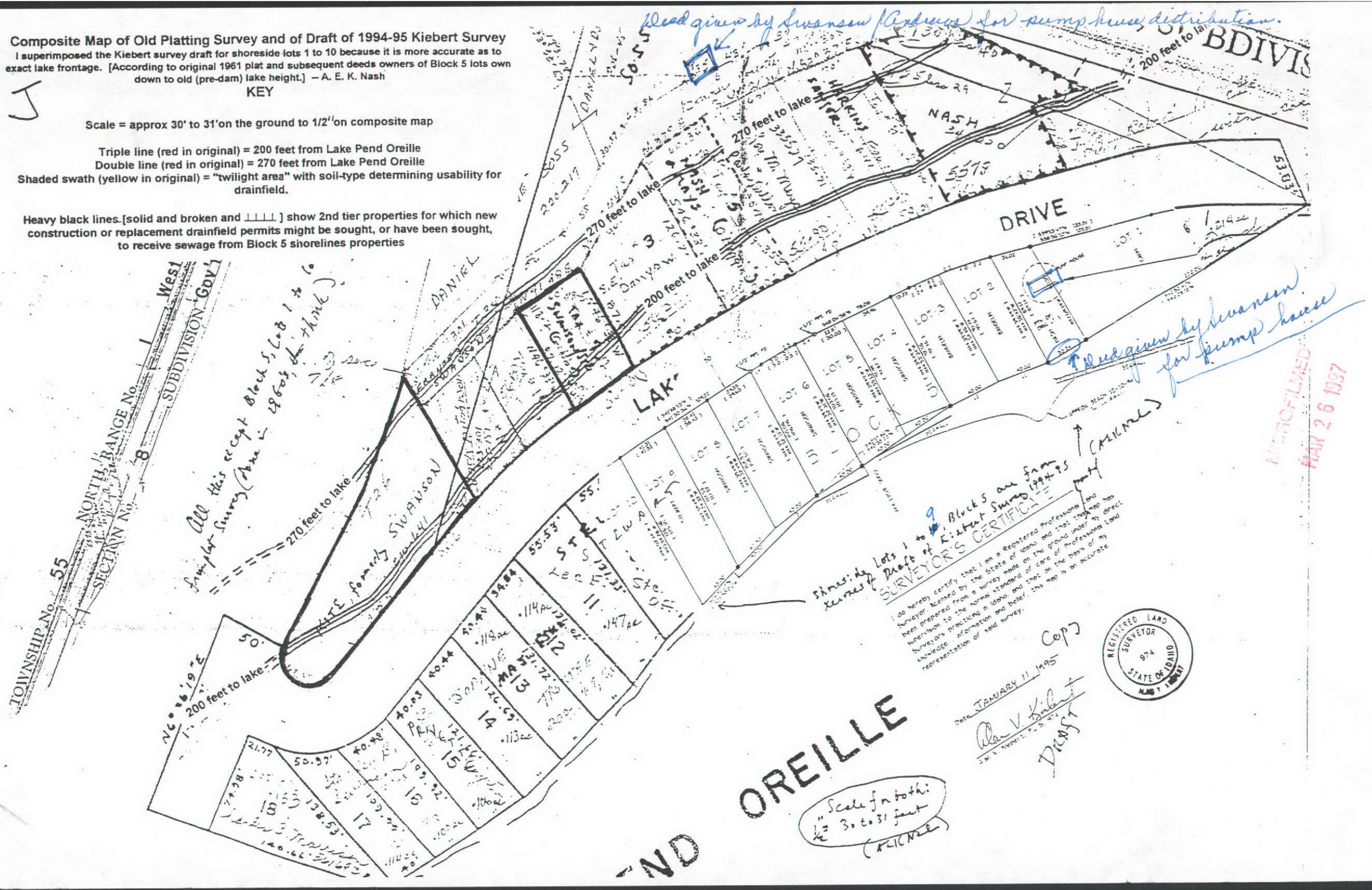
I superimposed the Kiebert survey draft for shoreside lots 1 to 10 because it is more accurate as to exact lake frontage. [According to original 1961 plat and subsequent deeds owners of Block 5 lots own down to old (pre-dam) lake height.] — A. E. K. Nash

KEY

Scale = approx 30' to 31'on the ground to 1/2"on composite map

Triple line (red in original) = 200 feet from Lake Pend Oreille
Double line (red in original) = 270 feet from Lake Pend Oreille
Shaded swath (yellow in original) = "twilight area" with soil-type determining usability for drainfield.

Heavy black lines [solid and broken and ⊥⊥⊥⊥] show 2nd tier properties for which new construction or replacement drainfield permits might be sought, or have been sought, to receive sewage from Block 5 shorelines properties



PETE T. CENARRUSA
SECRETARY OF STATE
STATE CAPITAL
BOISE, IDAHO

State of Idaho

Department of State

CERTIFICATE OF INCORPORATION
OF

TALACHE SHORESIDE WATER USERS ASSOC., INC.

I, PETE T. CENARRUSA, Secretary of State of the State of Idaho, hereby certify that duplicate originals of Articles of Incorporation for the incorporation of TALACHE SHORESIDE WATER USERS ASSOC., INC., duly signed pursuant to the provisions of the Idaho Nonprofit Corporation Act, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I issue this Certificate of Incorporation and attach hereto a duplicate original of the Articles of Incorporation.

Dated October 17, 19 80.

Pete T. Cenarrusa
SECRETARY OF STATE

[illegible]
Corporation Clerk

THE GREAT SEAL OF THE STATE OF IDAHO
ESTO PERPETUA

MICROFILMED
MAR 2 6 1997

CHF 779

Composite Map of Old Platting Survey and of Draft of 1994-95 Kiebert Survey

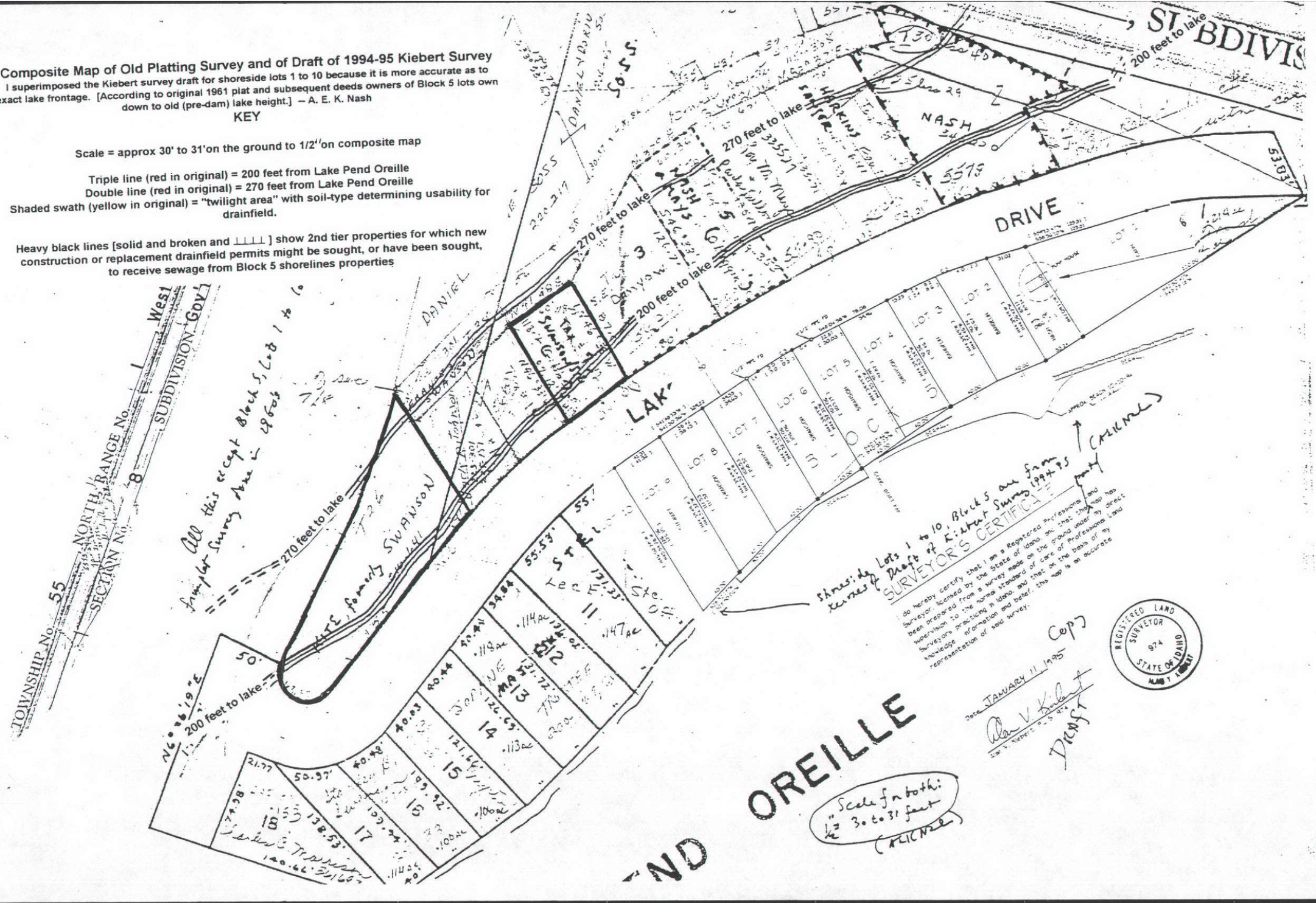
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Heavy black lines [solid and broken and ⊥⊥⊥⊥] show 2nd tier properties for which new construction or replacement drainfield permits might be sought, or have been sought, to receive sewage from Block 5 shorelines properties



State of Idaho
Department of Water Resources

Water Right License

WATER RIGHT NO. 96-08857

Priority: March 31, 1995 Maximum Diversion Rate: 0.12 CFS
Maximum Diversion Volume: 11.4 AF

This is to certify, that ARNOLD EDMUND KEIR NASH
MARGUERITE B R NASH
PO BOX 492
SAGLE ID 83860-0492 has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated March 31, 1995; and has submitted Proof of Beneficial Use on October 28, 1996. An examination indicates that the works have a diversion capacity of 0.120 cfs of water from:

PEND OREILLE LAKE tributary to **PEND OREILLE RIVER**

source, and a water right has been established as follows:

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION	ANNUAL VOLUME
IRRIGATION	03/15 to 11/15	0.07 CFS	7.2 AF
DOMESTIC	01/01 to 12/31	0.12 CFS	4.2 AF
	Totals	0.12 CFS	11.4 AF

LOCATION OF POINT(S) OF DIVERSION: Lot 2(NWSW), Sec. 8, Township 55N, Range 01W
BONNER County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES	ACRES	TOTAL
55N	01W	7	SENE	0.1	Lot 1(NESE)	0.4		0.5
		8	Lot 2(SWNW)	0.2	Lot 2(NWSW)	1.7		1.9
					Total number of acres irrigated:			2.4

PLACE OF USE:
DOMESTIC, same as IRRIGATION use

CONDITIONS OF APPROVAL AND REMARKS

1. This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 3.0 afa per acre at the field headgate for irrigation of the lands above.
2. Modifications to or variance from this license shall be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law and shall not be made without the consent of the owners of the lands identified herein.

MICROFILMED
DEC 29 1999

State of Idaho
Department of Water Resources

Water Right License

WATER RIGHT NO. 96-08857

CONDITIONS OF APPROVAL AND REMARKS

3. This right does not authorize the use of water on properties other than the following: domestic use for 1 home located on Lot 2A; 1 home on Tax 25 less 29/Tax 30 less 40; 1 home on Tax 6; 1 home on Tax 8; 1 home on Tax 10/Tax 11 also known as RP 55N01W085660 A.; 1 home on Tax 37/Tax 39; and 1 home on Tax 38 for a total of 7 homes. Domestic use does not include lawn, garden, landscape or other types of irrigation.
4. This right does not grant a right-of-way or easement across the lands of any person or entity and does not authorize the right holder to trespass on the property of others to maintain or operate the system.
5. This right does not constitute approval of any other agency for the maintenance or operation of the system.
6. This right does not serve to vest in the right holder sole ownership of the water right or of the existing delivery system.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources. Signed and sealed this 18TH day of OCTOBER, 1999.

Acting for KARL J. DREHER, Director

MICROFILMED
DEC 29 1999

RECEIVED
SEP 27 1999
Department of Water Resources

NDV

State of Idaho
Department of Water Resources

APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 96-08857

Date of Priority: March 31, 1995

Maximum Diversion Rate: 0.12 CFS
Maximum Diversion Volume: 11.4 AF

Comes now ARNOLD EDMUND KEIR NASH
MARGUERITE B R NASH
PO BOX 492
SAGLE ID 83860-0492 and represents to the Director of the

Idaho Department of Water Resources:

That he is the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho No. 96-08857, and requests that the permit be changed as follows:

Source: **PEND OREILLE LAKE** tributary to **PEND OREILLE RIVER**

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION	ANNUAL VOLUME
IRRIGATION	03/15 to 11/15	0.07 CFS	7.2 AF
DOMESTIC	01/01 to 12/31	0.12 CFS	4.2 AF
	Totals	0.12 CFS	11.4 AF

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BONNER County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES			ACRES	ACRES	TOTAL
55N	01W	7		SENE 0.1	Lot	1(NESE)	0.4		0.5
		8	Lot	2(SWNW) 0.2	Lot	2(NWSW)	1.7		1.9

Total number of acres irrigated: 2.4

PLACE OF USE:
DOMESTIC, same as IRRIGATION use

Permit holder asserts that in so far as he knows, and in light of the attached JUDGMENT AND ORDER in First District Bonner County Case No. CV-96-00578 which this Application for Amendment is in furtherance of, no one will be injured by such change.

MICROFILMED
DEC 29 1999

Signed at Sandpoint, ID. this 24 day of September 1999.

[signature]

State of Idaho
Department of Water Resources

APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 96-08857

****

FOR DEPARTMENT USE ONLY

Preliminary check by SWK Fee = 50.00 Receipted by KL # C046732 Date 10/1/99

ACTION OF THE DEPARTMENT OF WATER RESOURCES

I, Karl J. Dreher, of the Department of Water Resources hereby approve the above Application for Amendment for Permit No. 96-08857 with the following;

CONDITIONS OF APPROVAL AND REMARKS

1. This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 3.0 afa per acre at the field headgate for irrigation of the lands above.
2. Modifications to or variance from this license shall be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law and shall not be made without the consent of the owners of the lands identified herein.
3. This right does not authorize the use of water on properties Other than the following: domestic use for 1 home located on Lot 2A; 1 home on Tax 25 less 29/Tax 30 less 40; 1 home on Tax 6; 1 home on Tax 8; 1 home on Tax 10/Tax 11 also known as RP 55N01W085660 A.; 1 home on Tax 37/Tax 39; and 1 home on Tax 38 for a total of 7 homes. Domestic use does not include lawn, garden, landscape or other types of irrigation.
4. This right does not grant a right-of-way or easement across the lands of any person or entity and does not authorize the right holder to trespass on the property of others to maintain or operate the system.
5. This right does not constitute approval of any other agency for the maintenance or operation of the system.
6. This right does not serve to vest in the right holder sole ownership of the water right or of the existing delivery system.

Witness my hand this 18TH day of OCTOBER, 1999.

KARL J. DREHER, Director

MICROFILMED
DEC 29 1999

Form No. 217
7/94

RECEIVED
OCT 28 1996
Department of Water Resources

FOR OFFICE USE ONLY
Amt. of Fee $: 50.00
Receipt No. CC 36745
Receipt By: KT
Date Receipted: 10-28-96

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

PROOF OF BENEFICIAL USE

The Idaho Department of Water Resources considers this form a statement that the permit holder(s) has/have completed all development that will occur under this permit and that water has been applied according to the provisions of the permit for the beneficial use(s) described below. This form must be accompanied by a license examination fee, when necessary, or be accompanied by a completed field examination report prepared by a certified water right examiner who has been appointed by the department.

1. Permit No. 96-08857 Telephone No. (208) 263-0765

2. Name(s) of Permit Holder(s): ARNOLD EDMUND KEIR NASH & MARGUERITE B R NASH

3. Mailing Address: P.O. Box 492, SAGLE, ID. 83860 0492

4. Source of Water: LAKE PEND OREILLE If **GROUNDWATER** (well), Date Drilled: mo._____ / yr._____

a. Well Driller: _____ Drilling Permit Number: ____-____-____-____

b. *OPTIONAL:*
Pump Horsepower: _____ Pressure (psi): _____ Dynamic pumping level (ft): _____

5. Use(s) (as authorized by the water right permit):

Domestic (No. of households): 8 Stockwater (No. and type of stock): _____

Irrigation (No. of acres): 4 Other: _____

6. Total rate of diversion and/or volume for which proof is submitted: 0.12 cfs **OR** _____ acre feet

7. Measuring Device Requirement: **(refer to the approval conditions on your permit and respond accordingly)**
(This question is not optional. Please check either yes or no. Proofs returned not checked accordingly, will be considered incomplete)

Measuring Device:	Is a measuring device required?	Yes ____ or	No ✓
	Has the measuring device been installed?	Yes ____ or	No ✓
Flow Measurement Port:	Is a flow measurement port required?	Yes ____ or	No ✓
	Has the measurement port been installed?	Yes ____ or	No ____

8. Fee Enclosed: $ 50.00 (See Fee Schedule on back of the instructions for filing proof of beneficial use)

9. Person to contact to accompany the Department representative during field examination of the water system.

Name: A. E. KEIR NASH Telephone Number: (208) 263-0765

Address: P.O. Box 492, SAGLE, ID. 83860.

10. The information given on this form is my true statement of the extent to which the above numbered permit has been developed and I relinquish any undeveloped portion of the permit to the State of Idaho.

Signature of permit holder: [signature] Date: Oct. 23, 1996
(include your title, if on behalf of company of organization)

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT TO APPROPRIATE WATER NO. 96-08857 IN THE NAME OF ARNOLD EDMUND KEIR NASH AND MARGUERITE B. R. NASH	)	AMENDED FINAL ORDER

This matter comes before the Idaho Department of Water Resources (department) as an application for permit to appropriate water filed on March 31, 1995, by Arnold Edmund Keir Nash and Marguerite B. R. Nash (Applicants) and numbered in the department's records as Application No. 96-08857. The application seeks to appropriate 0.12 cubic feet per second (cfs) from Lake Pend Oreille for year-round domestic purposes and from March 15 to November 15 for irrigation purposes. Notice of the application was published in the *Bonner County Daily Bee.* Protests against approval of the application were received from Dan Deshon, Frances L. Swanson, Sidney Danyow, Robert S. and Deborah S. Cahn, and Jack R. and Rachell L. Johnson (Protestants).

A prehearing conference was held in Coeur d'Alene on June 14, 1995, and a hearing on September 19, 1995. The Applicants represented themselves at the hearing. The only Protestant present at the hearing was Frances L. Swanson who represented herself. Elizabeth Gay appeared as a public interest witness.

The Applicants and Protestants are residents (some part-year and some year-round) of the Talache area, located on the west side of Lake Pend Orielle, who use or claim an interest in an existing water supply system delivering water from the lake for domestic and irrigation uses within the community. The system was constructed and began operation in 1979 or 1980 without obtaining a permit to appropriate water. The corporation created to own and operate the system no longer exists. The Applicants say the purpose of the application is to legalize the use of water through the existing system for the uses that have been developed from the system, but will not result in any additional diversion rate or additional uses than those that now exist. The Protestants are seeking assurance that water from the system will continue to be supplied to their existing uses or, in the instance of Ms. Swanson, that her claim to have the right to use water from the system on a land parcel in which she has an interest will be recognized. In addition, the Protestants question whether issuance of a permit to the Applicants will give the Applicants control of the system and the water right associated with it.

On October 4, 1995, Norman C.Young, the hearing officer for the Department of Water Resources, (department) issued a Recommended Order in connection with Application for Permit to Appropriate Water No. 96-08857. Neither the Applicants nor the Protestants filed a Petition for Reconsideration in connection with the Recommended Order. On October 26, 1995, the department issued the Final Order. On November 1, 1995, Mr. Nash advised the department of typographical errors and tax parcel discrepancies and the department extended the appeal period for 28 days for reconsideration as provided by Procedure Rule 740.02.c. Later, it was found that the Protestants, Deborah and Robert Cahn, had not been served a copy of either the Recommended Order or the Final Order. On November 20, 1995, the department gave these Protestants an opportunity to submit a request for reconsideration. That opportunity has now passed.

The department is now prepared to issue an Amended Final Order which will correct the previous errors and to give proper service to the parties. Based upon his understanding of the law, the Director makes the following Findings of Fact, Conclusions of Law, Analysis and issues the Amended Final Order.

FINDINGS OF FACT

1. Application for Permit No. 96-08857 was filed for the purpose of establishing a valid right to supply water to those homes and properties that are now and have been receiving water from the water system that has been in operation since about 1980. These parcels and the owners are as follows (from Applicant's Exhibit 6):

Lot 1 less Tax 1.	Nash
Tax 25 and 30.	Nash
Tax 8.	Sanger and Harkins
Tax 6.	Mays and Dillon
Tax 37, 38 & 39.	Gay
Tax 10 & 11	Johnson (Also known as RP 55N01W085660 A)

2. Recorded easements have not been filed for the water system as it is now located on land owned or controlled by the Applicants, Protestants and other persons or entities.

3. The system, which originally had a capacity of 55 gallons per minute (0.12 cfs), has been modified more than once and now includes a pump that is rated at 45 gallons per minute (0.1 cfs).

4. The water system is not capable of delivering its rated capacity to lots at the higher elevations in the system.

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NOV 28 1995

5. Ms. Swanson testified that she does not object to issuance of the permit if the place of use includes the parcel listed on Applicant's Exhibit 6 as owned by Kite. However, this parcel is not included in the place of use described in the application.

6. The owners of the Sanger and Harkins, Mays and Dillon, Gay, and Johnson parcels have signed documents indicating their preference that their properties are included within the authorized place of use for Application for Permit No. 96-08857 and authorizing the Applicants to proceed with the application.

7. The quantity of water sought by Application for Permit No. 96-08857 is not significant in comparison to the water supply available from Pend Oreille Lake.

8. The water system covered by Application for Permit No. 96-08857 has been operated for about fifteen years to supply water to an existing community without complaints from other water right holders.

CONCLUSIONS OF LAW

1. A right to appropriate water from a surface water source for a use commenced after May 20, 1971, can only be developed by following the application, permit and license procedure as provided in Chapter 2, Title 42, Idaho Code.

2. Section 42-203A(5), Idaho Code, provides in pertinent part as follows:

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

3. The failure of a party to appear at a hearing after receiving notice thereof is reason to set aside the protests filed by the non-appearing parties.

4. The department cannot approve an application for a greater amount of water or for uses other than those applied for unless the application is amended by the applicant in accordance with Section 42-211, Idaho Code. Approval of the present application will not prevent the department from considering a subsequent application to add uses to the system.

5. Issuance of a permit authorizing the use of the water does not diminish any legal rights that others may have to the existing water system.

6. The water supply available for appropriation is sufficient to satisfy the uses proposed by Application for Permit No. 96-08857.

7. Approval of Application for Permit No. 96-08857 will not injure any other existing water right.

8. The Applicants have the financial ability to develop the permit because the system is already in operation.

9. The application is filed in good faith and is not for speculation or delay.

10. The application proposes a use not contrary to the conservation of water for beneficial use in Idaho.

11. The application proposes a use that does not conflict with the local public interest.

ORDER

NOW THEREFORE, Application for Permit No. 96-08857 is hereby **APPROVED** subject to the following conditions and limitations:

1. Proof of completion of works and beneficial use of the water shall be filed on or before December 1, 1996.

2. This permit does not authorize the use of water on properties other than those described in Finding of Fact No. 1.

3. Issuance of this permit does not grant a right-of-way or easement across the lands of any person or entity and does not authorize the permit holder to trespass on the property of others to build, maintain or operate the system.

4. Upon issuance, this permit becomes appurtenant to the land described in Finding of Fact No. 1 and cannot be amended without the consent of the owners of those lands.

5. Issuance of this permit does not constitute approval of any other agency for the construction, maintenance or operation of the system.

6. Issuance of this permit does not serve to vest in the permit holder sole ownership of the water right or of the existing delivery system.

IT IS FURTHER ORDERED that the protests filed by Dan Deshon, Sidney Danyow, Robert S. and Deborah S. Cahn, and Jack R. and Rachell L. Johnson are **SET ASIDE** for failure to appear at the hearing.

Signed at Boise, Idaho this 14th day of December, 1995.

KARL J. DREHER, Director

State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 96-08857

Proposed Priority: March 31, 1995 Maximum Diversion Rate: 0.12 CFS

This is to certify, that **ARNOLD EDMUND KEIR NASH**
MARGUERITE B R NASH
PO BOX 492
SAGLE ID 83860-0492
has applied for a permit to appropriate water from:
PEND OREILLE LAKE tributary of **PEND OREILLE RIVER**

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

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION
IRRIGATION	03/15 to 11/15	0.12 CFS
DOMESTIC	01/01 to 12/31	0.12 CFS
	Totals	0.12 CFS

LOCATION OF POINT(S) OF DIVERSION: Lot 2(NWSW), Sec. 8, Township 55N, Range 01W
BONNER County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES	ACRES	ACRES	TOTAL
55N	01W	8	Lot 2(NWSW)	4.0			4.0

Total number of acres irrigated: 4.0

PLACE OF USE: DOMESTIC, same as IRRIGATION use

CONDITIONS OF APPROVAL AND REMARKS

1. See Final Order for conditions and limitations for use of water under this approval.

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

26th day of October, 1995.

Karl J. Dreher, Director

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT TO APPROPRIATE WATER NO. 96-08857 IN THE NAME OF ARNOLD EDMUND KEIR NASH AND MARGUERITE B. R. NASH	)	FINAL ORDER

This matter comes before the Idaho Department of Water Resources (department) as an application for permit to appropriate water filed on March 31, 1995, by Arnold Edmund Keir Nash and Marguerite B. R. Nash (Applicants) and numbered in the department's records as Application No. 96-08857. The application seeks to appropriate 0.12 cubic feet per second (cfs) from Lake Pend Oreille for year-round domestic purposes and from March 15 to November 15 for irrigation purposes. Notice of the application was published in the *Bonner County Daily Bee.* Protests against approval of the application were received from Dan Deshon, Frances L. Swanson, Sidney Danyow, Robert S. and Deborah S. Cahn, and Jack R. and Rachell L. Johnson (Protestants).

A prehearing conference was held in Coeur d'Alene on June 14, 1995, and a hearing on September 19, 1995. The Applicants represented themselves at the hearing. The only Protestant present at the hearing was Frances L. Swanson who represented herself. Elizabeth Gay appeared as a public interest witness.

The Applicants and Protestants are residents (some part-year and some year-round) of the Talache area, located on the west side of Lake Pend Orielle, who use or claim an interest in an existing water supply system delivering water from the lake for domestic and irrigation uses within the community. The system was constructed and began operation in 1979 or 1980 without obtaining a permit to appropriate water. The corporation created to own and operate the system no longer exists. The Applicants say the purpose of the application is to legalize the use of water through the existing system for the uses that have been developed from the system, but will not result in any additional diversion rate or additional uses than those that now exist. The Protestants are seeking assurance that water from the system will continue to be supplied to their existing uses or, in the instance of Ms. Swanson, that her claim to have the right to use water from the system on a land parcel in which she has an interest will be recognized. In addition, the Protestants question whether issuance of a permit to the Applicants will give the Applicants control of the system and the water right associated with it.

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On October 4, 1995, the hearing officer for the Department of Water Resources (department) issued a Recommended Order in connection with Application for Permit to Appropriate Water No. 96-08857 in the name of Arnold Edmund Keir Nash and Marguerite B. R. Nash (applicants). Neither the applicants nor the protestants filed a Petition for Reconsideration in connection with the Recommended Order.

Based upon his understanding of the law, the Director makes the following Findings of Fact, Conclusions of Law, Analysis and Final Order:

FINDINGS OF FACT

1. Application for Permit No. 96-08857 was filed for the purpose of establishing a valid right to supply water to those homes and properties that are now and have been receiving water from the water system that has been in operation since about 1980. These parcels and the owners are as follows (from Applicant's Exhibit 6):

Lot 1 less Tax 1.	Nash
Tax 25 and 30.	Nash
Tax 8.	Sanger and Harkins
Tax 6.	Mays and Dillon
Tax 37, 38 & 39.	Gay
Tax 374, 19	Johnson

2. Recorded easements have not been filed for the water system as it is now located on land owned or controlled by the Applicants, Protestants and other persons or entities.

3. The system, which originally had a capacity of 55 gallons per minute (0.12 cfs), has been modified more than once and now includes a pump that is rated at 45 gallons per minute (0.1 cfs).

4. The water system is not capable of delivering its rated capacity to lots at the higher elevations in the system.

5. Ms. Swanson testified that she does not object to issuance of the permit if the place of use includes the parcel listed on Applicant's Exhibit 6 being owned by Kite. However, this parcel is not included in the place of use described in the application.

6. The owners of the Sanger and Harkins, Mays and Dillon, Gay, and Johnson parcels have signed documents indicating their preference that their properties are included within the authorized place of use for Application for Permit No. 96-08857 and authorizing the Applicants to proceed with the application.

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7. The quantity of water sought by Application for Permit No. 96-08857 is not significant in comparison to the water supply available from Pend Oreille Lake.

8. The water system covered by Application for Permit No. 96-08857 has been operated for about fifteen years to supply water to an existing community without complaints from other water right holders.

CONCLUSIONS OF LAW

1. A right to appropriate water from a surface water source for a use commenced after May 20, 1971, can only be developed by following the application, permit and license procedure as provided in Chapter 2, Title 42, Idaho Code.

2. Section 42-203A(5), Idaho Code, provides in pertinent part as follows:

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

3. The failure of a party to appear at a hearing after receiving notice thereof is reason to set aside the protests filed by the non-appearing parties.

4. The department cannot approve an application for a greater amount of water or for uses other than those applied for unless the application is amended by the applicant in accordance with Section 42-211, Idaho Code. Approval of the present application will not prevent the department from considering a subsequent application to add uses to the system.

5. Issuance of a permit authorizing the use of the water does not diminish any legal rights that others may have to the existing water system.

6. The water supply available for appropriation is sufficient to satisfy the uses proposed by Application for Permit No. 96-08857.

7. Approval of Application for Permit No. 96-08857 will not injure any other existing water right.

8. The Applicants have the financial ability to develop the permit because the system is already in operation.

9. The application is filed in good faith and is not for speculation or delay.

10. The application proposes a use not contrary to the conservation of water for beneficial use in Idaho.

11. The application proposes a use that does not conflict with the local public interest.

ORDER

NOW THEREFORE, Application for Permit No. 96-08857 is hereby **APPROVED** subject to the following conditions and limitations:

1. Proof of completion of works and beneficial use of the water shall be filed within on or before November 1, 1996.

2. This permit does not authorize the use of water on properties other than those described in Finding of Fact No. 1.

3. Issuance of this permit does not grant a right-of-way or easement across the lands of any person or entity and does not authorize the permit holder to trespass on the property of others to build, maintain or operate the system.

4. Upon issuance, this permit becomes appurtenant to the land described in Finding of Fact No. 1 and cannot be amended without the consent of the owners of those lands.

5. Issuance of this permit does not constitute approval of any other agency for the construction, maintenance or operation of the system.

6. Issuance of this permit does not serve to vest in the permit holder sole ownership of the water right or of the existing delivery system.

IT IS FURTHER ORDERED that the protests filed by Dan Deshon, Sidney Damyow, Robert S. and Deborah S. Cahn, and Jack R. and Rachell L. Johnson are **SET ASIDE** for failure to appear at the hearing.

Signed at Boise, Idaho this 26th day of October, 1995.

KARL J. DREHER
Director

CERTIFICATE OF MAILING

I hereby certify that on the 27th day of October, 1995, I mailed a true and correct copy of the Final Order, postage prepaid, to:

Arnold Edmund Keir Nash
Marguerite B. R. Nash
1033 North Ontare Road
Santa Barbara, California 93105

Jack R. and Rachell L. Johnson
P. O. Box 97
Newman Lake, Washington 99025

Sidney Danyow
P. O. Box 4095
Coos Bay, Oregon 97420

Dan Deshon
517 South 1st Avenue
Sandpoint, Idaho 83864

Frances L. Swanson
P. O. Box 104
Talache Beach
Sagle, Idaho 83860

Arnold Edmund Keir Nash
Marguerite B. R. Nash
P. O. Box 492
Sagle, Idaho 83860

RITA I. FLECK
Administrative Secretary

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT TO APPROPRIATE WATER NO. 96-08857 IN THE NAME OF ARNOLD EDMUND KEIR NASH AND MARGUERITE B. R. NASH	))))))	RECOMMENDED ORDER

This matter comes before the Idaho Department of Water Resources (department) as an application for permit to appropriate water filed on March 31, 1995, by Arnold Edmund Keir Nash and Marguerite B. R. Nash (Applicants) and numbered in the department's records as Application No. 96-08857. The application seeks to appropriate 0.12 cubic feet per second (cfs) from Lake Pend Oreille for year-round domestic purposes and from March 15 to November 15 for irrigation purposes. Notice of the application was published in the *Banner County Daily Bee.* Protests against approval of the application were received from Dan Deshon, Frances L. Swanson, Sidney Danyow, Robert S. and Deborah S. Cahn, and Jack R. and Rachell L. Johnson (Protestants).

A prehearing conference was held in Coeur d'Alene on June 14, 1995, and a hearing on September 19, 1995. The Applicants represented themselves at the hearing. The only Protestant present at the hearing was Frances L. Swanson who represented herself. Elizabeth Gay appeared as a public interest witness.

The Applicants and Protestants are residents (some part-year and some year-round) of the Talache area, located on the west side of Lake Pend Orielle, who use or claim an interest in an existing water supply system delivering water from the lake for domestic and irrigation uses within the community. The system was constructed and began operation in 1979 or 1980 without obtaining a permit to appropriate water. The corporation created to own and operate the system no longer exists. The Applicants say the purpose of the application is to legalize the use of water through the existing system for the uses that have been developed from the system, but will not result in any additional diversion rate or additional uses than those that now exist. The Protestants are seeking assurance that water from the system will continue to be supplied to their existing uses or, in the instance of Ms. Swanson, that her claim to have the right to use water from the system on a land parcel in which she has an interest will be recognized. In addition, the Protestants question whether issuance of a permit to the Applicants will give the Applicants control of the system and the water right associated with it.

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FINDINGS OF FACT

1. Application for Permit No. 96-08857 was filed for the purpose of establishing a valid right to supply water to those homes and properties that are now and have been receiving water from the water system that has been in operation since about 1980. These parcels and the owners are as follows (from Applicant's Exhibit 6):

Lot 1 less Tax 1.	Nash
Tax 25 and 30.	Nash
Tax 8.	Sanger and Harkins
Tax 6.	Mays and Dillon
Tax 37, 38 & 39.	Gay
Tax 374, 19	Johnson

2. Recorded easements have not been filed for the water system as it is now located on land owned or controlled by the Applicants, Protestants and other persons or entities.

3. The system, which originally had a capacity of 55 gallons per minute (0.12 cfs), has been modified more than once and now includes a pump that is rated at 45 gallons per minute (0.1 cfs).

4. The water system is not capable of delivering its rated capacity to lots at the higher elevations in the system.

5. Ms. Swanson testified that she does not object to issuance of the permit if the place of use includes the parcel listed on Applicant's Exhibit 6 being owned by Kite. However, this parcel is not included in the place of use described in the application.

6. The owners of the Sanger and Harkins, Mays and Dillon, Gay, and Johnson parcels have signed documents indicating their preference that their properties are included within the authorized place of use for Application for Permit No. 96-08857 and authorizing the Applicants to proceed with the application.

7. The quantity of water sought by Application for Permit No. 96-08857 is not significant in comparison to the water supply available from Pend Oreille Lake.

8. The water system covered by Application for Permit No. 96-08857 has been operated for about fifteen years to supply water to an existing community without complaints from other water right holders.

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MAR 2 6 1997

CONCLUSIONS OF LAW

1. A right to appropriate water from a surface water source for a use commenced after May 20, 1971, can only be developed by following the application, permit and license procedure as provided in Chapter 2, Title 42, Idaho Code.

2. Section 42-203A(5), Idaho Code, provides in pertinent part as follows:

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

3. The failure of a party to appear at a hearing after receiving notice thereof is reason to set aside the protests filed by the non-appearing parties.

4. The department cannot approve an application for a greater amount of water or for uses other than those applied for unless the application is amended by the applicant in accordance with Section 42-211, Idaho Code. Approval of the present application will not prevent the department from considering a subsequent application to add uses to the system.

5. Issuance of a permit authorizing the use of the water does not diminish any legal rights that others may have to the existing water system.

6. The water supply available for appropriation is sufficient to satisfy the uses proposed by Application for Permit No. 96-08857.

7. Approval of Application for Permit No. 96-08857 will not injure any other existing water right.

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MAR 2 6 1997

8. The Applicants have the financial ability to develop the permit because the system is already in operation.

9. The application is filed in good faith and is not for speculation or delay.

10. The application proposes a use not contrary to the conservation of water for beneficial use in Idaho.

11. The application proposes a use that does not conflict with the local public interest.

ORDER

NOW THEREFORE, Application for Permit No. 96-08857 is hereby **APPROVED** subject to the following conditions and limitations:

1. Proof of completion of works and beneficial use of the water shall be filed within one (1) year of the date of issuance of the final order issuing the permit in accordance with the provisions of Section 42-217, Idaho Code.

2. This permit does not authorize the use of water on properties other than those described in Finding of Fact No. 1.

3. Issuance of this permit does not grant a right-of-way or easement across the lands of any person or entity and does not authorize the permit holder to trespass on the property of others to build, maintain or operate the system.

4. Upon issuance, this permit becomes appurtenant to the land described in Finding of Fact No. 1 and cannot be amended without the consent of the owners of those lands.

5. Issuance of this permit does not constitute approval of any other agency for the construction, maintenance or operation of the system.

6. Issuance of this permit does not serve to vest in the permit holder sole ownership of the water right or of the existing delivery system.

IT IS FURTHER ORDERED that the protests filed by Dan Deshon, Sidney Damyow, Robert S. and Deborah S. Cahn, and Jack R. and Rachell L. Johnson are **SET ASIDE** for failure to appear at the hearing.

RECOMMENDED
MAR 26 1997

Signed at Boise, Idaho this 4TH day of October, 1995.

NORMAN C. YOUNG
Hearing Officer

CERTIFICATE OF MAILING

I hereby certify that on the 4th day of October, 1995, I mailed a true and correct copy of the Recommended Order, postage prepaid, to:

Arnold Edmund Keir Nash
Marguerite B. R. Nash
1033 North Ontare Road
Santa Barbara, California 93105

Jack R. and Rachell L. Johnson
P. O. Box 97
Newman Lake, Washington 99025

Sidney Danyow
P. O. Box 4095
Coos Bay, Oregon 97420

Dan Deshon
517 South 1st Avenue
Sandpoint, Idaho 83864

Frances L. Swanson
P. O. Box 104
Talache Beach
Sagle, Idaho 83860

Arnold Edmund Keir Nash
Marguerite B. R. Nash
P. O. Box 492
Sagle, Idaho 83860

RITA I. FLECK
Administrative Secretary

RECEIVED
MAR 28 1996

Form 202
10/92

Ident. No. 96-08857

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of applicant ARNOLD Edmund KEIR & Marguerite B.R. NASH (NASH) Phone 208-263-0765
   Post office address P.O. Box 492, SAGLE, ID. 83860
2. Source of water supply LAKE PEND OREILLE which is a tributary of (tributaries) PEND OREILLE RIVER
3. Location of point of diversion is _____ ¼ of NW SW ¼ of ~~SW~~ NW ¼, Govt. Lot 2
   Sec. 8 Township 55 NORTH Range 1 WEST B.M. BONNER County; additional
   points of diversion if any: _____
4. Water will be used for the following purposes:
   Amount .12 (cfs or acre-feet per annum) for DOMESTIC purposes from JAN. 1 to DEC. 31 (both dates inclusive)
   Amount .12 (cfs or acre-feet per annum) for IRRIGATION purposes from MAR. 15 to NOV. 15 (both dates inclusive)
   Amount _____ (cfs or acre-feet per annum) for _____ purposes from _____ to _____ (both dates inclusive)
   Amount _____ (cfs or acre-feet per annum) for _____ purposes from _____ to _____ (both dates inclusive)
5. Total quantity to be appropriated is (a) .12 cubic feet per second and/or (b) _____ acre feet per annum
6. Proposed diverting works:
   a. Description of ditches, flumes, pumps, headgates, etc. 45 GPM SQUIDE 5 HP SINGLE PHASE SUBMERSIBLE PUMP; 1½" ZOOK POLYPIPE UNDER LAKE BOTTOM & SEAWALL ON LOT 1, BLOCK 5 WITH 7 OUTLETS: ① BLOCK 5, (NASH) LOT 1 LESS TAX 1; ② TAX 25/30 (NASH); ③ TAX 8 (EDYE'S); ④ TAX 11; ⑤ TAX 39/FAR 37; ⑥ TAX 38; ⑦ TAX 6; CHLORINATOR PUMP & 2 PRESSURE TANKS & 4" MAIN FROM LOT 1 TO PRESSURE TANK
   b. Height of storage dam N.A. feet; active reservoir capacity _____ acre-feet; total
   reservoir capacity _____ acre-feet; period of year when water will be diverted to storage:
   _____ to _____ inclusive.
   c. Proposed well diameter is N.A. inches; proposed depth of well is _____ feet.
   d. Is ground water with a temperature of greater than 85°F being sought? No
   e. If well is already drilled, when? _____; Drilling firm _____;
   Well was drilled for *(well owner)* _____
7. Time required for the completion of the works and application of the water to be proposed beneficial use is
   1 years *(minimum 1 year)*.

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MAR 26 1997

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

a. Hydropower; show total feet of head and proposed capacity in KW. ✓

b. Stockwatering; list number and kind of livestock. ✓

c. Municipal; show name of municipality. ✓

d. Domestic; show number of households. 7

e. Other; describe fully. ✓

9. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of the use (*example: D for Domestic*) in the corresponding place of use below. See instructions for standard symbols.

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
55N	1W	8							~~3~~ (Govt Lot 2) D										
									~~3~~			4							4

Total number of acres to be irrigated ~~4~~ 4

10. Describe any other water rights used for the same purposes as described above. NONE

11. a. Who owns the property at the point of diversion? State of Idaho - APPLICANTS A.S.K. NASH & FRANCES M.B.R. NASH

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

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

12. Remarks:

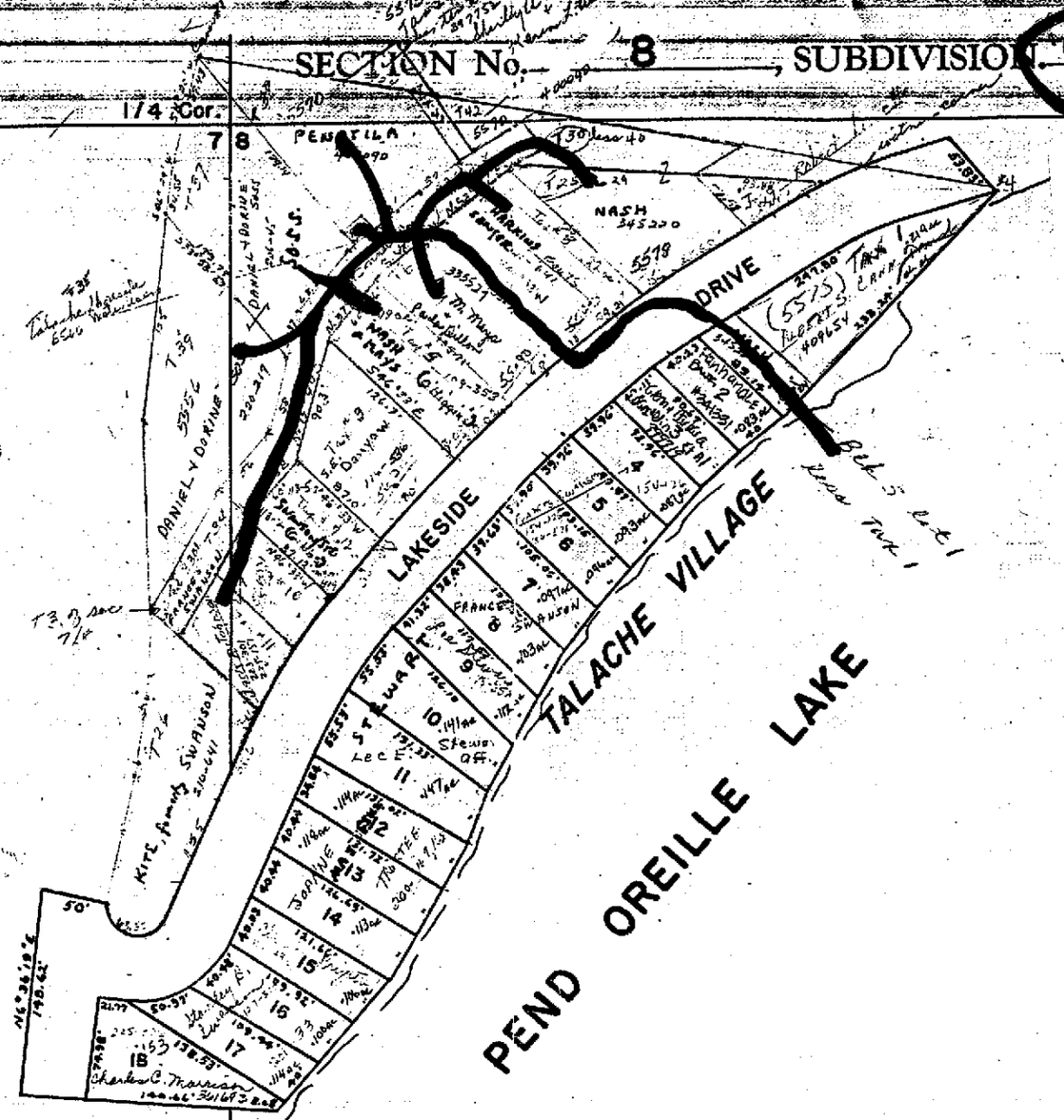
FILED

MAR 2 6 1987

TOWNSHIP No. 55 , NORTH RANGE No. 1 , West , BOISE MERIDIAN, ID.

SECTION No. 8 , SUBDIVISION Gov't Lot 2

NW 1/4 SW 1/4



13. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.

please see attached map

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MAR 26 1997

Scale: 2 inches equal 1 mile.

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

(Applicant)

Received by KB Date 3/31/95 Time 4:00 Preliminary check by KB

Fee $ 30.00 Receipted by KB # N-8749 Date 3/31/95

Publication prepared by db Date 4/12/95 Published in Boise Co Daily Bee 4/20 & 27/95

Publication approved _____ Date _____

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. _____, and said application is hereby _____.

1. Approval of said application is subject to the following limitations and conditions:

   a. SUBJECT TO ALL PRIOR WATER RIGHTS.

   b. Proof of construction of works and application of water to beneficial use shall be submitted on or before _____, 19____.

   c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.

   d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.

   e. Other:

MICROFILMED
MAR 2 6 1997

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
[redacted] North Orchard Street, P.O. Box 83720
Boise, Idaho 83720-0098

Return Service Requested

RECEIVED
OCT 25 1999
Department of Water Resources

PRESORTED FIRST CLASS

BOISE ID OCT 19'99 PB PITNEY BOWES 7085717 0243 U.S. POSTAGE

APR 17 2006

MICROFILMED DEC 29 1999

94-08857

NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

DAVID & ELIZABETH GAY
PO BOX 809
SPIRIT LAKE ID [redacted]

83 [redacted]

CERTIFICATE OF MAILING

I hereby certify that on the 19th day of October, 1999, I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (Approved License) to the person(s) listed below:

Water Right 96-08857

ARNOLD EDMUND KEIR NASH
MARGUERITE B R NASH
PO BOX 492
SAGLE ID 83860-0492

MARK MAYS
W 105 EIGHT AVE #7035
SPOKANE WA 99204-2318

THOMAS E COOKE
PO BOX 789
PRIEST RIVER ID 83856

R WAYNE SWENEY
LUKINS & ANNIS
250 NORTHWEST BLVD #102
COEUR D ALENE ID 83814

MATTHEW K SANGER
422 W RIVERSIDE #824
SPOKANE WA 99201

SIDNEY DANYOW
PO BOX 4095
COOS BAY OR 97420

DAN DESHON
517 S FIRST AVE
SANDPOINT ID 83864

RACHELL JOHNSON
PO BOX 0097
NEWMAN LAKE WA 99025

TIMOTHY J HARKINS
1301 W COLLEGE AVE
SPOKANE WA 99201

MICHAEL BLACK
717 W SPRAGUE #1600
SPOKANE WA 99201

BRIAN T WATKINS
RAMSDEN & LYONS
PO BOX 1336
COEUR D ALENE ID 83816-1336

DAVID & ELIZABETH GAY
PO BOX 809
SPIRIT LAKE ID 83869

DEBORAH S & ROBERT S CAHN
PO BOX 47
PHILO CA 95466

FRANCES L SWANSON
PO BOX 104
TALACHE BEACH
SAGLE ID 83860

Kari Lynn Townsend
Secretary

State of Idaho
Department of Water Resources

Water Right License

WATER RIGHT NO. 96-08857

Priority: March 31, 1995 Maximum Diversion Rate: 0.12 CFS
Maximum Diversion Volume: 11.4 AF

This is to certify, that ARNOLD EDMUND KEIR NASH
MARGUERITE B R NASH
PO BOX 492
SAGLE ID 83860-0492 has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated March 31, 1995; and has submitted Proof of Beneficial Use on October 28, 1996. An examination indicates that the works have a diversion capacity of 0.120 cfs of water from:

PEND OREILLE LAKE tributary to **PEND OREILLE RIVER**

source, and a water right has been established as follows:

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION	ANNUAL VOLUME
IRRIGATION	03/15 to 11/15	0.07 CFS	7.2 AF
DOMESTIC	01/01 to 12/31	0.12 CFS	4.2 AF
	Totals	0.12 CFS	11.4 AF

LOCATION OF POINT(S) OF DIVERSION: Lot 2(NWSW), Sec. 8, Township 55N, Range 01W
BONNER County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES	ACRES	TOTAL
55N	01W	7	SENE	0.1	Lot 1(NESE)	0.4		0.5
		8	Lot 2(SWNW)	0.2	Lot 2(NWSW)	1.7		1.9
					Total number of acres irrigated:			2.4

PLACE OF USE:
DOMESTIC, same as IRRIGATION use

CONDITIONS OF APPROVAL AND REMARKS

1. This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 3.0 afa per acre at the field headgate for irrigation of the lands above.
2. Modifications to or variance from this license shall be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law and shall not be made without the consent of the owners of the lands identified herein.

State of Idaho
Department of Water Resources

Water Right License

WATER RIGHT NO. 96-08857

CONDITIONS OF APPROVAL AND REMARKS

3. This right does not authorize the use of water on properties other than the following: domestic use for 1 home located on Lot 2A; 1 home on Tax 25 less 29/Tax 30 less 40; 1 home on Tax 6; 1 home on Tax 8; 1 home on Tax 10/Tax 11 also known as RP 55N01W085660 A.; 1 home on Tax 37/Tax 39; and 1 home on Tax 38 for a total of 7 homes. Domestic use does not include lawn, garden, landscape or other types of irrigation.
4. This right does not grant a right-of-way or easement across the lands of any person or entity and does not authorize the right holder to trespass on the property of others to maintain or operate the system.
5. This right does not constitute approval of any other agency for the maintenance or operation of the system.
6. This right does not serve to vest in the right holder sole ownership of the water right or of the existing delivery system.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources. Signed and sealed this 18TH day of OCTOBER, 1999.

KARL J. DREHER, Director

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
[redacted]orth Orchard Street, P.O. Box 83720
Boise, Idaho 83720-0098

Return Service Requested

RECEIVED
OCT 25 1999
Department of Water Resources

96-08857
10.26.99 - Mailed request to advise on license status - Ref

K Swanson

PRESORTED FIRST CLASS

BOISE OCT 19'99 ID
PB METER 7085717
0243
U.S. POSTAGE

FRANCES L SWANSON
PO BOX 104
[redacted]

MICROFILMED
DEC 29 1999

SWAN104 838602016 1799 07 10/22/99
RETURN TO SENDER
SWANSON FRANCES L
PO BOX 458
HOPE ID 83836-0458

83720-0098 ADTLP 83860

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

October 19, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

ARNOLD EDMUND KEIR NASH
MARGUERITE B R NASH
PO BOX 492
SAGLE ID 83860-0492

RE: WATER RIGHT NO. 96-08857

Dear Water Right Holder(s):

The Department of Water Resources (the Department) has issued the enclosed license confirming that a water right has been established in accordance with the permit referenced above. The license is a **preliminary order** issued by the Department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the Department unless a party petitions for reconsideration or files an exception and/or brief as described in the enclosed information sheet.

For your records I have also enclosed a copy of your Application for Amendment of Permit, which was approved.

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

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

Sincerely,

Shelley Walter Keen

Shelley W. Keen
Water Rights Supervisor

SK:klt

Enclosure

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DEC 2 9 1999

CERTIFICATE OF MAILING

I hereby certify that on the 19th day of October, 1999, I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (Approved License) to the person(s) listed below:

Water Right 96-08857

ARNOLD EDMUND KEIR NASH
MARGUERITE B R NASH
PO BOX 492
SAGLE ID 83860-0492

MARK MAYS
W 105 EIGHT AVE #7035
SPOKANE WA 99204-2318

THOMAS E COOKE
PO BOX 789
PRIEST RIVER ID 83856

R WAYNE SWENEY
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FRANCES L SWANSON
PO BOX 104
TALACHE BEACH
SAGLE ID 83860

Kari Lynn Townsend
Secretary

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DEC 29 1999

Responding to Preliminary Orders Issued by the Idaho Department of Water Resources

The Idaho Department of Water Resources (Department) issues water right permits, licenses, and transfers as preliminary orders pursuant to section 67-5243, Idaho Code. **A preliminary order can and will become a final order without further action of the department unless a party petitions for reconsideration or files an exception and/or brief as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the Department within fourteen (14) days of the service date of the order. The Department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5243(3), Idaho Code.

EXCEPTIONS AND BRIEFS

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

If any party appeals or takes exceptions to a preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Department. The Department retains the right to review the preliminary order on its own motion.

ORAL ARGUMENT

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

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DEC 2 9 1999

CERTIFICATE OF SERVICE

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

FINAL ORDER

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

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

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

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

APPEAL OF FINAL ORDER TO DISTRICT COURT

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

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

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

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OCT 0 1 1999
Department of Water Resources

September 29, 1999

Shelly Walter Keen
Water Rights Supervisor
State of Idaho
Dept. of Resources
1301 N. Orchard Street
P.O. Box 83720
Boise, Idaho 83720-0098

Dear Mr. Keen:

Enclosed please find my check made payable to the State of Idaho in the amount of $50.00 representing an application filing fee for permit number 8608857. I was advised by Mr. Keir Nash that this is the fee representing the amendment to application that he has previously submitted to you.

If you have any questions don't hesitate to contact me at (509) 325-5466 during regular business hours. Otherwise, I will presume that this completes the amendment to application process.

I thank you for your attention to this matter.

Very truly yours,

TIMOTHY J. HARKINS
Attorney at Law

TJH:th
encl-

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DEC 2 9 1999

RAMSDEN & LYONS
700 Ironwood Drive, Suite 301
PO Box 1336
Coeur d'Alene, ID 83816-1336
Telephone: 664-5818
Brian T. Watkins, ISB No. 4263

Attorneys for Defendant - Rachell L. Johnson

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT

1999 SEP -7 A 11: 23

MARIE SCOTT
CLERK DISTRICT COURT
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF BONNER

A.E. KEIR NASH and MARGUERITE NASH, husband and wife, Plaintiffs, vs. STEPHEN R. VIRNIG and CYNTHIA J. VIRNIG, husband and wife, et al., Defendants.	Case No. CV-96-00578 JUDGMENT and ORDER

The parties to this action stipulate to the entry of judgment in this action regarding plaintiffs' claim to quiet title regarding water line easements and to the defendants' counterclaims alleging easement to draw water from Lake Pend Oreille across plaintiffs' lakefront property. The parties stipulate to the entry of judgment in this action which provides as follows:

1. The claims identified by paragraph 25 of the Third Amended Complaint will be dismissed on the merits and each to bear their own costs and fees.

2. Membership in the Talache Shoreside Community Water Users Association, Inc., shall be limited to property owners presently served by the

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DEC 29 1999

existing water lines. Membership shall be tied to ownership of specific parcels. The right to delivery of water from the system shall be limited to members of the Talache Shoreside Community Water Users Association, Inc.

3. The pump house components currently located on Lot 2A, Block 5, Talache Village, according to the re-plat of Lots 2 and 3, and a portion of Lot 1, Block 5, Talache Village Subdivision, said re-plat recorded as Instrument No. 490033, Bonner County, Idaho, (Nash lakefront property), will be relocated by November 1, 1999, to the lower half of the Harkins/Sanger property, more particularly described as:

That part of Government Lot 2 in Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho, described as follows:

FROM the Northwesterly most corner of Lot 3 in Block 5, Talache Village Plat, which point is on the Southerly right of way line of Lakeside Drive; thence North 48° 24' 30" East, along said right of way line, 15.25 feet; thence North 41° 35' 30" West, 50 feet to a point on the Northerly right of way line of said Lakeshore Drive and the true point of beginning; thence South 48° 24' 30" West, 10.82 feet; thence North 46° 33' West 135.71 feet; thence North 52° 37' 30" East, 70.0 feet; thence South 46° 34' 40" East, 135.0 feet to the Northerly right of way line of Lakeside Drive; thence Southwesterly along said right of way line to a curve to the left whose radius is 393.45 feet, a distance of 59.21 feet to the TRUE POINT OF BEGINNING.

SUBJECT TO reservations and restrictions of record.

or to the Talache Shoreside Community Water Users Association, Inc. property, more particularly described as:

A tract of land in the Mexico mineral survey number 2559, in Government Lot 2 of Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho, more specifically described as follows: From corner number 1 of said Mexico claim; thence South 34° 41' 12" East a Distance of 164.14 feet to the TRUE POINT OF BEGINNING; thence, continuing South 34° 41' 12" East a distance of 15.0 feet to the Northwesterly right-of-way line of the existing public access road; thence North 48° 13" East along said road a distance of 20.75 feet, (North 48° 24' 30" East by original deed); thence leaving said right-of-way line, North 34° 41' 12" West a distance of 15.0 feet; thence South 48° 13' West a distance of 20.75 feet to the TRUE POINT OF BEGINNING.

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DEC 29 1999

4. All costs of moving the pump house components and utilities from Lot 2A, Block 5, Talache Village, to the lower half of the Harkins/Sanger property or the corporate property shall be shared by the members of the Talache Shoreside Community Water Users Association, Inc. equally. All costs of extending the existing encroachment pipe deeper into Lake Pend Oreille for health purposes shall be shared by the members equally.

5. All parties will grant reciprocal easements for the use and maintenance of the existing water lines for the benefit of each member appurtenant to the properties currently served by the existing water system. These easements shall be prepared and recorded prior to September 15, 1999.

6. The plaintiffs shall complete the process of obtaining a water license from the State of Idaho, Department of Water Resources. This shall include providing an accurate property description of the Johnson parcel to the State of Idaho, Department of Water Resources.

7. Talache Shoreside Community Water Users Association, Inc., will independently obtain and/or the Nashes will transfer existing encroachment permits to the corporation from the State of Idaho, Department of Lands, and the United States Army Corps of Engineers.

8. There will be no expansion of the existing water system without the unanimous vote of the members of the Talache Shoreside Community Water Users Association, Inc. The condition that expansion of the water system shall only be had by a unanimous vote shall be incorporated in the bylaws and/or amended Articles of Incorporation as may be necessary to effectuate the purpose of these paragraphs. The amended Articles and bylaws, as to the expansion requirement, shall not be modified unless by unanimous member vote.

9. Water usage among the members shall be monitored through the installation of separate water meters on each property. The cost of installation of the separate water meters shall be borne by each member separately.

10. Water purification shall be handled by separately installed units on each property. The cost of installation of water purification systems shall be borne by each member separately.

11. Each member expressly reserves the right to relocate the system's water lines on the member's own property. The cost of relocating a water line shall be borne by the member separately.

12. The parties are bound by obligations of good faith and full disclosure to implement the terms of this agreement.

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DEC 29 1999

JUDGMENT AND ORDER

Based on the stipulation of the parties as set forth above, and the Court being fully advised in the premises, the stipulation is in all respects adopted and approved. The Court Orders that the parties are bound by the obligations of good faith to abide by the terms of the stipulation and the Court Expressly Orders that the stipulation shall be enforced by all powers legal and equitable available to the Court for the enforcement of court orders. NOW, THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, and this does Order, that the above stipulation is the order and judgment of this Court.

DATED this 1st day of September, 1999.

/s/ Gary M. Haman
Gary M. Haman, District Judge

Presented by:
RAMSDEN & LYONS
Brian T. Watkins
Attorney for Defendant Johnson

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SEP 23 1999

CLERK'S CERTIFICATE OF MAILING

I hereby certify that on the 7 day of September, 1999, I caused to be served a true and correct copy of the foregoing by U.S. Mail, postage prepaid, and addressed to the following:

Rachell Johnson
PO Box 0097
Newman Lake WA 99025

Timothy J. Harkins, Esq.
1301 W. College Avenue
Spokane WA 99201

Mark Mays
W. 105 Eight Avenue, Ste 7035
Spokane WA 99204-2318

Michael Black, Esq.
717 W. Sprague, Ste 1600
Spokane WA 99201

Thomas E. Cooke, Esq.
PO Box 789
Priest River ID 83856

Matthew K. Sanger, Esq.
422 W. Riverside, Ste 824
Spokane WA 99201

R. Wayne Sweney
Lukins & Annis, P.S.
250 Northwest Blvd., Suite 102
Coeur d'Alene, ID 83814

Brian T. Watkins
RAMSDEN & LYONS
P.O. Box 1336
Coeur d'Alene, ID 83816-1336

Keir and Marguerite Nash
P.O. Box 492
Sagle, ID 83860

CLERK OF THE DISTRICT COURT

Denise M Rawlins
Deputy Clerk

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DEC 29 1999

RECEIVED
SEP 20 1999
Department of Water Resources

RAMSDEN & LYONS
ATTORNEYS AT LAW

MICHAEL E. RAMSDEN *
MARC A. LYONS *
DOUGLAS S. MARFICE *
BRIAN T. WATKINS *
RAMI AMARO
MICHAEL A. EALY *
JOHN A. CAFFERTY

P.O. BOX 1336
COEUR D'ALENE, ID
83816-1336

TELEPHONE: (208) 664-5818
TELEFAX: (208) 664-5884
E-MAIL: ramlyo@iea.com

STREET ADDRESS:

700 IRONWOOD DR.
SUITE 301
COEUR D'ALENE, ID
83814

ALL ATTORNEYS LICENSED IN IDAHO
* ALSO LICENSED IN WASHINGTON

September 14, 1999

Shelley Walter Keen
State of Idaho, Department of Water Resources
1301 N. Orchard
P.O. Box 83720
Boise, Idaho 83720-0098

Re: Water Right No. 96-08857

Dear Mr. Keene:

Pursuant to our telephone conference of September 10, 1999, I am forwarding to you a copy of Rachell Johnson's property description. It was my understanding, based upon the settlement agreement with Nash, that he would be filing an application for amendment prior to the issuance of the water license.

As you know, Rachell Johnson has an interest in the water license based upon the Findings of Fact and Conclusions of Law in the Final Order. By this letter, I am formally requesting that the following property description become part of the amendment of the application. In case the attachment does not make it to your desk, Rachell Johnson's property description should read:

A PORTION OF GOVERNMENT LOT 2 IN SECTION 8, TOWNSHIP 55 NORTH, RANGE 1 WEST OF THE BOISE MERIDIAN, BONNER COUNTY, IDAHO; AND

A PORTION OF GOVERNMENT LOT 1 IN SECTION 7, TOWNSHIP 55 NORTH, RANGE 1 WEST OF THE BOISE MERIDIAN, BONNER COUNTY, IDAHO, AS PER SAID DEED OF TRUST.

TAX NO. 10 AND 11 OF MEXICO MINE, PARCEL NO. RP 55N01W085660A.

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DEC 29 1999

If you have any questions or need further assistance with regard to Rachell Johnson's interest in the water right, please call me at (208) 664-5818.

Yours very truly,

Brian T. Watkins

BTW/cs
cc: Rachell Johnson
Enclosure

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DEC 2 9 1999

Order No. W5933

Escrow or Loan No.

RECORDING REQUESTED BY

When Recorded Mail To:
JACK R JOHNSON
RACHELL L JOHNSON
PO BOX 97
NEWMAN, WA 99025

FILED BY First American Title

RECEIVED 94 AUG 10 AM 10 39

SEP 20 1999 3.00

MARIE SCOTT
RECORDER OF BONNER
COUNTY BY MK DEP.

Department of Water Resources

SPACE ABOVE THIS LINE FOR RECORDER'S USE

450254

FULL RECONVEYANCE

FIRST AMERICAN TITLE COMPANY, a Corporation, Trustee under the Deed of Trust executed by

JACK RONALD JOHNSON AND RACHELL LEE JOHNSON, HUSBAND AND WIFE

Trustor, and recorded JUN 21, 1984 as Document No. 288045 in Book 132, page 348, of Official Records in the Office of the County Recorder of BONNER County, Idaho, having been requested in writing by the holder of the obligation secured by said Deed of Trust, to reconvey the estate granted to Trustee under said Deed of Trust, does hereby reconvey to the person or persons legally entitled thereto, without warranty, all the estate, title and interest acquired by Trustee under said Deed of Trust.

DESCRIPTION A PORTION OF GOVERNMENT LOT 2 IN SECTION 8, TOWNSHIP 55 NORTH, RANGE 1 WEST OF THE BOISE MERIDIAN, BONNER COUNTY, IDAHO; AND

A PORTION OF GOVERNMENT LOT 1 IN SECTION 7, TOWNSHIP 55 NORTH, RANGE 1 WEST OF THE BOISE MERIDIAN, BONNER COUNTY, IDAHO, AS PER SAID DEED OF TRUST.

Dated: JULY 29, 1994

FIRST AMERICAN TITLE COMPANY

By Laurelie B. Wall
Vice President

STATE OF IDAHO
COUNTY OF BONNER } ss.

On JULY 29, 1994 before me, the undersigned, a Notary Public in and for said State, personally appeared LAURELIE B. WALL known to me to be the Vice President of the corporation that executed the within instrument, and known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same, as such Trustee.

WITNESS my hand and official seal.

Signature Linda D Deeter

LINDA D. DEETER
Name (Typed or Printed)

My Commission Expires: 8-27-97

LINDA D. DEETER
NOTARY PUBLIC
STATE OF IDAHO

(This area for official seal)

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DEC 29 1999

Selkirk Press, Inc.

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

August 30, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

A E KEIR NASH
PO BOX 492
SAGLE ID 83860

RE: Water Right No. 96-08857

Dear Mr. Nash:

As we discussed last week, I am forwarding to you a copy of Julie Yarbrough's 6/30/99 letter explaining that the lapse notice for Permit No. 86-08857 was an error. I have also enclosed an Application for Amendment form that must be signed and returned to me with the $50.00 statutory filing fee before a water right license can be issued.

The purpose of the amendment is to clarify that portions of some of the parcels on which water is used are outside Govt. Lot 2 of Section 8, Township 55 North, Range 1 West, B. M., which was the place of use described on Permit No. 86-08857. Other than this item, the field examiner who verified the water use developed under your permit reported that diversion and use of water had occurred substantially in accordance with the permit. The source of water, diversion rate, point of diversion, water use, and location of use (as described by tax parcel) are all in conformance with the permit. The amendment to further clarify the location of use is not, in my view, inconsistent with approval condition #4 on the permit because it does not change the lots upon which the use of water is authorized. If you feel it is in your interest, however, you are welcome to attach consent forms obtained from the various lot owners.

If I do not receive a completed amendment form from you within 30 days, I will recommend the issuance of a water right license that does not expressly authorize the use of water outside the Govt. Lot 2 of Section 8, Township 55 North, Range 1 West, B. M. The disclaimer statement associated with the signature on the amendment form is not statutorily required. Therefore, you may cross it out or replace it with language of your own before signing the amendment form.

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

Respectfully,

Shelley Walter Keen

Shelley Walter Keen
Water Rights Supervisor

Enclosures

Cc with Enclosures: Brian Watkins

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DEC 2 9 1999

\\DWR03\skeen\NAMELTRS\NASH4.DOC

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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

TRANSMITTAL COVER SHEET

FAX NUMBER: (208) 327-7866

DATE: 8.30.99

TO: Brian Watkins
208-664-5884

FROM: Shelley Keen
IDWR

DOCUMENT DESCRIPTION: Correspondence re WR 96-08857

COVER SHEET + 2 PAGES

CONTACT: Kari Lynch J. IF YOU DO NOT RECEIVE ALL THE PAGES
327-7971

THANK YOU!

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DEC 2 9 1999

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

August 30, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

A E KEIR NASH
PO BOX 492
SAGLE ID 83860

RE: Water Right No. 96-08857

Dear Mr. Nash:

As we discussed last week, I am forwarding to you a copy of Julie Yarbrough's 6/30/99 letter explaining that the lapse notice for Permit No. 86-08857 was an error. I have also enclosed an Application for Amendment form that must be signed and returned to me with the $50.00 statutory filing fee before a water right license can be issued.

The purpose of the amendment is to clarify that portions of some of the parcels on which water is used are outside Govt. Lot 2 of Section 8, Township 55 North, Range 1 West, B. M., which was the place of use described on Permit No. 86-08857. Other than this item, the field examiner who verified the water use developed under your permit reported that diversion and use of water had occurred substantially in accordance with the permit. The source of water, diversion rate, point of diversion, water use, and location of use (as described by tax parcel) are all in conformance with the permit. The amendment to further clarify the location of use is not, in my view, inconsistent with approval condition #4 on the permit because it does not change the lots upon which the use of water is authorized. If you feel it is in your interest, however, you are welcome to attach consent forms obtained from the various lot owners.

If I do not receive a completed amendment form from you within 30 days, I will recommend the issuance of a water right license that does not expressly authorize the use of water outside the Govt. Lot 2 of Section 8, Township 55 North, Range 1 West, B. M. The disclaimer statement associated with the signature on the amendment form is not statutorily required. Therefore, you may cross it out or replace it with language of your own before signing the amendment form.

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

Respectfully,

Shelley Walter Keen

Shelley Walter Keen
Water Rights Supervisor

Enclosures

Cc with Enclosures: Brian Watkins - FAXED

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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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

June 30, 1999

Arnold Edmond Keir Nash
PO Box 492
Sagle ID 83860

RE: Water Right No. 96-08857

Dear Mr. Nash:

Please disregard the Lapse Notice I mailed to you on June 28, 1999, in connection with the above referenced water right permit. The permit is in good standing and was lapsed in error by the department.

If you have any questions regarding the lapse notice, please contact me directly at (208)327-7953.

Sincerely,

Julie L. Yarbrough

JULIE L. YARBROUGH
Administrative Assistant
Water Allocation Bureau

IDWR - Region

DEC 2 9 1999

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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

June 30, 1999

Arnold Edmond Keir Nash
PO Box 492
Sagle ID 83860

RE: Water Right No. 96-08857

Dear Mr. Nash:

Please disregard the Lapse Notice I mailed to you on June 28, 1999, in connection with the above referenced water right permit. The permit is in good standing and was lapsed in error by the department.

If you have any questions regarding the lapse notice, please contact me directly at (208)327-7953.

Sincerely,

Julie L. Yarbrough

JULIE L. YARBROUGH
Administrative Assistant
Water Allocation Bureau

IDWR - Region

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DEC 2 9 1999

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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

June 28, 1999

ARNOLD EDMOND KEIR NASH
PO BOX 492
SAGLE ID 83860

LAPSE NOTICE

RE: Permit No. 96-08857

Dear Permit Holder:

You are hereby notified that under the provisions of Section 42-218a of the Idaho Code, the above referenced permit has **lapsed**. No further construction or additional development is authorized under this permit unless it is reinstated.

On February 28, 1999, the department sent you a Proof Due Notice, by certified mail, informing you of the need to submit a Proof of Beneficial Use Statement or an Extension of Time. However, the department has reason to believe that you may not have received the notice as required by Section 42-2040, Idaho Code.

The permit can be reinstated with **no advance in priority** if you submit an acceptable proof of beneficial use statement or extension of time to the department within **sixty (60) days** of the date of mailing of this lapse notice. If nothing is received by the department, the permit will be void and of no further force or effect.

If you have any questions concerning this matter, please contact me directly at (208)327-7953.

Sincerely,

Julie L. Yarbrough

JULIE L. YARBROUGH, Administrative Assistant
Water Allocation Bureau

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DEC 2 9 1999

CERTIFICATION OF MAILING

I hereby certify that on 6/28/99 a copy/an original of this document was deposited in the United States mail, postage prepaid addressed to the individual(s) named above.

MEMORANDUM

DATE: March 26, 1999

TO: Water Right File 96-08848

FROM: Shelley W. Keen SWK

RE: Phone call from Brian Watkins

Today Brian Watkins called to find out why right 96-08848 had not yet been licensed. I told him that I have not had an opportunity to work on the file for several months and that, to the best of my recollection, the delay is caused by the need to get an amendment to describe the Johnson property as part of the place of use. Mr. Watkins asked me to pursue getting the license issued as soon as possible.

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MEMORANDUM

DATE: August 14, 1998

TO: Water Right File 96-08857

FROM: Shelley W. Keen SWK

RE: Concerns expressed by Professor Nash

Yesterday Keir Nash and I spoke about some concerns he has about the conditions proposed for License 96-08857 when it is issued. Prof. Nash feels that condition no. 4 of the Amended Final Order protects against expansion of the water use by explicitly stating that the permit cannot be amended without consent of the owners of the lands where water is used. He would like similar language added to condition no. 4 on the license. In addition, he suggested that we elaborate on conditions 6 & 10 by stating how many homes are associated with each one of the lots. I told him that we could probably accommodate both suggestions.

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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

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

August 13, 1998

A. E. KEIR NASH
PO BOX 492
SAGLE ID 83860-0492

RE: Water Appropriation Permit 96-08857

Dear Professor Nash:

I am returning your letter offering to "withdraw" your "application". As we discussed this afternoon, your relinquishment of the entire permit would be in conflict with approval conditions 4 and 6 of the Amended Final Order approving your application, and it was not on the standard IDWR relinquishment form.

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

Respectfully,

Shelley Walter Keen
Water Rights Supervisor

Enclosure

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DEC 2 9 1999

RECEIVED
JUN 22 1998
Department of Water Resources

A. E. Keir Nash
1033 N. Ontare Road
Santa Barbara, CA. 93105.

18 June 1998

Shelley Walter Keen
Water Rights Supervisor
Department of Water Resources, State of Idaho
1301 North Orchard Street,
P.O. Box 83720
Boise, ID. 83720--0098

RE: Water Right No. 96-08857 at Talache, Lake Pend Oreille, Bonner County, Idaho.

Dear Mr. Keen:

Thank you for your letter of 11 May and our follow-up conversation. As per that conversation I understand I am at liberty to withdraw my application for Water Right No. 96-08857. I therefore withdraw this application.

Please note that my current postal address is:
Professor A. E. Keir Nash
1033 North Ontare Rd.
Santa Barbara, CA. 93105.

Sincerely yours,

A. E. Keir Nash
Professor Emeritus, University of California

MICROFILMED
DEC 29 1999

MEMORANDUM

DATE: August 4, 1998

TO: Water Right File 96-08857

FROM: Shelley W. Keen SWK

RE: Conversation with Brian Watkins

This morning I returned a phone call from Brian Watkins, attorney for Jack and Rachell Johnson. Mr. Watkins asked me to fax him a copy of the amended final order and recent correspondence between Keir Nash and me. Mr. Watkins also expressed his clients' interest in doing whatever is necessary to see that a license is issued.

Phone: 208-664-5818
Fax: 208-664-5884

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DEC 2 9 1999

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

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

May 11, 1998

A E KEIR NASH
PO BOX 492
SAGLE ID 83860-0492

RE: Water Right No. 96-08857

Dear Mr. Nash:

Thank you for your letter describing your concerns about my request that you amend water appropriation permit 96-08857. I am writing to respond to the issues raised in your letter.

The Director of IDWR takes water right compliance matters very seriously, regardless of where in Idaho the water use occurs. To paraphrase a statement from §42-101, *Idaho Code*, the orderly and economical use of the public waters is essential to the prosperity of the state. Without your water right filing, you and the other water users on your system would be without the protection afforded by a water right. You would also be in conflict with the provisions of §42-201, *Idaho Code*, which states the requirement that the use of the public waters shall be in accordance with Idaho law. For these reasons, you may wish to reconsider your offer to relinquish your permit.

The field examiner who verified the water use developed under your permit reported that diversion and use of water had occurred substantially in accordance with your permit. The source of water, diversion rate, point of diversion, water use, and location of use (as described by tax parcel) are all in conformance with the permit. The examiner recommended the amendment simply to *clarify* that portions of some of the parcels on which water is used are outside Govt. Lot 2 of Section 8, Township 55 North, Range 1 West, B. M. (A copy of the examiner's map is enclosed for your reference.) The amendment to further clarify the location of use is not, in my view, inconsistent with approval condition #4 on the permit because it does not change the lots upon which the use of water is authorized. If you feel it is in your interest, however, you are welcome to attach consent forms obtained from the various lot owners. The disclaimer statement associated with the signature on the amendment form is not statutorily required. Therefore, you may cross it out or replace it with language of your own before signing the amendment form.

In response to your concerns about a "pirate spur line", I can say that while IDWR cannot resolve physical trespass issues, IDWR has the statutory authority to address unauthorized uses of water. Questions or complaints about an unauthorized use of water should be directed to Bob Haynes, IDWR's regional manager in Coeur D'Alene.

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DEC 29 1999

Amending permit 96-08857 will clear the way for issuance of a water right license that accurately describes the beneficial use of water developed under the permit. Changes to the water use after the field examination can be addressed via the transfer provision of §42-222, *Idaho Code*. If all or part of the use authorized by the licensed water right is discontinued, the forfeiture provisions of Section 42-222(2), *Idaho Code*, will apply. In fact, the Idaho Supreme Court recently issued an opinion upholding the concept of partial forfeiture of a water right.

In summary, I requested that you amend your permit to further clarify the location of the water use that was developed under the permit. Completing the amendment form, with or without the disclaimer statement, will clear the way for the issuance of a license that will accurately benchmark the parameters of the water right. The existence of a water right license will avoid the need for IDWR to consider an enforcement action under the provisions of §§42-350 to 42-352, *Idaho Code*. Changes to the water use after the right is licensed can be addressed by filing a water right transfer application.

I have enclosed another copy of the amendment form for you. Please complete the form and return it to me with the $50.00 amendment fee within 30 days. If I do not receive a response from you within 30 days, I will recommend the issuance of a water right license that does not expressly authorize the use of water outside the Govt. Lot 2 of Section 8, Township 55 North, Range 1 West, B. M.

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

Respectfully,

Shelley Walter Keen

Shelley Walter Keen
Water Rights Supervisor

Enclosures

C: Bob Haynes, IDWR Northern Region

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DEC 2 9 1999

RECEIVED
MAY 04 1998
Department of Water Resources

A. E. Keir Nash
P. O. Box 492
Sagle, ID. 83860

30 April 1998

Shelley W. Keen, Water Rights Supervisor
Department of Water Resources, State of Idaho
1301 North Orchard Street, P. O. Box 83720
Boise, ID. 83720-0098.

RE: REVIEW OF WATER RIGHT PERMIT NO. 96-08857 PRIOR TO LICENSE and YOUR 21 APRIL LETTER TO ME

Dear Mr. Keen:

Following our helpful conversation of last week, on 26 April my attorney [R. Wayne Sweney of Lukins and Annis], the regional vice president of my title insurance company [Arlen Taylor of the Salt Lake City office of Stewart Title Guaranty (Ft. Worth)], and I met in Coeur d'Alene to consider the implications of my signing the statement at the bottom of the APPLICATION FOR AMENDMENT FOR LICENSING PURPOSES you enclosed with your letter:

"Permit holder asserts that no one will be injured by such change and that such change will be made at permit holder's own risk.
"Signed at___, this __ day of __, 19__. Signature_____"

We concluded that I cannot sign said amendment for the following reasons.

Reason #1. In the late summer of 1995, sometime after a June 14 conference chaired by Northern Regional Director Robert Haynes about 5 protests to your department's issuing the water right as then applied for, my then attorney (and now Judge) Charles Hosack followed some advice by Mr. Haynes as to how to proceed ahead and sent the enclosed 13 September 1995 letter to all other current users of these illegal waterworks (because unpermitted since construction in 1980 and remaining unpermitted despite new pipeline's installation in 1990-91). See particularly Hosack's last sentence on page 1. Hosack, polling users' preferences, made it clear that this was permissive use inasmuch as no recorded easements existed across my riparian property, Lot 1 Less Tax 1, Block 5, Talache Village. The signators of the attached voting questionnaire were thus aware of the terms on which Nashes were willing to apply on their behalf. As such, the application went ahead and was issued following a hearing chaired by Norman Young on September 19, 1995. ***Recently, however, two of the users have abrogated that agreement by filing counterclaims (seemingly) mysteriously asserting the water right gives them an easement across my property in an ongoing Quiet Title suit of my Talache property parcels. Under those circumstances I cannot sensibly assume liability for signing your Amendment form.***

Reason #2. Even as corrected, your APPLICATION FOR AMENDMENT bears little resemblance to the changing actual use of the water insofar as I can find it out. It's not your fault. Rather the users seem to keep changing their using habits. As far as I can determine, 3 of the original 8 lots are no longer on the system and are now using a well, and the owners of

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DEC 29 1999

another using lot think it unreasonable for me to object to adding a new lot to the pipelines. This is the very lot that appeared in an early version of the application but was deleted on objection by still other users. All this despite Condition of Approval 6 in your amendment. And despite Order No. 4 in the Amended Final Order of 14 Dec 1995: "Upon issuance, this permit becomes appurtenant to the land described in Finding of Fact No. 1 and cannot be amended without the consent of the owners of those lands."

Reason #3. Condition of Approval No. 7 in the Amendment Application states "This right does not grant a right-of-way or easement across the lands of any person or entity and does not authorize the right holder to trespass on the property of others to maintain or operate a system." This is the same as No. 3 in the December 1995 Final Order and should be familiar to all users. However, two related problems have emerged. First, in July 1994 a third party not on the system (and one of the protestants) attached to the service line running from the main to one of the user cabins a "pirate spur line" leading across said protestant's property to another property she soon after sold to still another party. Because the attachment is on the protestant's property it is impossible for Nashes to secure the removal of that attachment. Two, beginning this Fall various mysterious objects began to appear attached to the Nashes' dock and near to where the waterpipes come up out of the lakebed floor -- e.g., an elaborate yellow rope hangman's noose. Perhaps your final order should have contained some more explicit language about no trespassing to attach nooses and/or mafia-like concrete-shoes.

Reason #4. Finally, it appears to me that, as recently functioning, the waterpipelines have gone not only out of where I thought we were originally applying for -- lots on 55 01W Section 8, NWSW quarter-quarter -- into Section 7, SENE quarter-quarter but also onto the NWNW quarter-quarter of Section 8 and perhaps onto the NENE of Section 7. I may be wrong about this, but that's what it looks like -- unless it is true that the 3 parcels mentioned earlier really did go off the water pipelines from the lake onto a well.

This whole business seems out of control to me. Any efforts I make to try to get people to observe the limitations and conditions of the permit seem to go unheeded. I get no encouragement about trying to legalize the encroachments with Idaho Lands and the Corps of Engineers. Not a cent of anyone else's money has gone into backing my efforts to legalize the system. Or I just get dressed down for bothering users about the issues. **Hence,** on **advice of the title insurance company vice president and my attorney, I am requesting to withdraw entirely my application for any water rights for myself or for others under** No. 96-08857. **If you think that inadvisable, please let me know.** Some of these other users have been opposed to legalizing much of the way along. They apparently believe the jurisdiction of your department doesn't reach as far north as Bonner County. Are they right?

Sincerely,

A. E. Keir Nash, Professor Emeritus
University of California

P.S. Feel free to contact either Vice President Arlen Taylor at 1-800-834-6617, or Attorney Wayne Sweney at 208-666-4101, whom I "cc.".

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DEC 2 9 1999

MEMORANDUM

DATE: April 27, 1998

TO: Water Right File 96-08857

FROM: Shelley W. Keen SWK

RE: Call from Arnold E. K. Nash

On April 24, 1998, Arnold E. K Nash called in response to my amendment request. He told me that due to some ongoing litigation occurring in his subdivision, he is not sure how he wants to proceed at this time. He asked for 10 days to consult with his attorney. I agreed to wait.

Mr. Nash also told me that some of the parcel descriptions (see condition no. 6) have changed. For example, Lot 1 less Tax 1 is now Lot 2A. Furthermore, the home in the parcel owned by the Gays is now served by a well, possibly eliminating the need for the amendment.

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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

April 21, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

ARNOLD EDMUND KEIR NASH
MARGUERITE B R NASH
PO BOX 492
SAGLE ID 83860-0492

RE: WATER RIGHT NO. 96-08857

Dear Permit Holder(s):

The Department of Water Resources is reviewing the permit referenced above prior to issuing a water right license. By issuing a license, the Department confirms that a water right has been established in compliance with the terms of the permit. The examiner who verified your water use reported that your place(s) of use is in a location other than what was described on your permit. Therefore, before a license can be issued, the permit must be amended to depict your water right as it was actually developed.

The enclosed Application for Amendment form depicts the place(s) of use and other information as it will appear on the license when it is issued. Please review the amendment form carefully. If you concur with the information presented, please sign the form and return it with the $50.00 filing fee within 14 days.

Also, please note that some of the proposed conditions of approval and remarks may be modified upon further administrative review.

If you do not concur, or if you have any questions about this information, please contact me as soon as possible. My telephone number is (208)327-7946.

Sincerely,

Shelley W. Keen
Water Rights Supervisor

SK:klt

Enclosure

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DEC 2 9 1999

September 18, 1995

Charles W. Hosack
Attorney at Law
250 Northwest Boulevard
Suite 102
Coeur d'Alene, Idaho 83814

RE: A. E. Keir Nash
Water Application

Dear Mr. Hosack:

I include herein my written response regarding my willingness to participate in this application. I have previously faxed to you the same information and this is merely the hard copy of same.

Very truly yours,

TIMOTHY J. HARKINS

TJH:th
encl-

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DEC 2 9 1999

TALACHE SHORESIDE WATER WITHDRAWAL APPLICATION

INDICATION OF USERS' PREFERENCES

IN CONJUNCTION WITH 19 SEPT 95 HEARING

(Please fill out and return promptly to Charles Hosack, Attorney-at-Law
Lukins and Annis, Suite 102, 250 Northwest Blvd.
Coeur d'Alene, ID. 83814-2971.)

SECTION 1 -- TO BE FILLED OUT IF YOU WISH TO CONTINUE TO BE INCLUDED, AS PER FEBRUARY & MARCH 1995 CORRESPONDENCE BETWEEN TIM HARKINS & KEIR NASH, IN THE MARCH 31, 1995 WATER WITHDRAWAL RIGHTS APPLICATION, #96-08857, TO THE IDAHO DEPARTMENT OF WATER RESOURCES

Tax parcel # RP55N01W0256804

I/We, the undersigned, now own Lot(s)/Parcel(s) _____ situated wholly or partially in Government Lot 2, Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho. I/We believe that this property has de facto received water from the waterline withdrawing from Lake Pend Oreille across Lot 1, Block 5, Talache Landing for at least 5 consecutive years, though I/we have not necessarily owned the lot(s)/parcel(s) for all this time.

This property (was) ~~was not~~ [please circle correct answer & cross out incorrect one] sold to me/us as if it had a valid right so to withdraw water.

I/We prefer, and authorize, Marguerite Bouraad Nash and A. E. Keir Nash *to continue to include the aforelisted property* in the application originally submitted March 31, 1995, and numbered 96-08857, to the Idaho Department of Water Resources in order to secure to me/us from that department the right lawfully to withdraw water from Lake Pend Oreille via that waterline to be used for domestic, gardening, and fire-prevention purposes on the aforesaid lot(s)/parcel(s).

Timothy J. Harkins 9/18/95

Name(s) and Date(s)

SECTION 2 -- TO BE FILLED OUT IF YOU WISH NOT TO CONTINUE TO BE INCLUDED IN THE MARCH 31, 1995 WATER WITHDRAWAL RIGHTS APPLICATION, #96-08857, TO THE IDAHO DEPARTMENT OF WATER RESOURCES

I/We, the undersigned, now own Lot(s)/Parcel(s) _____ situated wholly or partially in Government Lot 2, Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho. I/We believe that this property has de facto received water from the waterline withdrawing from Lake Pend Oreille across Lot 1, Block 5, Talache Landing for at least 5 consecutive years, though I/we have not necessarily owned the lot(s)/parcel(s) for all this time.

This property was / was not [please circle correct answer & cross out incorrect one] sold to me/us as if it had a valid right so to withdraw water.

I/We prefer that Marguerite Bouraad Nash and A. E. Keir Nash *delete the aforelisted property* from the application originally submitted March 31, 1995 to the Idaho Department of Water Resources, and numbered 96-08857, in order to secure to me/us from that department the right lawfully to withdraw water from Lake Pend Oreille via that waterline to be used for domestic, gardening, and fire-prevention purposes on the aforesaid lot(s)/parcel(s).

_____

Name(s) and Date(s)

_____

MICROFILMED
DEC 2 3 1999

TALACHE SHORESIDE WATER WITHDRAWAL APPLICATION

INDICATION OF USERS' PREFERENCES

IN CONJUNCTION WITH 19 SEPT 95 HEARING

(Please fill out and return promptly to Charles Hosack, Attorney-at-Law
Lukins and Annis, Suite 102, 250 Northwest Blvd.
Coeur d'Alene, ID. 83814-2971.)

SECTION 1 -- TO BE FILLED OUT IF YOU WISH TO CONTINUE TO BE INCLUDED, AS PER FEBRUARY & MARCH 1995 CORRESPONDENCE BETWEEN TIM HARKINS & KEIR NASH, IN THE MARCH 31, 1995 WATER WITHDRAWAL RIGHTS APPLICATION, #96-08857, TO THE IDAHO DEPARTMENT OF WATER RESOURCES

I/We, the undersigned, now own Lot(s)/Parcel(s) Tax 377.19 Parcel # RP55N01W085660A situated wholly or partially in Government Lot 2, Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho. I/We believe that this property has de facto received water from the waterline withdrawing from Lake Pend Oreille across Lot 1, Block 5, Talache Landing for at least 5 consecutive years, though I/we have not necessarily owned the lot(s)/parcel(s) for all this time.

This property was / ~~was not~~ [please circle correct answer & cross out incorrect one] sold to me/us as if it had a valid right so to withdraw water.

I/We prefer, and authorize, Marguerite Bouraad Nash and A. E. Keir Nash ***to continue to include the aforelisted property*** in the application originally submitted March 31, 1995, and numbered 96-08857, to the Idaho Department of Water Resources in order to secure to me/us from that department the right lawfully to withdraw water from Lake Pend Oreille via that waterline to be used for domestic, gardening, and fire-prevention purposes on the aforesaid lot(s)/parcel(s).

9-18-95

Name(s) and Date(s)

9-18-95

SECTION 2 -- TO BE FILLED OUT IF YOU WISH NOT TO CONTINUE TO BE INCLUDED IN THE MARCH 31, 1995 WATER WITHDRAWAL RIGHTS APPLICATION, #96-08857, TO THE IDAHO DEPARTMENT OF WATER RESOURCES

I/We, the undersigned, now own Lot(s)/Parcel(s) _____ situated wholly or partially in Government Lot 2, Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho. I/We believe that this property has de facto received water from the waterline withdrawing from Lake Pend Oreille across Lot 1, Block 5, Talache Landing for at least 5 consecutive years, though I/we have not necessarily owned the lot(s)/parcel(s) for all this time.

This property was / was not [please circle correct answer & cross out incorrect one] sold to me/us as if it had a valid right so to withdraw water.

I/We prefer that Marguerite Bouraad Nash and A. E. Keir Nash ***delete the aforelisted property*** from the application originally submitted March 31, 1995 to the Idaho Department of Water Resources, and numbered 96-08857, in order to secure to me/us from that department the right lawfully to withdraw water from Lake Pend Oreille via that waterline to be used for domestic, gardening, and fire-prevention purposes on the aforesaid lot(s)/parcel(s).

_____ _____

Name(s) and Date(s)

_____ _____

MICROFILMED

DEC 2 9 1999

CERTIFICATE OF MAILING

I hereby certify that on the 18th day of December, 1995, I mailed a true and correct copy of the Amended Final Order, postage prepaid, to:

Arnold Edmund Keir Nash
Marguerite B. R. Nash
1033 North Ontare Road
Santa Barbara, California 93105

Jack R. and Rachell L. Johnson
P. O. Box 97
Newman Lake, Washington 99025

Sidney Danyow
P. O. Box 4095
Coos Bay, Oregon 97420

Deborah S. and Robert S. Cahn
P. O. Box 47
Philo, California 95466

Dan Deshon
517 South 1st Avenue
Sandpoint, Idaho 83864

Frances L. Swanson
P. O. Box 104
Talache Beach
Sagle, Idaho 83860

Arnold Edmund Keir Nash
Marguerite B. R. Nash
P. O. Box 492
Sagle, Idaho 83860

Rita I. Fleck

RITA I. FLECK
Administrative Secretary

*Edward P. Wroe
Charles W. Hosack
R. Wayne Sweney
Sidney E. Smith
*Michael M. Megaard
Edward W. Kok
*Mischelle R. Fulgham
Dawn B. Allison

Of Counsel
James M. English

*Admitted in Idaho and Washington

LAW OFFICES

LUKINS & ANNIS

A PROFESSIONAL SERVICE CORPORATION

250 Northwest Boulevard, Suite 102, Coeur d'Alene, Idaho 83814-2971
Phone (208) 667-0517 • FAX (208) 664-4125

Spokane Office
1600 Washington Trust Financial Center
717 West Sprague Avenue
Spokane, Washington 99204-0466
Phone (509) 455-9555

Moses Lake Office
1000 West Ivy Street
Moses Lake, Washington 98837
Phone (509) 765-4199

September 13, 1995

TO CURRENT SYSTEM USERS:

Jack and Rachell Johnson
P.O. Box 97
Newman Lake, Washington 99025

Mark and Paula Mays
E. 3306 Donora Court
Spokane, WA 99223

Mr. and Mrs. Timothy J. Harkins
Mr. and Mrs. Matt Sanger
West 1304 College
Spokane, WA 99201-2013

David and Elizabeth Gay
P.O. Box 809
Spirit Lake, ID 83869

Re: Application for Water Withdrawal Rights -
Mr. and Mrs. A.E. Keir Nash

Dear Mr. and Mrs. David Gay:

The Idaho Department of Water Resources has scheduled a hearing on September 19, 1995, regarding the application of Keir Nash for water withdrawal rights. The Department, at an informal conference which I attended on June 14, 1995, indicated that the purpose of the application would be limited to permit existing use, and that the Department of Water Resources would not address the right of one party to cross another's riparian property to withdraw water from Lake Pend O'Reille. Director Haynes suggested that the Nashes choose either to modify the application so as to include only their own Talache properties or, after polling other long-term users regarding their preferences, to continue to include only those who still so wish.

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During the process of legalizing the water withdrawal onto Nashes' property (Talache Village, block 5, bloc 1, Less Tax 1) via a pipeline which was installed in the winter of 1990-1991 prior to Nashes' October 1992 property purchase, the Nashes have permitted nearby property owners with service lines already attached to this pipeline by the time of the Nashes' purchase to continue drawing water through it. If you wish to participate in the withdrawal's legalization and to continue this permissive use, please indicate that you would like to be included by filling out Section 1 on the enclosed form entitled Indication of Users' Preferences. The Nashes will assume that you do not wish to be included within the application if we do not hear from you in advance of the September 19 hearing date.

Very truly yours,

CHARLES W. HOSACK

CWH:bd
Enclosures

L0908bdj.cwh-091395

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OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM	USE PERIOD TO	DIVERSION RATE	DIVERSION VOLUME
C	ARNOLD EDMUND KEIR NASH	03/31/1995	IRRIGATION	03/15	11/15	0.070 CFS	7.20 AFA
C	MARGUERITE B R NASH		DOMESTIC	01/01	12/31	0.120 CFS	4.20 AFA
	PO BOX 492						
	SAGLE ID 83860-0492			TOTAL DIVERSION:		0.120 CFS	11.40 AFA
	(208) 263-0765						

Water Source: PEND OREILLE LAKE Tributary to: PEND OREILLE RIVER Stage: LICENSE

Point(s) of Diversion Capacity: 0.120 CFS

Point(s) of Diversion: T55N R01W S08 Lot 02(NWSW) BONNER County

Place of use Legal Description for: IRRIGATION

	NE				NW				SW				SE				
	NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE	
T R S	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	SUM
55N 01W 7				.1									01-.4				0.5
55N 01W 8							.2			02-01							1.9
																TOTAL ACRES	2.4

Place of use location for DOMESTIC is the same location as described for: IRRIGATION

Pou County: BONNER

Other Water Rights with Same Point(s) of Diversion with Stage (Includes All Sources):
96-08360 96-08848 96-08854 96-08857 96-08904

Other Water Rights Listing Overlapping Place(s) of use:
96-08857

Conditions of Approval:

R66 - This right when combined with all other rights shall provide no
- more than 0.03 cfs per acre nor more than 3.0 afa per acre at the
- field headgate for irrigation of the lands above.

Remarks: GEN This right does not authorize the use of water on properties other than the following: Lot 1 less Tax 1; Tax 25 and 30; Tax 8; Tax 6; Tax 37, 38, 39; and Tax 10 and 11 also known as RP 55N01W085660 A.
This right does not grant a right-of-way or easement across the lands of any person or entity and does not authorize the right holder to trespass on the property of others to maintain or operate the system.
This right does not constitute approval of any other agency for the maintenance or operation of the system.
This right does not serve to vest in the right holder sole

Remarks: ownership of the water right or of the existing delivery system.
Domestic use is for 7 homes and does not include lawn, garden, landscape, or other types of irrigation.

Dates:
App. Received: 03/31/1995 Priority Date: 03/31/1995
Proof Due Date: 12/01/1996 Proof Made Date: 10/28/1996
Exam Made Date: 08/25/1997 Exam Sent to S.O.: 01/23/1998
Licensed Date:

Misc: Water District Number: Field Exam Fee: R (Received)

Comments: Date: 04/10/1995 User-ID: DBALL Subject: DIVERSION DESCRIPTION
45 gpm Goulde 5 hp single phase submersible pump.
1-1/2 inch 200 k polypipe under lake bottom & seawall on Lot 1, Block 5, with 7 outlets.
Chlorinater pump and pressure tanks.
4" main from Lot 1 to pressure tank.

Date: 10/28/1996 User-ID: PHARRELL Subject: Proof of Beneficial Use Rcvd
Proof of Beneficial Use Rcvd

Audit: 04/20/98 SCURTIS

(WATER RIGHT NUMBERS THAT BEGIN WITH AN '*' ARE ADJUDICATION CLAIMS)
(QUARTER-QUARTERS WITH A '?' HAVE DIFFERENT ACREAGE AMOUNTS--CHECK THE DATA BASE RECORDS)

		NE				NW				SW				SE				
		NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
WR-NUMBER	SOURCE	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	SUM
L9608857	T55N R01W S 7 PEND OREILLE LAKE																	
	:				0	:				:				: 01-0				:
	NO MATCHES FOR THIS POU IN AJ-POU																	
	NO MATCHING IRRIGATION RIGHTS WERE FOUND FOR THIS POU																	
	NO MAPPING INFO AVAILABLE																	
L9608857	T55N R01W S 8 PEND OREILLE LAKE																	
	:				:		0		:	02-01			:					: 1
	NO MATCHES FOR THIS POU IN AJ-POU																	
9602160	FISH CREEK :				:		02-01		:				:					: 1
9608046	GROUNDWATE :				:		02-02		:				:					: 2
9608857	PEND OREIL :				:				:	02-04			:					: 4
	NO MAPPING INFO AVAILABLE																	

MEMORANDUM

TO: File 96-08857

FROM: Sharla

DATE: April 21, 1998

RE: Licensing Recommendation Adjustments

The adjustments to licensing recommendations for Permit No. 96-08857 are as follows:

C: DIVERSION AND DELIVERY SYSTEM

2. Place(s) of Use:

T55N, R1W, S7 - SENE (0.1 acre), NESE (0.5 acres)
S8 - NWSW (1.2 acres), SWNW (0.2 acres)
TOTAL 2.4 acres

The examiner recommended licensing of all four acres permitted but did not indicate the distribution of the acres. Using the lot dimensions from the map, the total of all the tracts covered under this right is only ~2.4 acres; allowing that many acres is generous, with little consideration of home size, driveways, etc. The distribution of the acres was determined using the topo map.

Examiner: David Pagel
Exam Date: August 25, 1997

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LICENSE REVIEW CHECKLIST

PERMIT NO. 96-08857 DATE 4/20/98 REVIEWER: *SHARLA*

	Change/OK	
NAME	~~OK~~	
Address	~~OK~~	
SOURCE	OK	Does change clarifiy orig. intended source? If no, Void permit
POINT OF DIV	OK	_ Change (Para P39 - gov P40/P47) _ Add (P45/P42)

W32 (multiple in ¼¼)
W36 (overlap)
W59 (subd. desc)

Overlaps: Right(s): _____
File reviewed ___ Profile reports printed ___

PLACE OF USE Chg _ Change (P41 - gov P43/P47) X Add (P41/P42)

W60 (subd. desc)
W27 (ppu acre limit)

Overlaps: Right(s): _____
File reviewed ___ Profile reports printed ___

~~SWNW 1.2~~ 0.2
NWSW ~~2.0~~ 1.9
NESE .8
SENE .1 ~~1.0~~ (2.4)

.3 Nash
.1
1.3 Day
.2 Johnson
.5 Mays
Sarys
2.4

NWSW
.9 NESE
.4 NESE
.1 NESE
.1 NWSW
.5 NWSW
.4 "
2.4

RATE OF DIV

Permitted Rate	.12 cfs	
Fee limit	20 cfs	$50.00
Measured	— cfs	
Theoretical	.12 cfs	

Recommended Total Div Rate .12 cfs

WATER USES OK

~~20~~	.07 cfs	2.4 X .03 af	Irrig -	overlap (R58-R61, R62-R65, R66-R69)
DOM	.12 cfs	7 X .6 = af 4.2		supp. gw (WB7/065/079)
	___ cfs	___ af		overlap spec. combined rts (W35)
	___ cfs	___ af		<1acre (W31)
	___ cfs	___ af	Domestic	(W01/WB5/070/071/075)
TOTALS	.12 cfs	11.4 af	Power	(W42 or W43/025/027/R22 or R23)

Fish (042) Fire (077) Wtr Quality (081/R07)

X 3.0 = 7.2

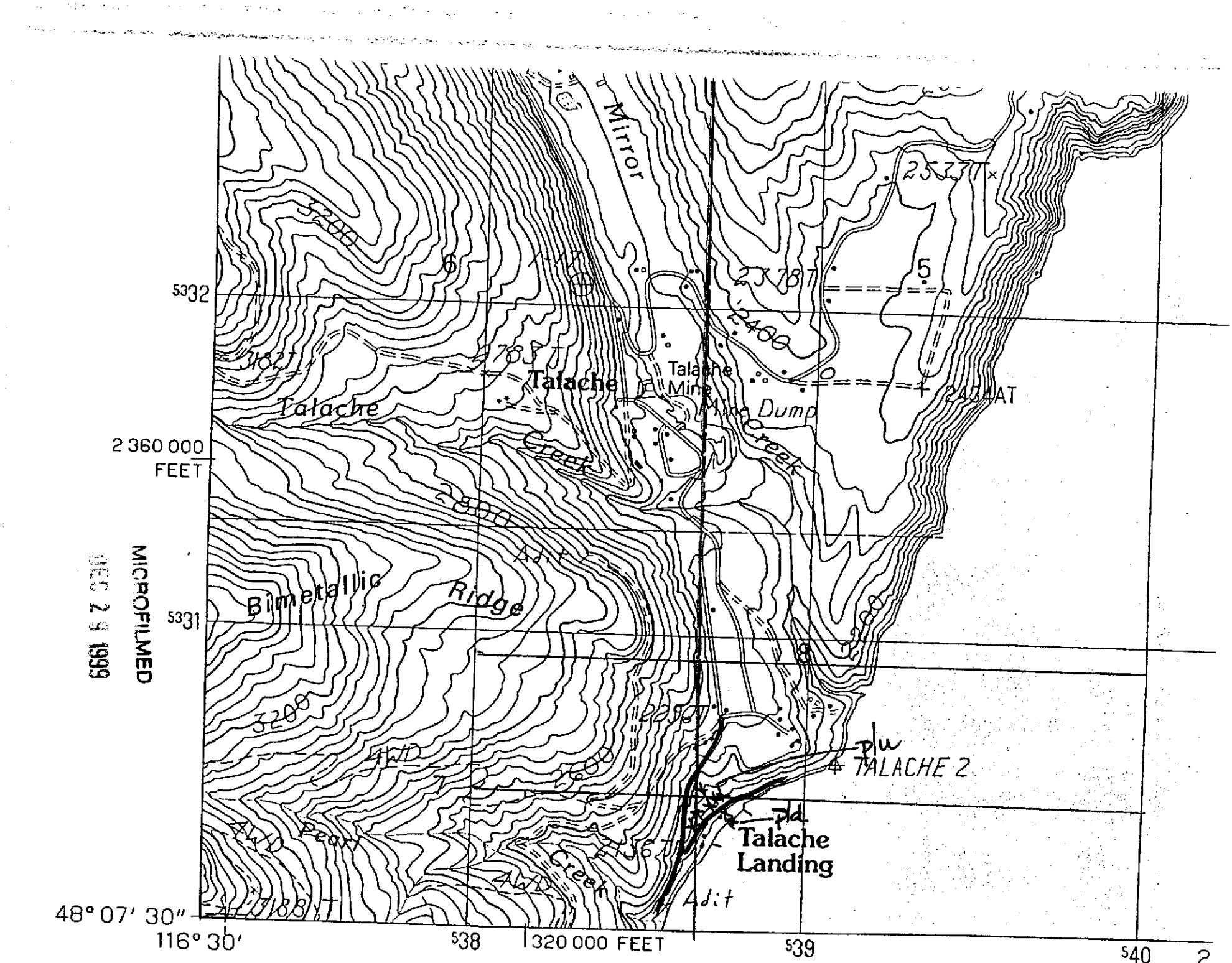
Flow rate .12 cfs X 365 days X 1.98 = 86.7 af

REMARKS 5/7 (WB5) spec permit and.

ADD'L CONDITIONS ___ Watermaster Control WD# ___
___ GW Measurement/Measuring Device
Hole Others Trust (052/R55 - remove 051) Non-trust (048/049)

Advance Priority ___ yes ✓ no SRBA Claim N/A

Adjust Memo ppu desc/# acres
Amend letters P44, P38
P42



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PRODUCED BY THE UNITED STATES GEOLOGICAL SURVEY

Form 219
6/92

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

BENEFICIAL USE FIELD REPORT

RECEIVED
JAN 27 1998
Department of Water Resources

A. GENERAL INFORMATION

Permit No. 96-08857

1. Owner: Arnold Edmund Keir Nash, Marguerite B.R. Nash Phone No. (208) 263-0765

Current Address: P.O. Box 492 Sagle, Idaho 83860-0492

2. Accompanied by: Keir, Marguerite Nash, David, Elizabeth Gay EXAM DATE: 8-25-97

Address: Same Phone No.

Relationship to Permit Holder: owner, co-owners

3. Source: Pend Oreille Lake tributary to Pend Oreille River

B. OVERLAP REVIEW

1. Other water rights with the same place of use:

2. Other water rights with the same point of diversion: 96-08360, 96-08848, 96-08854, 96-08904

C. DIVERSION AND DELIVERY SYSTEM

1. **Point(s) of Diversion:**

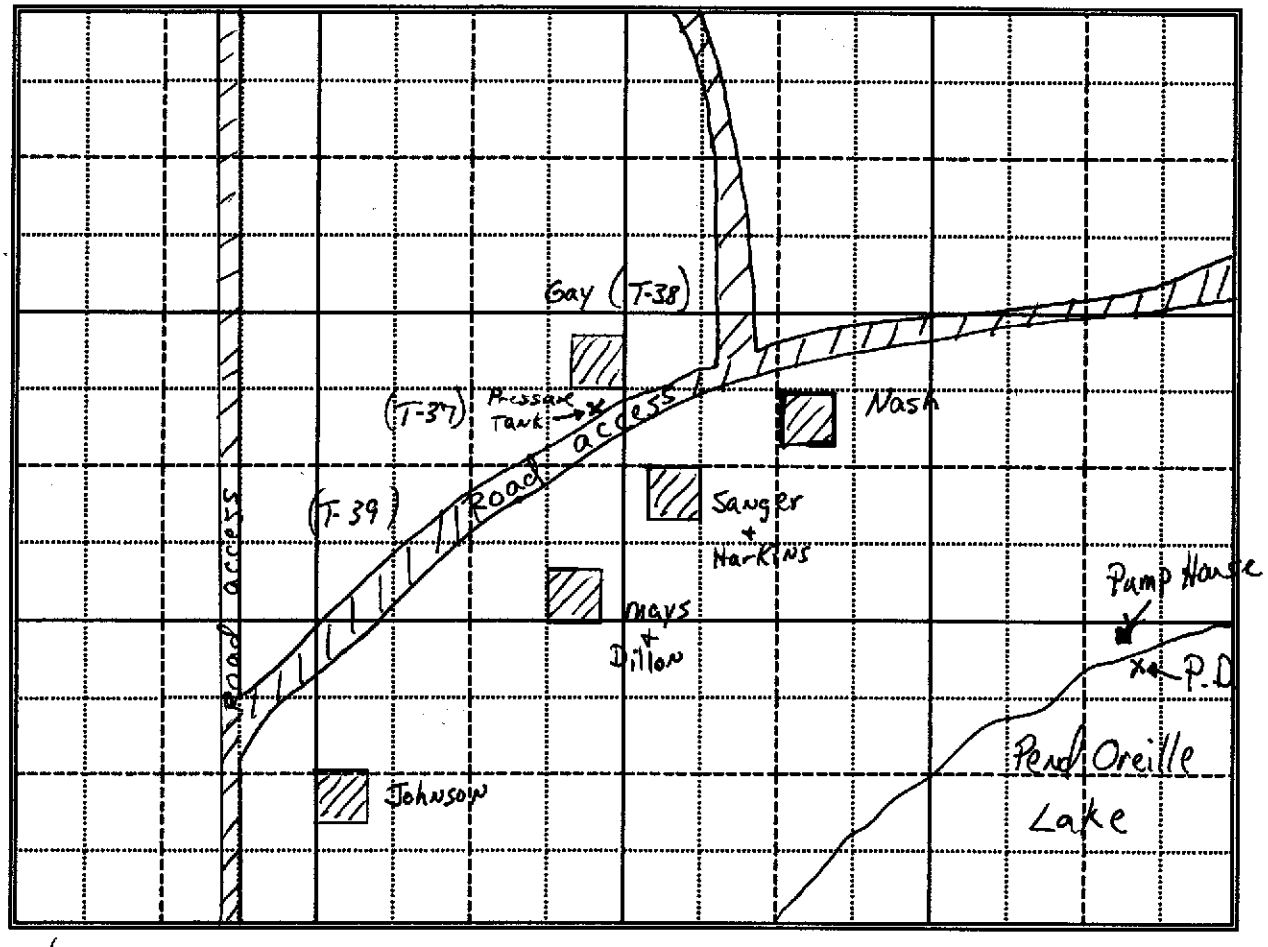
Ident No.	Gov't Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Method of Determination/Remarks
	02		NW	SW	08	55N	01W	Bonner	USGS 7.5' Quad.

2. **Place(s) of Use:** Indicate Method of Determination

TWP	RGE	SEC	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
55N	01W	8										I,D GL-2							
55N	01W	8							I,D GL-2										
55N	01W	7													I,D GL-1				
55N	01W	7				I,D													
										MICROFILMED									

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3. **Delivery System Diagram**: Indicate all major components and distances between components. Indicate weir size/ditch size/pipe i.d. as applicable.



Scale: 1" = N/A.

____ Copy of USGS Quadrange Attached Showing location(s) of point(s) of diversion and place(s) of use (required).

____ Aerial Photo Attached (required for irrigation of 10+ acres)

____ Photo of Diversion and System Attached

4.

Well or Diversion Identification No.*	Motor Make	Hp	Motor Serial No.	Pump Make	Pump Serial No. or Discharge Size
	Goulde	5		Submersible	

**Code to correspond with No. on map and aerial photo*

D. FLOW MEASUREMENTS

1.

Measurement Equipment	Type	Make	Model No.	Serial No.	Size	Calib. Date

2. **Measurements:** _____

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E. NARRATIVE/REMARKS/COMMENTS

A 5 Hp pump serves five (5) existing homes. At the time this application was filed a mobile home was located on the Gay property (T-39). It is not there now. The pipework to this lot is still there. There is also pipework to lot T-37.

I have included a map that I have obtained from Keir Nash which shows that parts of lots T37, T38, and T39 owned by David and Elizabeth Gay extend into; SW NW Sec. 8, NE SE sec. 7 and SE NE sec 7. I have noted that a licensing amendment is recommended. I have discussed this issue with Mr. Nash and Mr. Gay.

Part of the property owned by Jack Johnson (509) 226-3360 is also located in NE SE sec. 7. attempts to contact Mr. Johnson have been unsuccessful

Have conditions of permit approval been met? ✓ yes ___ no

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F. FLOW CALCULATIONS X Additional Computation Sheets Attached

Measured Method:

See Theoretical

G. VOLUME CALCULATIONS

1. Volume Calculations for Irrigation:

$V_{I.R.}$ = (Acres Irrigated) x (Irrigation Requirement) = 4 x 3.0 = 12

$V_{D.R.}$ = [Diversion Rate (cfs)] x (Days in Irrigation Season) x 1.9835 = .12 x 245 x 1.9835 = 58.3

V = Smaller of $V_{I.R.}$ and $V_{D.R.}$ = 12 afa

2. Volume Calculations for Other Uses:

Acre Feet (Domestic) = 7 homes x .6 afa = 4.2 afa

H. RECOMMENDATIONS

1. Recommended Amounts

Beneficial Use	Period of Use From	Period of Use To	Rate of Diversion Q (cfs)	Annual Volume V (afa)
Irrigation	03/15	11/15	.12	12 afa
Domestic	01/01	12/31	.12	4.2 afa
		Totals:	.12	16.2 afa

2. Recommended Amendments

___ Change P.D. as reflected above ___ Add P.D. as reflected above ___ None

___ Change P.U. as reflected above X Add P.U. as reflected above ___ Other

I. AUTHENTICATION

Field Examiner's Name David A. Rogel Date 8-27-97

Reviewer _____ Date _____

SEAL

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THEORETICAL PUMP EFFICIENCY CALCULATIONS

FILE: 96-08857, NASH
DATE: 26-AUG-97
COMPLETE BY: D. PAGEL

HORSEPOWER = 5

PUMP EFFICIENCY = 70%

DYNAMIC LIFT = 150 FEET

SYSTEM PRESSURE = 45 PSI

QUANITY = 0.12 CFS

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SECTION No. 8, SUBDIVISION. Gov't

RECEIVED
AUG 26 1997
NORTHERN REGION
IDWR

96-08857
Nash
T55N R01W Sec 7,8

1/4 Cor.

LAKESIDE VILLAGE

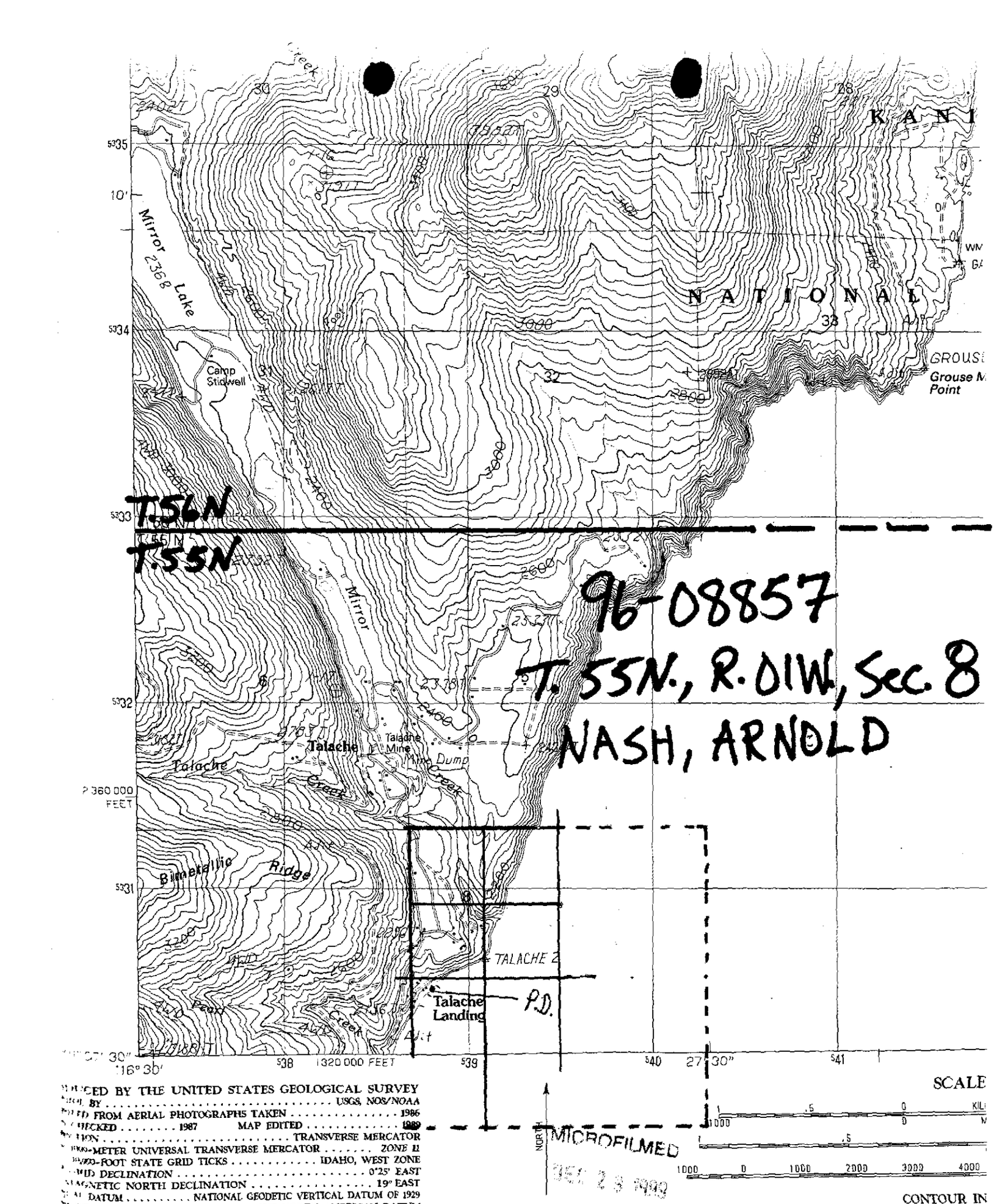
PEND OREILLE LAKE

DRIVE

destroyed 1988 fire (part)
1987 pump, 1991 pipe, 1995 water right
1995 water right to encroachment permit, not yet built

1991, no water right, no encroachment permit

1976 built, 1983 water right, probably no encroachment permit



UCED BY THE UNITED STATES GEOLOGICAL SURVEY
BY ..... USGS, NOS/NOAA
D FROM AERIAL PHOTOGRAPHS TAKEN 1986
CHECKED ..... 1987 MAP EDITED 1989
ION ..... TRANSVERSE MERCATOR
000-METER UNIVERSAL TRANSVERSE MERCATOR ..... ZONE 11
000-FOOT STATE GRID TICKS ..... IDAHO, WEST ZONE
MID DECLINATION ..... 0°25' EAST
AGNETIC NORTH DECLINATION ..... 19° EAST
AL DATUM ..... NATIONAL GEODETIC VERTICAL DATUM OF 1929
NTAL DATUM ..... 1927 NORTH AMERICAN DATUM
place on the predicted North American Datum of 1983,
the projection lines as shown by dashed corner ticks
(meters north and 77 meters east)
may ... ya... ok... gs within the boundaries of any

96-08857

T. 55N., R. 01W., Sec. 8

NASH, ARNOLD

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DEC 29 1999

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
FIELD REPORT SUPPLEMENT

PERMIT 96-08857

PHOTOGRAPHS



Pump house

Point of diversion, located

T5N R01W Sec. 8 Govt lot 2
NWSW Lot 1 less tax 1 Nash

P.U. Nash - Tax 25-30

P.U. Sawyer + Harkins
Tax 8

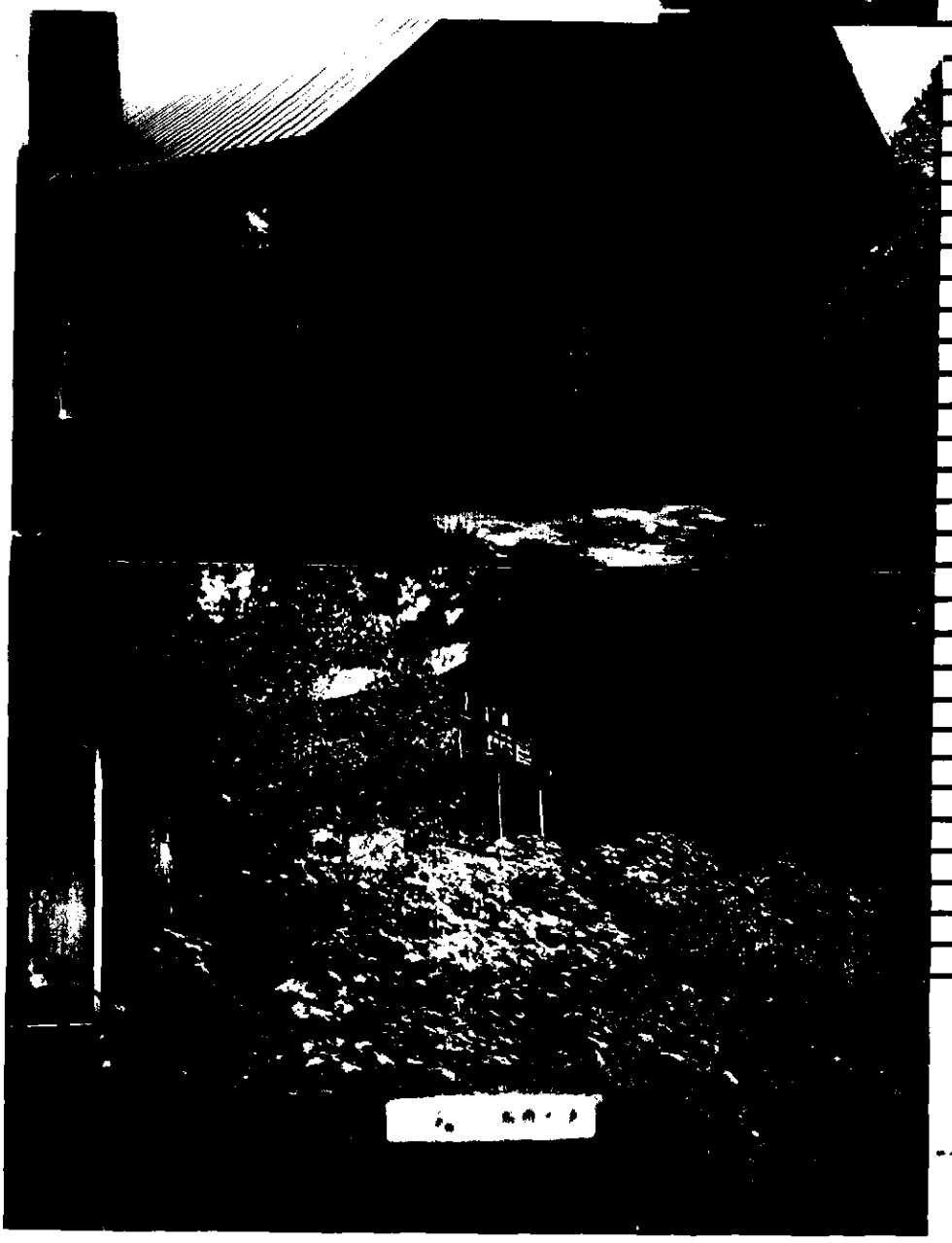
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DEC 29 1993

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
FIELD REPORT SUPPLEMENT

PERMIT # 96-08857



P.U. Mays + Dillon
Tax 6



P.U.
Johnson Tax 10 + 11

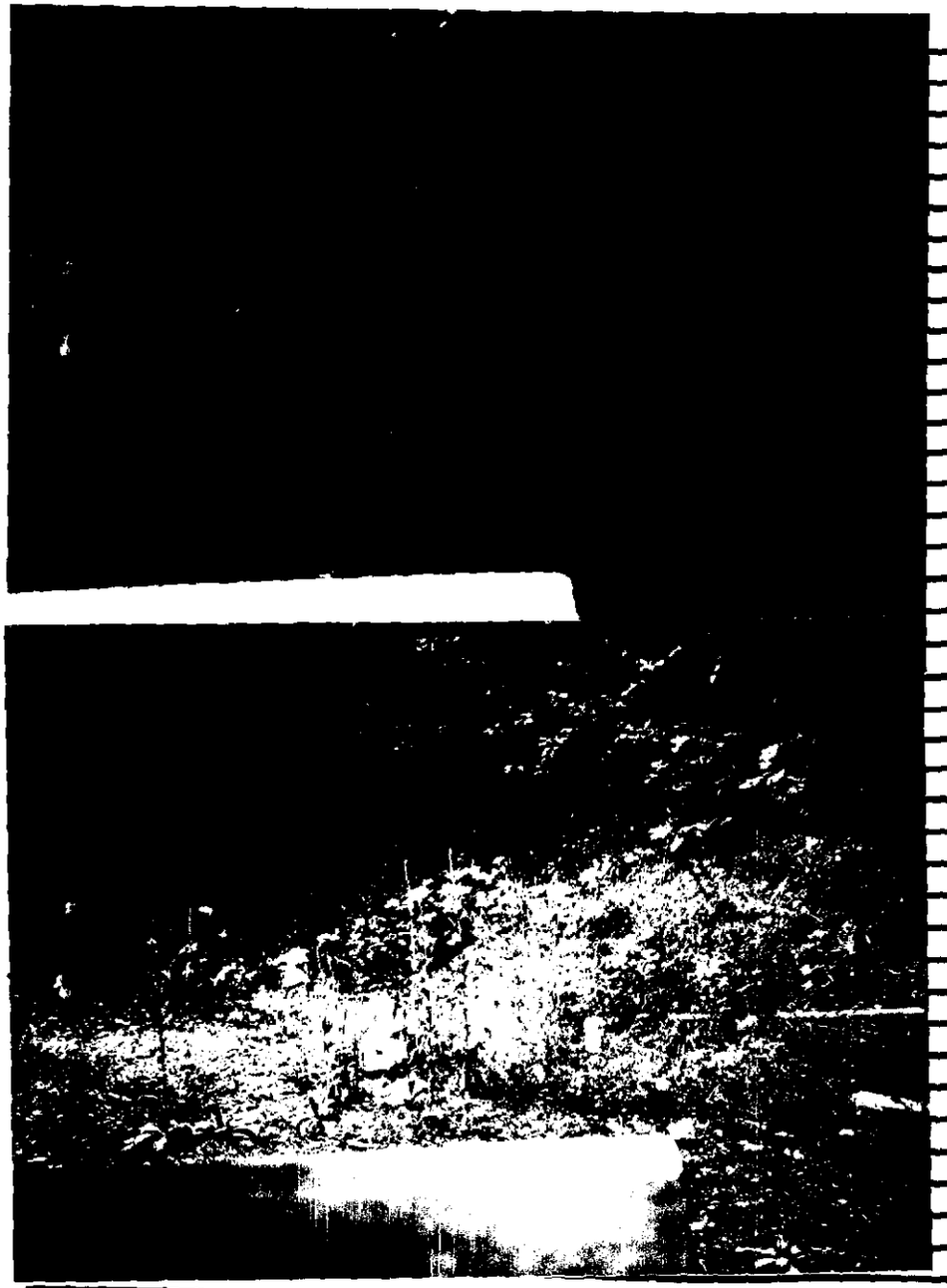
P.U. Gay
tax 38

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DEC 29 1998

PERMIT # 96-08857

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
FIELD REPORT SUPPLEMENT

PHOTOGRAPHS



P.U. Gay
tax 37.

P.U. Gay
tax 39

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ANALYSIS SHEET
FOR
PROOF OF BENEFICIAL USE

Permit No. 96-08857 Reviewed by [signature] Date 11-14-96

GENERAL CONSIDERATIONS

yes Name same as permit?

yes Address same as permit?

yes Proof timely received?
If not, complete calculation below.

TYPES OF USE

dom. Irr.

Correct Uses? yes

SOURCE OF WATER

✓ Surface water source

____ Ground water source
____ Drilling permit required?
____ Copy in the file? Drilling Permit No. ____
____ Amount paid for permit ____ Correct?
____ Well log in the file?

LICENSE EXAMINATION FEE

yes Required?

50 Amount Submitted

yes Correct?

MEASURING DEVICE

no Required?

____ Installed?

____ Waiver requested?

PRIORITY CALCULATION

Date proof received		
Date proof due	-	
No. of days late	=	
Priority Date	+	
New Priority Date		

DEFICIENCIES OR ACTION ITEMS

Proof acceptable

DATA ENTRY

New Address ____ Proof Made 10-28-96

November 15, 1996

ARNOLD EDMUND KEIR NASH
MARGUERITE B R NASH
PO BOX 492
SAGLE ID 838600492

PROOF ACKNOWLEDGMENT LETTER

RE: PERMIT NO. 96-08857

Dear Permit Holder:

The department acknowledges receipt of the proof of beneficial use form submitted for the above referenced permit. The next step in the process of developing a water right is for the department to conduct a field examination to determine and confirm the use being made of the water.

If you have questions concerning this matter, please feel free to contact the NORTHERN Regional Office in Coeur D' Alene at (208)769-1450.

Sincerely,

JULIE L. YARBROUGH
Senior Secretary

c: IDWR - Region

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APR 10 1997

September 30, 1996

ARNOLD EDMUND KEIR NASH
MARGUERITE B R NASH
PO BOX 492
SAGLE ID 838600492

PROOF DUE NOTICE

RE: PERMIT NO. 96-08857

Dear Permit Holder:

One of the conditions of approval of the above referenced water permit was that proof of the extent of your beneficial use must be submitted to this office on or before December 1, 1996. (See last page of your approved permit or your last approved extension request.) Enclosed is a form which when accompanied by the license examination fee or a complete field examination report prepared by a certified water right examiner may be used to submit the required proof.

If you have not fully completed your project, and you or a previous owner of this permit have not received a prior extension of time, you may request an extension of time if the delay is for reasonable cause as provided in Section 42-204, Idaho Code. If you have been prevented from proceeding by a governmental agency or by litigation which might bring title to the water in question, more than one extension of time can be granted. An extension of time request form is enclosed for your convenience.

Either an acceptable proof of beneficial use submittal or an acceptable request for an extension of time must be received by this department on or before the above described proof due date. If neither is received, the department will send you a lapse notice. Within sixty (60) days of the mailing of the lapse notice, the permit will no longer be of any force nor effect.

SINCERELY,

JULIE L. YARBROUGH
Senior Secretary

Enclosures

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APR 10 1997

CERTIFIED MAIL
NO. 143007

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

December 18, 1995

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

Arnold Edmund Keir Nash
Marguerite B.R. Nash
P. O. Box 492
Sagle, Idaho 83860

and

1033 North Ontare Road
Santa Barbara, California 93105

Jack R. and Rachell L. Johnson
P. O. Box 97
Newman Lake, Washington 99025

Sidney Danyow
P. O. Box 4095
Coos Bay, Oregon 97420

Deborah S. and Robert S. Cahn
P. O. Box 47
Philo, California 95466

Dan Deshon
517 South 1st Avenue
Sandpoint, Idaho 83864

Frances L. Swanson
P.O. Box 104
Talache Beach
Sagle, Idaho 83860

RE: In the Matter of Application for Permit No. 96-08857
in the name of Arnold Edmund Keir Nash and Marguerite B.R. Nash

Dear Interested Parties:

The accompanying order is an Amended Final Order is issued by the department pursuant to Section 67-5246, Idaho Code.

The final order is effective 14 days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency, the final order becomes effective when a) the petition for reconsideration is disposed of; or b) the petition is deemed denied because the agency did not dispose of the petition within 21 days.

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APR 10 1997

A party may not be required to comply with the amended final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.

A non-party shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.

The provisions of this section do not preclude an agency from taking immediate action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within 14 days of the service date of this order. The department will act on a petition for reconsideration within 21 days of its receipt, or the petition will be considered denied by operation of law. See section 67-5243(4) Idaho Code.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department, may appeal the final order and all previously issued orders in the matter to the district court. The party may file a petition in the district court of the county in which a) a hearing was held, b) the final agency action was taken, c) the party seeking review of the order resides, or d) the real property or personal property that was the subject of the agency action is located.

The appeal must be filed within 28 days a) of the service date of the final order, b) of an order denying petition for reconsideration, or c) the failure within 21 days to grant or deny a petition for reconsideration, whichever is later. (See Section 67-5273, Idaho Code.) The filing of an appeal to the district court does not in itself stay the effectiveness or enforcement of the order under appeal.

Sincerely,

NORMAN C. YOUNG
Administrator, Water Management Division

NCY:rf

Enclosure

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APR 1 0

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

November 21, 1995

Karl David Kite
4519 S.W. Coast
Lincoln City, Oregon 97367

Re: Application for Permit 96-08857 (Nash)

Dear Mr. Kite:

This letter is in response to your letter dated November 15, 1995 and telephone conversation on November 17. Enclosed are copies of the "Final Order" issued on application No. 96-08857, a copy of the department's *Rules of Procedure* that govern contested cases, and an application for permit form with instructions.

Ms. Swanson, as the seller of the parcel for which you have an interest, protested the Nash application and appeared at the hearing to raise issues concerning her desire to have your parcel included in the permit. IDWR addressed these issues in the order. The effect of an approved permit from the department is to allow diversion and use of water from the Pend Oreille Lake. The permit does not affect ownership of the existing system. IDWR does not have authority to determine ownership of the system or to grant easements across private or public property.

Because errors were found in the "Final Order," the parties have been given additional time to review and respond to the proposed corrections. Therefore, the final date for filing an appeal of the matter with the district court has been delayed. This date may be further delayed by the need to serve a copy of the final order on a party who was overlooked in the initial service. However, only parties to the contested case at the administrative (agency) level are entitled to appeal (Rule 790). A petition to intervene in the matter would not be timely (Rule 352).

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APR 10 1997

If I can provide additional information on this matter, I will be happy to do so.

Sincerely,

NORMAN C. YOUNG
Administrator
Water Management Division

c: Applicants & Protestants w/enc.
Northern region

Enclosures: Final Order
Rules
Application & Instructions

bcc: Resent this letter + all attachments
to: Keira Nash 11/28/95

MICROFILMED
APR 10 [illegible]

November 15, 1995

Idaho Dept. of Water Resources
1301 N. Orchard St.
State House Mall
Boise, ID 83720-9000

Dear Mr. Dreher:

We would like to inform you of a problem with your recent approval of an application for water for Keir Nash, Talache Village.

We have purchased a lot from Frances Swanson, and as part of the contingencies of the purchase we requested approval from all the property owners who were on the Talache Village Water Association water system, which is a defunct corporation. We received acknowledgement and approval from the other property owners.

In Keir Nash's application for water rights, his application expressly excludes our property. He is planning on using the existing water distribution system, and charging 4 other lot owners a substantial amount of money for access to the existing system. According to legal paperwork we have, our lot was an original member of the system, even though the lot was undeveloped. There now is piping inside the lot boundaries, and has been since January 1995, but no spigot. We are planning to build within 2 years of our purchase, and were not aware of any time limit to our right to use water from the Talache Village Water Association.

We wish to register a protest or appeal, within the time limits available, if needed. We were unable to file a protest when the original application was filed, as we were notified too late to send in the fee. Since we live in Oregon, distance poses a factor. But we are concerned enough to make a personal trip if need be, as being excluded from a water system is a serious matter to us.

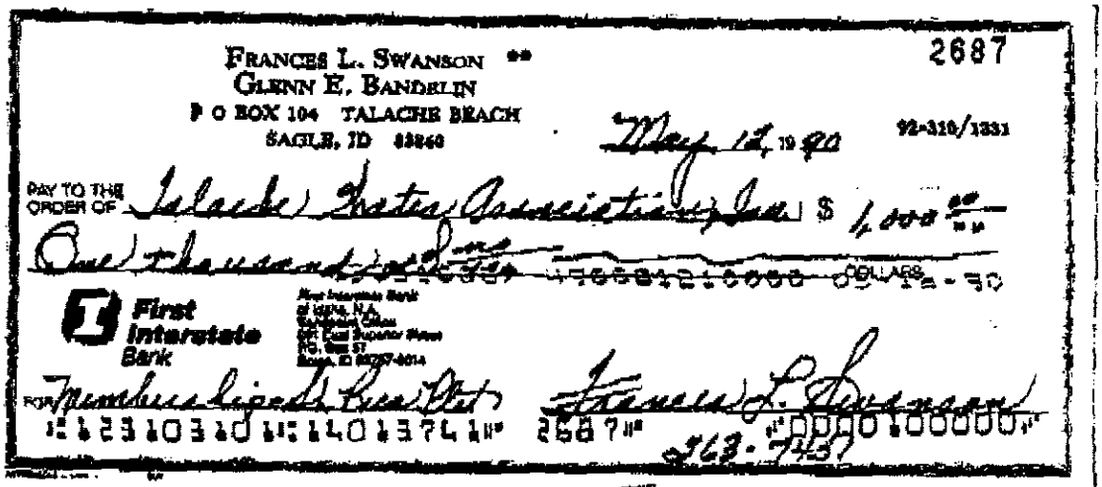
We would also consider making an application to apply for water, to append to Keir's application, and we realize that there will be his protest for that.

Please take this information in consideration, and advise us, ASAP.
Thank you.
Sincerely,

Karl David Kite
4519 SW Coast
Lincoln City, OR 97367
(541)996-3282 FAX also

TAX LOT 26

MICROFILMED
APR 10 1997



FRANCES L. SWANSON **
GLENN E. BANDELIN
P O BOX 104 TALACHE BEACH
EAGLE, ID 83616

2687

92-319/1331

May 12, 1990

PAY TO THE ORDER OF Talache Water Association Inc $ 1,000.00

One thousand and no/100 DOLLARS

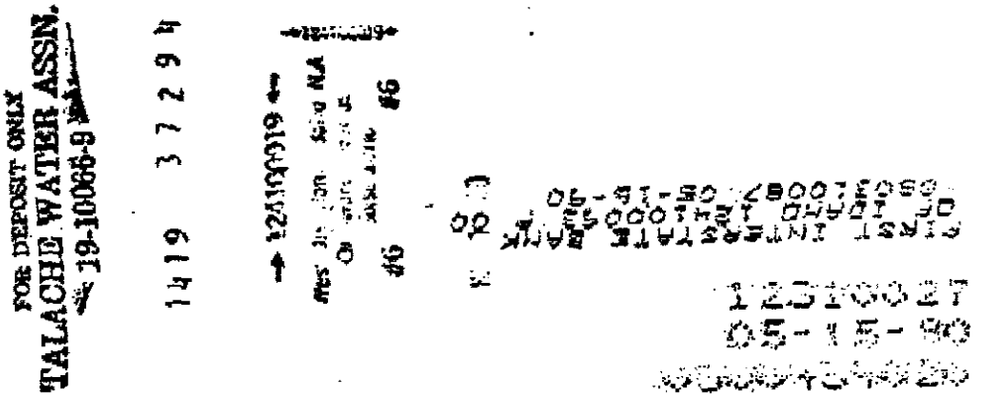
First Interstate Bank

FOR Membership Lien Dues

Frances L. Swanson

⑈123103191⑈ 140137411⑈ 2687⑈ 463-7137 ⑆000100000⑈

TAX LOT 26F
TALACHE VILLAGE KITE



FOR DEPOSIT ONLY
TALACHE WATER ASSN.
19-10066-9

1419 37294

⑆123103191⑆ 616

#6

FIRST INTERSTATE BANK
OF IDAHO, N.A.
123103191
05-15-90

MICROFILMED

APR 10 1997

EVERETT D. HOFMEISTER
Trust Account
Sunset Mall Suite 20
290 Sunset Ave. 667 0569
Coeur D'Alene, Id 83814

1630

April 21 1994

Pay to the Order of Talache Mercantile Water Users Assn. $ 240.00

Two Hundred Forty and 00/100 Dollars

First Security Bank
First Security Bank of Idaho
101 East Sherman Avenue
Coeur D'Alene, Idaho 83814

For Assessment - 1994

Everett D. Hofmeister

"001630" "124100064:088 70365 49" "000000 24000"

TAX LOT 26#
TALACHE VILLAGE
KITE

Authorized Signature
Ivy Smith Hofmeister

0641 10579

SEATTLE WA

94 21

9603164

MICROFILMED

APR 10 1997

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

November 20, 1995

Deborah and Robert S. Cahn
P O Box 47
Philo, CA 95466

Re: Application for Permit No. 96-08857 - Nash

Dear Mr. and Mrs. Cahn:

In a recent telephone conversation with Mr. Nash, he advised us that you were not given proper notice when the department issued the recommended order and the final order. Enclosed for your review are the final order and cover letter, a cover memorandum from the Director, Karl Dreher; and a letter from Mr. Nash. The final order is under reconsideration per the Director's memorandum.

You now have the opportunity to review the final order. Note the cover letter dated October 27, 1995. Starting with Item (4), you will have the opportunity to continue with the procedures as outlined. Under Item 4, however, the statement has been modified to give you fourteen days from the date of this letter.

This was an unfortunate oversight. I hope it does not cause you any problems. If you have questions, please feel free to contact me.

Sincerely,

Rita I. Fleck

RITA I. FLECK
Administrative Secretary

Enclosures
c: Arnold Edmund and Marguerite B.R. Nash

MICROFILMED
APR 10 1997

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

November 20, 1995

Sidney Danyow
P O Box 4095
Coos Bay OR 97420

Re: Application for Permit No. 96-08857 - Nash

Dear Mr. Danyow:

Enclosed is the tape of the water right hearing for the above-referenced application for permit along with the receipt for the $5.00 copy fee.

Note, the department uses a multiple-speed recording system. Also, the system utilizes both sides of the tape for recording. Thus, the tape is understandable when playing the A side only.

If I can be of further assistance, please feel free to contact me.

Sincerely,

Rita I. Fleck

RITA I. FLECK
Administrative Secretary

Enclosures

MICROFILMED

APR 10 1997

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

MEMORANDUM

TO: PARTIES ON ATTACHED SERVICE LIST

FROM: KARL J. DREHER, DIRECTOR

SUBJECT: REQUEST FOR RECONSIDERATION OF FINAL ORDER ON APPLICATION FOR PERMIT NO. 96-08857 (NASH)

DATE: November 7, 1995

On October 26, 1995, a final order was issued approving Application No. 96-08857 with conditions. The Department's Rules guiding administrative procedures allow parties 14 days to file requests for reconsideration of the order. On November 6, 1995, the attached request for reconsideration was received. The request seeks to have the order amended to correct the Tax Number designation for the lot(s) owned by Jack and Rachell Johnson which would be authorized to receive water under the permit. The Department wants the order to be accurate and will make the change requested unless a valid objection is received from another party on or before November 20, 1995.

The time period for filing an appeal of the decision is tolled by the filing of the request for reconsideration. The appeal period extends for 28 days after the request for reconsideration is acted on by the Director as provided by Procedure Rule 740.02.c.

Enclosure: Letter from A. E. Keir Nash dated November 1, 1995

MICROFILMED
APR 10 97

SERVICE LIST

I hereby certify that on this the 7th of November, 1995, I mailed a true and correct copy of the Memorandum from Karl J. Dreher distributing the request for reconsideration, postage prepaid to:

Arnold Edmund Keir Nash
Marguerite B. R. Nash
1033 North Ontare Road
Santa Barbara, California 93105

Jack R. and Rachell L. Johnson
P. O. Box 97
Newman Lake, Washington 99025

Sidney Danyow
P.O. Box 4095
Coos Bay, Oregon 97420

Dan Deshon
517 South 1st Avenue
Sandpoint, Idaho 83864

Frances L. Swanson
P.O. Box 104
Talache Beach
Sagle, Idaho 83860

Arnold Edmund Keir Nash
Marguerite B. R. Nash
P. O. Box 492
Sagle, Idaho 83860

RITA I. FLECK
Administrative Secretary

MICROFILMED
APR 10 1997

A. E. Keir Nash, P. O. Box 492, Sagle, ID. 83860. Phone: (208) 263-0765

November 1, 1995

To: Norman C. Young/attn: Rita I. Fleck
Idaho Department of Water Resources
1301 N. Orchard St.
Boise, ID. 83706-2237

RECEIVED
NOV 0 6 1995
Department of Water Resources

From: A. E. Keir Nash
Re: Permit No. 96-08857

As is shown by the enclosed computer printout (made yesterday by Bonnie Miller, the senior non-elected official in the Bonner County Tax Assessor's Office), **my original designation in the permit application of Jack and Rachell Johnson's Talache property (as Tax 10 and Tax 11) is correct.** Also correct is the more formal parcel number given as the 2nd figure in Exhibit 44 (Johnsons' own filled out authorization to proceed) -- RP 55N01W085660 A.

how amended order came about

Wrong, however, is the designation "Tax 374.19" in Order, p. 2, Findings of Fact. As Bonnie Miller points out, that is exactly 1/2 the annual $ tax bill [$758.38/2] on the property parcel. Why Mr. or Mrs. Johnson wrote that on the authorization form escapes me.

It seems an amended ORDER should be sent out, using either the "Tax 10&11" or the" RP 55N01W085660 A" designation of the property. While I was with Bonnie Miller in the Tax Assessor's office yesterday, she and I also double-checked my designations of the other parcels. They are correct.

Thank you for your consideration.

A E Keir Nash

MICROFILMED
APR 1 0 1997

Display Device . . . . . : A1
User . . . . . : ASSESSOR

Parcel RP 55N01W085660 A TAX INQUIRY ** PARCEL ROLL **

Year 1994

Name JOHNSON, JACK R & RACHELL L
Addr P O BOX 97
NEWMAN LAKE WA 99025

Code Area 62-00 Bill# 21065
Bank Code STCU FLB Code
Owner Code Account Type

Market Value	46,062
- Hardship	
- Homeowner	
Net Market -->	46,062

Legal 7 & 8-55N-1W
TAX 10 & 11 MEXICO MINE

Tax Amount	595.90
- Circuit Brk	
+ Specials	162.48
Net Tax ------>	758.38

Tax Payments	758.38
Tax Cancelled	
Spec Cancelled	
Remaining Due->	.00

Bill-> RP 1994

Parcel-> RP A

Address

F1-Toggle F3-End Program F5-Payment Activity F24-More Keys

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APR 10 1997

November 15, 1995

RECEIVED
NOV 2 0 1995
Department of Water Resources

Idaho Dept. of Water Resources
1301 N. Orchard St.
State House Mall
Boise, ID 83720-9000

Dear Mr. Dreher:

We would like to inform you of a problem with your recent approval of an application for water for Keir Nash, Talache Village.

We have purchased a lot from Frances Swanson, and as part of the contingencies of the purchase we requested approval from all the property owners who were on the Talache Village Water Association water system, which is a defunct corporation. We received acknowledgement and approval from the other property owners.

In Keir Nash's application for water rights, his application expressly excludes our property. He is planning on using the existing water distribution system, and charging 4 other lot owners a substantial amount of money for access to the existing system. According to legal paperwork we have, our lot was an original member of the system, even though the lot was undeveloped. There now is piping inside the lot boundaries, and has been since January 1995, but no spigot. We are planning to build within 2 years of our purchase, and were not aware of any time limit to our right to use water from the Talache Village Water Association.

We wish to register a protest or appeal, within the time limits available, if needed. We were unable to file a protest when the original application was filed, as we were notified too late to send in the fee. Since we live in Oregon, distance poses a factor. But we are concerned enough to make a personal trip if need be, as being excluded from a water system is a serious matter to us.

We would also consider making an application to apply for water, to append to Keir's application, and we realize that there will be his protest for that.

Please take this information in consideration, and advise us, ASAP.
Thank you.
Sincerely,

Karl David Kite
4519 SW Coast
Lincoln City, OR 97367
(541)996-3282 FAX also

TAX LOT 26#

MICROFILMED
APR 1 0 1997

EVERETT D. HOFMEISTER
Trust Account
Sunset Mall Suite 20
296 Sunset Ave. 667-0569
Coeur D'Alene, Id 83814

1630

April 21 1994

Pay to the Order of Talache Sewer & Water Users Assn. $ 240.00

Two Hundred Forty and 00/100 Dollars

First Security Bank
First Security Bank of Idaho
101 East Sherman Avenue
Coeur D'Alene, Idaho 83814

For Swenson 1994

Shirley G Hofmeister

⑈001630⑈ ⑆124100064⑆088 70365 49⑈ ⑈00000 24000⑈

TAX LOT 26#
TALACHE VILLAGE
KITE

Talache Sewer & Water Users Assn.
by Shirley G Hofmeister

0641 10579

→125000244←
FIRST INTERSTATE BANK
SEATTLE WA

FIRST INTERSTATE BANK
11/22/94
1241-00064

0009164

CE5S100090
124100019
11/22/94
FIRST DE BANK

94 21

MICROFILMED
APR 10 1997

FRANCES L. SWANSON **
GLENN E. BANDELIN
P O BOX 104 TALACHE BEACH
SAGLE, ID 83860

2687

92-310/1231

May 12, 1990

PAY TO THE ORDER OF Talache Water Association, Inc. $ 1,000.00

One thousand and no/100 DOLLARS

First Interstate Bank

First Interstate Bank of Idaho, N.A. Sandpoint Office 201 East Superior Street P.O. Box 67 Boise, ID 83707-0014

FOR Membership & Lien Fee

Frances L. Swanson

⑆123103104⑆140137411⑈ 2687⑈ ⑆000001000000⑈

263-7457

TAX LOT 26#
TALACHE VILLAGE KITE

FOR DEPOSIT ONLY
TALACHE WATER ASSN.
19-10066-9

1419 37294

→ 124000019 →

#6

FIRST INTERSTATE BANK OF IDAHO, N.A.
05-15-90

MICROFILMED
APR 10 1997

October 30, 1995

P.O. Box 4095
Coos Bay, OR 97420

RECEIVED
NOV 0 1 1995
Department of Water Resources

State of Idaho
Department of Water Resources
1301 North Orchard St., Statehouse Mail,
Boise, Idaho 83720-9000
Attn: Mr. Norman C. Young, Administrator
Water Management Division

Re: Application for Permit 96-08857(Nash)

Dear Mr. Young:
My check number 663 dated 10/30/95 in the amount of Five Dollars is enclosed in payment for one copy of the tape recording generated during the September 19, 1995 hearing regarding the referenced application.

A copy of your letter to me dated 10/04/95 is enclosed for your reference. Your assistance is appreciated!

MICROFILMED
APR 10 1997

Sincerely,
S.E. Danyow
S.E. DANYOW

Encl: Two

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

October 27, 1995

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

RE: In the Matter of Application for Permit No. 96-08857 in the name of Arnold Edmund Keir Nash & Marguerite B.R. Nash

Dear Interested Party:

The accompanying order is a "final order" issued by the department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

(1) If the presiding officer is the agency head, the presiding officer shall issue a final order.

(2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.

(3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.

(4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the issuance of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.

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

(a) the petition for reconsideration is disposed of; or

(b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

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APR 10 1997

(6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.

(7) A nonparty shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.

(8) The provisions of this section do not preclude an agency from taking immediate action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order. The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5246(4) Idaho Code.

APPEAL OF FINAL ORDER TO DISTRICT COURT

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

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

The appeal must be filed within twenty-eight (28) days a) of the service date of the final order, b) of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

Sincerely,

L. Glen Saxton

L. GLEN SAXTON
Chief, Water Allocation Bureau

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APR 10 1997

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

October 4, 1995

Re: In the matter of Application for Permit to Appropriate Water No. 96-08857 in the name of Arnold Edmund Keir Nash and Marguerite B. R. Nash

Dear Applicants and Protestants:

The accompanying order is a "recommended order" issued by the department pursuant to section 67-5243, Idaho Code. The provisions of this order will not become effective until the Director issues a final order in this matter.

Each party to these proceedings who appeared at the hearing may file a petition for reconsideration, briefs and exceptions to the recommended order and may request oral argument before the Director of the department as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a recommended order with the hearing officer issuing the order within fourteen (14) days of the service date of the order. The hearing officer will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243 (3), Idaho Code.

EXCEPTIONS AND BRIEFS

Within twenty-one (21) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of a recommended order and may file briefs in support of the party's position on any issue in the proceeding. Written briefs in support of or taking exceptions to the recommended order shall be filed with the Director. Opposing parties within have twenty-one (21) days to respond.

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APR 10 [illegible]

ORAL ARGUMENT

The Director may schedule oral argument in the matter before issuing a final order. Oral argument on exceptions to a recommended order shall be heard at the discretion of the Director. If oral arguments are to be heard, the Director will, within a reasonable time, notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

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

FINAL ORDER

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

APPEAL OF FINAL ORDER TO DISTRICT COURT

A party aggrieved by a final order of the Director is entitled to judicial review in compliance with sections 67-5271 through 67-5279, Idaho Code.

Sincerely,

NORMAN C. YOUNG
Hearing Officer

APR 10 [illegible]

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

October 4, 1995

Sidney E. Danyow
P.O. Box 4095
Coos Bay, Oregon 97420

Re: Application for Permit 96-08857 (Nash)

Dear Mr. Danyow:

Your letter of September 13, 1995, has been forwarded to this office for a response.

The hearing was held as scheduled on the application for permit on September 19, 1995. A taped record was kept, but a typed transcript is not usually prepared unless the matter is appealed to district court. The cost of a copy of the tape recording is $5.00 to cover the cost of the tape and mailing. Upon receipt of payment, a copy will be sent to you.

A recommended order is being issued to address the protests against approval of Application No. 96-08857. You will receive a copy of the order.

Sincerely,

NORMAN C. YOUNG
Administrator
Water Management Division

MICROFILMED
APR 10 1997

PUBLIC HEARING

File: 96-08857 - NASH

Date: September 19, 1995

Place: STATE OF IDAHO DEPARTMENT OF WATER RESOURCES
1910 NORTHWEST BOULEVARD, SUITE 210, COEUR D ALENE, ID

ROSTER OF ATTENDANCE

NAME	ADDRESS
DAVID GAY	2811 TALACHE RD, SAGLE ID
Elizabeth H. Gay	" " " "
Florence M. Taylor	1805 N. Bayview Ave., Sandpoint Idaho
Francis L. Swanson	Talache Beach P.O. Box 104, Sagle, Ida.
Glenn C. Bandelin	Talache Beach PO box 186 Sagle Ida.
Marguerite Nash	Talache Landing Rt 492 Sagle, I.D. 83860
N. L. (Lew) Nash	" "

MICROFILMED
APR 10 1997

September 19, 1995
Application 96-08857

Hearing

Applicant - Arnold Edmund Ker Nash
Marguerite Nash

Protestant - Dan Deshaw
Francis Swanson ✓
Sidney Dayton
Robert & Deborah Cake
Jack & Rachel Johnson

David & Elizabeth Gay - water usage
Florence Carter -
Glenn Bandlow -

Issues

① Trespass
② Not in good faith
③ Lack of financial resources
④ Precluded from getting own water right

On Record @ 9:25 am pdt

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APR 10 1997

Nash -

① Application on behalf of all users of system since last sys -
② Francis Swanson deeded small property on map 6 to water association
③ Reviewed who now uses system -
④ Purchased property in October 92
⑤ System built in 1979/80 Jay made in 1980 but no permits obtained. Corporation forfeited in 1982 - dissolved 1993

(6) Summer 1994 tentative go ahead to file on behalf of the members.

(7) ~~Henry~~ Hahn

(8) Eight properties within six hours non navigable water -
See exhibit 6 —
- Nash on Bear -
- Nash above Coweta drive
- SANGER
- GAY - including house & two small lots
- GAY - GARDEN
- GAY - MOBILE HOME
- JOHNSON - 2 lots combined -

- Jack & Rachell Johnson wants to CONTINUE —

(9) water available - yes - Cave Landowner is adjacent
injury - no. Been in existence since 1980 w/o complaint
financial capability - already granted
conservation - yes
local PE - no conflict

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APR 10 1997

6) Good Faith — Cost of App rules —
submitted deeds —

Places of use = same as shown for
existing uses shown on exhibit G

Properties receiving water from the
system — Flaccle Water Assoc.
Harling — Lyon —
Mary Dillon —

Live Pasture rights — don't use
but maintain the right to
hook up in future —

At least two other systems —
Dangar — purchased his
property with understanding
that he would get the
old Flaccle Water Assoc.
water —

Kite property — has old Lyon
system pipe but no longer
system.

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APR 10 1997

Other systems from Lake Tahoe
Sandelin, Swanson, etc —

Corporation created 1880 - forfeited 1982
dissolved 1993

- No membership certificates

- Swann contends that 1633 Jr Clerk exhibit 23 is her evidence of a civic water right.

- 24 missing -

- Negligence in setting up corporation
Negligence in following thru to
get water to those who should
have been holders

Claims ownership of shed (pumphouse)
by reason of paying taxes on property -
Not clear who owns pipes on property

Summary (see exhibit 31) -
- three classes of users - the
(a) those holding ownership
(b) assigned a later
(c) those who were dist

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APR 10 1997

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APR 10 1997

Pump broken in 1987 - replaced with a

Smaller pumps —

In 1998 were reduced in size from 3" to 1"

How changed the system to the point it isn't same system originally built. Any claim for water has to be a system they were hooked up to & when put in.

Exhibit 41 — not submitted on clerks
Exhibit 1 thru 45 ~~clerks~~ — except 41

Mrs Nash

- Want to legalize the system -

Mrs Inman

(1) No objection to the hunting rights
(2) Want to protect her interests
(3) Owned 160 ac & farmed the system then Tom Harrell (who bought property) & Lee ~~Ted~~ now deceased.
(4) Bought property from West - planned to split with Jack Klein & Lloyd.
(5) Owned the property that received the water
(6) Would be satisfied that permit could issue if the "Kite" properties were included

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APR 10 1997

Mrs Nash —

Failure to use the system was cause to no longer have a right.

— No right to hook up the site property

— Should have looked up the facts to have water system —

Kitsaw —

— household + lawn (less than ½ acre)

— no livestock —

Elizabeth Gay —

Purchased Dixon home with understanding that it had power + water + other utilities

Not afraid of any legal problems with water supply —

appreciate the efforts the Nashes have put into this matter

Concern that system is not stable to supply water any further uses.

Represents that premises home on part of her property.

How further cost for adding others?

→ 55 gpm → 45 gpm pump.

Kits will not object to paying for plan to upgrade

Nash

— Others claim rights as well — Kits — 3 others as well —

MICROFILMED
APR 10 1997
MICROFILMED
APR 10 1997

Usually only 1, 2, or 3 hours

Will system deliver 45 gpm? —
130 ft of head
5 gpm @ hose bibb @ 80 ft
when no others are using.

— No county regulations —

How will the system

— Single nonprofit corporation —

Glenn Bardsley —

When ownership of property be examined about once

Send a copy of recommended order to

Official notice taken of the

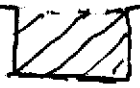
Board of Supervisors
PO Box 509
Spirit Lake, IA 51360

EMMETSBURG
APR 10 1997

David - 503- 986- 3282
- Kite - - Oregon -

S Kein - Protest -
NASH - 96-08857 -

10 sites
7TH Hook-up 6 Lots identified



Approve - permit
prevap

Association.

MICROFILMED
APR 10 1997

LIST OF ARTICLES OFFERED IN EVIDENCE IN SEPT. 19, 1995 HEARING OF IDAHO DEPT OF WATER RESOURCES RE WATER WITHDRAWAL PERMIT APPLICATION 96-08857

1. 1994 Idaho Sec of State Certificate showing 1972 Idaho qualification of Calif-chartered Talache Land Compny Corporation, and November 30, 1973 forfeiture of same.

2. Calif. Sec of State Office record of Talache Land Company Corporation showing absence of Vice President from list of officers.

3. Sept. 20, 1974 Release of Judgment Lien by E. C. Wert/Paul (?) Wert wherein Wert, purporting to be Vice President of Talache Land, attempts to forgive himself his own personal debt to corporation in consequence of April 17, 1970 Kootenai County court judgment.

4. Next day (Oct. 1, 1974) sale of beachlots 7 and 8 to Frances L. Swanson.

5. Two weeks later sale (Oct. 15, 1974) of beachlots 1, 2, 3, 4, 5 sale to Frances Swanson.

6. ---Map

7. 1977 Quitclaim by Swanson to Andrews of undivided 1/2 of Lot 1 less Tax 1.

8. Bonner Public Doc. #191440. Quitclaim by Swansonto Andrews of half of Lot 1 Less Tax 1. Same property.

9. #222984. Quitclaim, recorded 11 Dec 1979, of all of same lot portion by Swanson to Andrews.

10. #345220. Warranty Deed conveying same (and 2 other parcels) from Andrews to Graves, 30 Oct. 1987, recorded Feb 4, 1988.

11. #414777. Similar conveyance from Graves to Nash, 23 Oct 1992, recorded 30 Oct 1992.

12. #449888. [Bogus] easement, 1 August 1994, from Goebel to Swanson.

13. 24 August 1994, apologetic letter from Goebel to Nash/Bandelin/Bennet(Cahn) re same.

14. 21 August 1994 letter from Nash to E. Coulter (Goebel's attorney) explaining flaws in 449888 and murky history of Talache land deals.

15. #454051. Acknowledgment of Nullity of bogus easement by Swanson, recorded 18 Oct 94.

16. #453477. Revocation of Easement Originally Granted in Error, by Goebel, recorded 5 Oct 94.

17. #460937. Quitclaim deed by Goebels, recorded 13 Feb 95, re any claim to Nashes' 3 parcels.

18. 1980 Articles of Incorporation of Talache Shoreside Water Users Assoc (see particularly articles VI and VII).

19. Idaho Sec of State Certificate of Oct 17, 1980 water corp incorporation certificate; Nov. 30, 1982 forfeiture, and March 1, 1993 dissolution.

20. Sole annual report ever submitted by water corp to Sec of State, showing absence of directors other than Andrews.

IMAGED FILMED
APR 10 1997

20. Sole annual report ever submitted by water corp to Sec of State, showing absence of directors other than Andrews.

21. Extract from Idaho 30-3 Idaho Nonprofit Corporation Act (see particularly 30-3-34 re when members must secure admission).

22. Quitclaim deed showing only property ever deeded to water corporation (uphill 15 X 20 foot square where pressure tank she dnow is).

23. Xerox of 4 May 1982 check from Attorney Herndon to Andrews.

24. (1994) discussion by Nash of legal status of water corp.

25. 1995 Assessor's Ofice statement showing Nashes, like preceding Block 5, Lot 1 owners, paid taxes on shed on beachlot ! Less Tax 1.

26. Nash letter of 16 May 95 re Johnson protest.

27. Nash letter of 14 May 95 re Danyow protest.

28. Nash letter of 13 May 95 re Cahn protest.

29. Nash 5 May 95 suggestions as to how to solve interrelated conflicts.

30 June 3, 1995 letter of Attorney Featherston to Andrews re potential slander of title.

31. Nash: chart summary of apparent possible legal relationships of de facto water system and affected properties.

32. Idaho Water Resources Dept printout showing Swanson/Virnig 96-08854 water rights application (without notice to other co-owners of that system)

33. Nash letter of 9 May 95 to Allen Beardslee

34. Nash letter to Stewart Title Guaranty Company, July 11, 1995, re most recent bogus easement effort.

35. Nash letter of 10 August 1995 to purchaser Virnig re same (particularly all 3 Sandpoint title insurance companies' views).

36. Bonner Doc. #464699. Easement.

37. #464700. Bogus Easement.

38. #464701. Bogus Easement.

39. April 3, 1995 Letter Nash to seller's realty agent re beachlot easement problems, offering to confer -- never replied to.
]
40..March 31, 1995 letter from Attorney Featherston (on behalf of Bandelins) to same realtor -- never replied to.

41. Extract from 9th circuit Opinion in 1986 case of Swanson v. U.S. [3 judge court found for US] re lawfulness of seawall construction.

42 - 45 - Surveys

MICROFILMED
APR 1 2

State of Idaho

Department of State

CERTIFICATE

TALACHE LAND COMPANY CORPORATION
File Number C 44853

I, PETE T. CENARRUSA, Secretary of State of the State of Idaho, hereby certify that I am the custodian of the corporation records of this State.

I FURTHER CERTIFY That the records of this office show that the above-named corporation was incorporated under the laws of the State of California and was issued a certificate of qualification in Idaho on January 12, 1972.

I FURTHER CERTIFY That this corporation forfeited its right to do business on November 30, 1973 for failure to file the required annual statement and pay its annual license tax for the fiscal year ending June 30, 1974 and that said corporation is not now and has not been authorized to transact business as a subsisting corporation in the State of Idaho since the forfeiture date.

Dated: August 19, 1994

GREAT SEAL OF THE STATE OF IDAHO

Pete T. Cenarrusa
SECRETARY OF STATE

By Debbie R. Hammond

MICROFILMED
APR 10 1997

STATEMENT BY DOMESTIC CORPORATION

THIS STATEMENT MUST BE FILED WITH CALIFORNIA SECRETARY OF STATE (SEC. 3501, CORPORATION CODE)
PLEASE READ THE INSTRUCTIONS ON THE BACK OF THE FORM BEFORE COMPLETING

1. THE CORPORATION NAMED HEREIN, ORGANIZED UNDER THE LAWS OF THE STATE OF CALIFORNIA, MAKES THE FOLLOWING STATEMENT:

2. 48 San Miguel Avenue — Salinas, Monterey — Calif. — 93901

3. P.O. Box 577 — Salinas, California — 93901

4. THE NAMES OF THE FOLLOWING DIRECTORS (ALL)

PRESIDENT: Charles R. Kines
48 San Miguel Avenue — Salinas, California — 93901

VICE-PRESIDENT:

SECRETARY: Bill C. Comer
48 San Miguel Avenue — Salinas, California — 93901

TREASURER: Kenneth E. Comer
48 San Miguel Avenue — Salinas, California — 93901

5. By [signature] President

Date 21 March 1972

DO NOT WRITE IN THIS SPACE

FILED
In the office of the Secretary of State
of the State of California
APR 3 1972
SACRAMENTO, CALIF.

Filed by

ALACHE LAND COMPANY CORPORATION
48 SAN MIGUEL AVENUE
SALINAS, CALIF. 93901

L 0 2 0 9 4 MAR 30 72 3.00

PLEASE PRINT OR TYPE

P 0105 0

614

162406

RELEASE OF JUDGMENT LIEN

KNOW ALL MEN BY THESE PRESENTS:

That for and in consideration of One ($1.00) Dollars and other valuable considerations paid to TALACHE LAND COMPANY CORPORATION, a corporation, by E. C. WERT and JOCELYN M. WERT, husband and wife, receipt of which is hereby acknowledged, now TALACHE LAND COMPANY CORPORATION does hereby release property in the County of Bonner, State of Idaho a description of which is hereby attached as Exhibit "A" and made a part hereof by this reference as if fully set forth herein: from all claim to or interest in the same, or any part thereof which the said TALACHE LAND COMPANY CORPORATION may have under and by virtue of the Judgment rendered on the 17th day of April, 1970, in The District Court of the First Judicial District in the County of Kootenai against the said E. C. WERT and JOCELYN M. WERT, husband and wife, for the sum of $190,690.50, and from all liens or encumbrances that have attached to the same by reason of the recovery of the Judgment as free and clear, in all respects, as though the Judgment had not been rendered.

DATED this 30 day of September, 1974.

TALACHE LAND COMPANY CORPORATION

BY: _____
Vice President

STATE OF IDAHO)
) ss.
County of Bonner)

On this 30 day of September, 1974, before me the undersigned, a Notary Public, in and for said County and State personally appeared E. C. WERT as Vice President of TALACHE LAND COMPANY CORPORATION, respectively, and known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal the date last above written.

_____
Notary Public in and for the State of Idaho.
Residing at: Sandpoint
My Commission expires: July 26-75

BANDELIN & ASSOCIATES
ATTORNEYS AT LAW
P.O. BOX 816
SANDPOINT, IDAHO 83864
TEL. (208) 263-3139

RELEASE OF JUDGMENT LIEN

STATE OF WASHINGTON,

150-518

7+8-55-1W

4.

WARRANTY DEED

160850

KNOW ALL MEN BY THESE PRESENTS:

Plat 7.8

That TALACHE LAND COMPANY CORPORATION, a Corporation, in consideration of One ($1.00) Dollar, and other valuable considerations does hereby grant, bargain, sell and convey unto FRANCES L. SWANSON of Veradale, County of Spokane, State of South 2006 Evergreen Rd., Veradale, Wn. 99037 Washington, the following property, in Bonner County, State of Idaho, to-wit:

Lots 7 and 8 in Block 5 of Talache Village, a Subdivision located in Bonner County, State of Idaho, excepting therefrom all mineral rights.

TOGETHER WITH ALL AND SINGULAR, The tenements, hereditaments and appurtenances hereunto belonging or in anywise appertaining.

AND the above-named grantor hereby covenants, that the above-described premises are free from all encumbrances, and that it will and their heirs, executors and administrators shall warrant and defend the above premises against all lawful claims and demands

DATED this 30th day of September, 1974.

TALACHE LAND COMPANY CORPORATION

BY _____
E. C. Wert
Vice President

OCT 1974 RECEIVED BONNER COUNTY ASSESSOR

STATE OF IDAHO)
) ss.
County of Bonner)

On this 2 day of ~~September~~ October, 1974, before me the undersigned, a Notary Public, in and for said County and State personally appeared E. C. WERT as Vice President of TALACHE LAND COMPANY CORPORATION, respectively, and known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal the date last above written.

_____
Notary Public in and for the State of Idaho.
Residing at: Sandpoint, Idaho
My Commission expires: 4-30-78

FILED FOR RECORD Oct. 3 1974 AT 10:52 A.M. REQUEST OF Frances Swanson
KERIE L. KENNEY, BONNER COUNTY RECORDER BOOK 141 PAGE 518 Deputy

CHARLES A. FREDERICK NOTARY PUBLIC State of Calif.

C 3/28/95
93-535

277

161819

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That TALACHE LAND COMPANY CORPORATION, a Corporation, in consideration of One ($1.00) Dollar, and other valuable considerations does hereby grant, bargain, sell and convey unto FRANCES L. SWANSON of Veradale, County of Spokane, State of Washington, the following property in Bonner County, State of Idaho, to-wit:

Lots 1, 2, 3, and 4 in Block 5 of Talache Village, a Subdivision located in Bonner County, State of Idaho, excepting therefrom all mineral rights.

TOGETHER WITH ALL AND SINGULAR, The tenements, hereditaments and appurtenances hereunto belonging or in anywise appertaining.

AND the above-named Grantor hereby covenants, that the above-described premises are free from all encumbrances, and that it will and their heirs, executors and administrators shall warrant and defend the above premises against all lawful claims and demands.

DATED this 15th day of October, 1974.

TALACHE LAND COMPANY CORPORATION

BY: E. C. WERT
Vice President

STATE OF IDAHO)
) ss.
County of Bonner)

On this 15th day of October, 1974, before me the undersigned, a Notary Public in and for said County and State personally appeared E. C. WERT as Vice President of TALACHE LAND COMPANY CORPORATION, respectively, and known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal the date last above written.

Notary Public in and for the State of Idaho
Residing at: Sandpoint Idaho
My Commission expires: 11-20-78

Filed for record Nov. 15, 1974 at 2:04 P.m., Request of Grantor
Book 157 of Deeds Page 277
Recording Fee, $ 1.00

DORIS L. KENNEY
Bonner County Recorder
BY: DEPUTY

State of Idaho)
) ss
County of Bonner)

I, Marie Scott, County Recorder in and for th County and State aforesaid, do hereby certif that the foregoing instrument is a true and cor rect copy of the original thereof recorded in m office by Instrument number:

161819

In Testimoney Whereof, I have hereunto se my hand and affixed by official seal this the 15 day of March 1995

MARIE SCOTT
County Recorder, Bonner County, Idaho

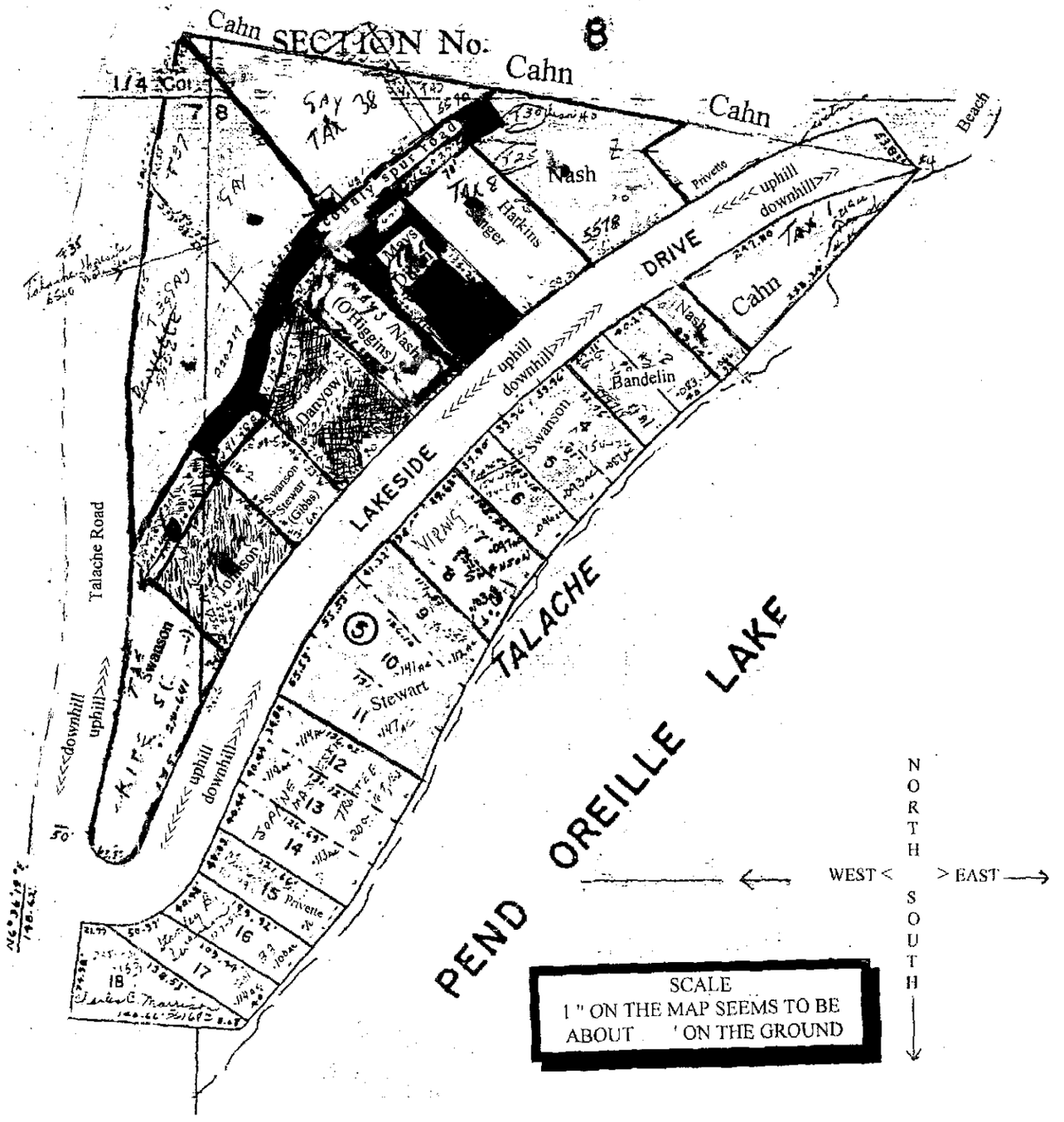
By Deputy

WARRANTY DEED

TOWNSHIP No. 55 NORTH, RANGE No. 6

1 West BOISE MERIDIAN, I

SUBDIVISION Gov't Lot 2



(Optional)

Recorded	☐	Platted	☐	Key Punched	☐	To Treasurer	☐
Microfilmed	☐	Deed Card	☐	Master File	☐		
Indexed	☐	Compared	☐	Abstracted	☐		

7

QUITCLAIM DEED

THIS INDENTURE, Made this 16th day of September

in the year of our Lord one thousand nine hundred and seventy-seven between FRANCES L. SWANSON, a single woman

of Sagle, County of Bonner

State of Idaho, the party of the first part, and LLOYD J. ANDREWS and

of WINNIE MAY ANDREWS, husband & wife County of

State of Washington, the parties of the second part.

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

One($1.00) ---------- DOLLARS,

lawful money of the United States of America, to have in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, do by these presents remise, release and forever QUITCLAIM, unto the said parties of the second part, and to their heirs and assigns all part of that certain lot X, piece or parcel of land, situate, lying and being in Talache Subdivision County of Bonner, State of Idaho, bounded and particularly described as follows, to-wit:

An undivided one-half interest in Lot 1, Block 5, Talache Village, according to the plat thereof recorded in Book 2 of Plats, Page 78, records of Bonner County, Idaho, except that portion described as follows:

Beginning at the most Easterly corner of said Lot 1; thence Southwesterly, along the Southeasterly line, thereof 200 feet; thence Northwesterly, at right angles to said Southeasterly line, to the Northwesterly line of said Lot 1; thence Northeasterly along said Northwesterly line, to the point of beginning.

Together with all littoral or riparian rights extending to the mean high water level of Lake Pend O'Reille prior to the year 1952.

Excepting therefrom all mineral rights and road rights of way.

Superseded by Deed Recorded 12/6/79
Recorded - Sept. 16, 1977 - 11:55 A.M.
Book 169 of Deeds - Page 55

Location of above described property _____ House No. _____ Street

MAIL DEED TO:	MAIL TAX NOTICE TO:
Frances L. Swanson	Name Frances L. Swanson
P.O. Box 104	Address P.O. Box 104
Sagle Idaho	City & State Sagle, Idaho

Office of the Clerk of the District Court, Ex-Officio Auditor and Recorder, Bonner County, Idaho

RECEIVED this day the following Instrument as shown on Reception Record of even date herewith.

DORIS E. KENNEDY
Clerk of the District Court and ex-officio Auditor and Recorder.

Deputy.

Fees must be paid in advance.

Sandpoint, Idaho, 9-16-77

REQUEST OF

TO

Fees $

Any inquiry regarding this Instrument please refer to this number: 191440

TOGETHER With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD, All and singular the said premises, together with the appurtenances, unto the part of the second part, and to heirs and assigns forever.

IN WITNESS WHEREOF, The said part of the first part ha hereunto set hand and seal the day and year first above written.

SIGNED, SEALED AND DELIVERED IN PRESENCE OF

Frances L Swanson [Seal]

[Seal]

[Seal]

[Seal]

STATE OF IDAHO
County of Bonner } ss.

On this 16th day of September in the year 1977, before me a Notary Public in and for said State, personally appeared Frances L Swanson known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she 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.

Robert Bill
Notary Public for the State of Idaho.
Residing at , Idaho.

No.

QUITCLAIM DEED

—TO—

Dated , 19

STATE OF IDAHO, } ss.
County of

I hereby certify that this instrument was filed for record at request of at minutes past o'clock M., this day of , A.D. 19 in my office, and duly recorded in Book of at page

Ex-Officio Recorder.

By Deputy.

Fees, $

Mail to

Recorded	☐	Platted	☐	Key Punched	☐	To Treasurer	☐
Microfilmed	☐	Deed Card	☐	Master File	☐	55	
Indexed	☐	Compared	☐	Abstracted	☐		

8

191440.

QUITCLAIM DEED

THIS INDENTURE, Made this day of September

in the year of our Lord one thousand nine hundred and seventy-seven between

FRANCES L. SWANSON, a single woman

of Sagle, County of Bonner

State of Idaho , the party of the first part, and LLOYD J. ANDREWS and

xx WINNIE MAY ANDREWS, husband & wife County of

State of Washington , the parties of the second part.

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

One($1.00) ---------- DOLLARS,

lawful money of the United States of America, to have in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, do by these presents remise, release and forever QUITCLAIM, unto the said parties of the second part, and to their heirs and assigns all part of that certain lot X , piece or parcel of land, situate, lying and being in Talache Subdivision County of Bonner , State of Idaho, bounded and particularly described as follows, to-wit:

An undivided one-half interest in Lot 1, Block 5, Talache Village, according to the plat thereof recorded in Book 2 of Plats, Page 78, records of Bonner County, Idaho, except that portion described as follows:

Beginning at the most Easterly corner of said Lot 1; thence Southwesterly, along the Southeasterly line, thereof 200 feet; thence Northwesterly, at right angles to said Southeasterly line, to the Northwesterly line of said Lot 1; thence Northeasterly along said Northwesterly line, to the point of beginning.

Together with all littoral or riparian rights extending to the mean high water level of Lake Pend O'Reille prior to the year 1952.

Excepting therefrom all mineral rights and road rights of way.

Sept 16, 1977 AT 12:55 P.M. REQUEST OF Frances L. Swanson
J. L. BOWEN, BONNER COUNTY RECORDER BOOK NO. 167 PAGE 55
Bill Bowen

Location of above described property 20
House No. Street

MAIL DEED TO:	MAIL TAX NOTICE TO:
Frances L. Swanson	Name Frances L. Swanson
P.O. Box 104	Address P.O. Box 104
Sagle, Idaho	City & State Sagle, Idaho

TOGETHER With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD, All and singular the said premises, together with the appurtenances, unto the part of the second part, and to heirs and assigns forever.

IN WITNESS WHEREOF, The said part of the first part ha hereunto set hand and seal the day and year first above written.

SIGNED, SEALED AND DELIVERED IN PRESENCE OF

Frances L. Swanson [Seal]

[Seal]

[Seal]

[Seal]

STATE OF IDAHO } ss.
County of BONNER }

On this 16th day of September in the year 1977, before me the undersigned, a Notary Public in and for said State, personally appeared FRANCES L. SWANSON

known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she 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.

Notary Public for the State of Idaho.
Residing at Sandpoint, Idaho.

191410

No.

QUITCLAIM DEED

—TO—

Dated , 19

STATE OF IDAHO, } ss.
County of

I hereby certify that this instrument was filed for record at request of

at minutes past o'clock M., this day of A.D. 19 in my office, and duly recorded in Book at page of

Ex-Officio Recorder.

By Deputy.

Fees, $

Mail to

QUIT CLAIM DEED

496
29841

9

The grantor FRANCES L. SWANSON, a single woman,

for and in consideration of the sum of $ 10.00 Dollars and other valuable considerations in hand paid, remise, release, and quit claim unto LLOYD J. ANDREWS and WINNIE MAY ANDREWS, husband and wife,

the following described real estate situated in Bonner County, Idaho:

Lot 1, Block 5, Talache Village, according to the plat thereof recorded in Book 2 of Plats, Page 78, records of Bonner County, Idaho, except that portion described as follows:

Beginning at the most Easterly corner of said Lot 1; thence Southwesterly, along the Southeasterly line, thereof 200 feet; thence Northwesterly, at right angles to said Southeasterly line, to the Northwesterly line of said Lot 1; thence Northeasterly along said Northwesterly line, to the point of beginning.

Together with all littoral or riparian rights extending to the mean high water level of Lake Pend O'Reille prior to the year 1952.

Excepting therefrom all mineral rights and road rights of way.

SIGNED, this 6th day of December , 1979

Frances L. Swanson

STATE OF IDAHO
County of Bonner } ss.

On this 6th day of December , 19 79 , before me,

the undersigned, a Notary Public, in and for said state, personally appeared

FRANCES L. SWANSON

known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same.

In Witness Whereof, I have hereunto set my hand and notarial seal on the date last above written.

Barbara L. Clarke
Notary Public, residing at Sandpoint
Sandpoint Idaho

STATE OF
County of } ss.

Filed for record at the request of Frances Swanson

on the 11 day of Dec. , 19 79 , at 11:02 o'clock A M.,

in Book 158 of Deeds, on page 496.

DORIS L. KENNEY Recorder.

By Thelma Jones Deputy. Recording fee, $ 2.00

By 10 c. agt. the 1982 19

MICROFILM

1628

10

345220

FEB 04 1988

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, That Grantors, LLOYD J. ANDREWS and WINNIE MAY ANDREWS, husband and wife, for value and consideration received do hereby GRANT, BARGAIN, SELL and CONVEY unto the Grantee, ELDON GRAVES, an unmarried man, the following described real property situate in the County of Bonner, State of Idaho, to-wit:

PARCEL 1: A portion of Government Lot 2 in Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho, more particularly described as follows:

From the Northwesterly most corner of Lot 3, Block 5 of Talache Village Plat, which point is on the Southerly right of way line of Lakeside Drive; thence North 48°24'30" East along said right of way line 15.25 feet; thence North 41°35'30" West, 50 feet to a point on the Northerly right of way line of said Lakeside Drive; thence Northeasterly along said right of way line, along a curve to the right whose radius is 393.45 feet, a distance of 59.21 feet to the true point of beginning; thence North 46° 34' West 135.0 feet; thence South 84°25'24" East 218.82 feet to a point on the North line of said Lakeside Drive; thence South 59°15'39" West along said right of way line 124.16 feet; thence along said right of way line, along a curve to the left whose radius is 393.45 feet a distance of 15.31 feet to the true point of beginning.

LESS a tract of land in Government Lot 2 of Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho, more specifically described as follows:

From the Northwesterly corner of Lot 1 of Block 5 of Talache Village, a plat recorded in the records of Bonner County in Book 2 of Plats, page 78, thence North 30°44'21" West a distance of 50.00 feet to the Northerly right of way line of Lakeside Drive of said Talache Village; thence North 59°15'39" East along said Lakeside Drive a distance of 63.68 feet to the true point of beginning; thence continuing North 59°15'39" East a distance of 60.48 feet; thence leaving said Lakeside Drive, North 84°25'24" West a distance of 93.82 feet; thence South 46°34'40" East a distance of 57.58 feet to the true point of beginning.

PARCEL 2: A tract of land in the Mexico mineral survey number 2559, in Government Lot 2 of Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho, more specifically described as follows:

From the witness corner to corner number 4 of said Mexico claim, which point is North 79°44' West a distance of 104.28 feet from said corner number 4; thence North 79°44' West along the

Return to
Eldon Graves
PO Box 9156
Yakima WA 98909

North line of said Mexico claim a distance of 93.21 feet to the true point of beginning; thence continuing North 79°44' West a distance of 223.23 feet; thence leaving said North line, South 33°14'36" East a distance of 46.65 feet to the Northerly right of way line of the existing 30.0 foot public access road; thence South 62°39'16" East across said access road a distance of 32.99 feet; thence South 84°25'24" East a distance of 125.0 feet; thence North 56°41'23" East a distance of 48.30 feet to the true point of beginning. EXCEPT any portion of the above described tract lying within the 30.0 foot public access road as deeded in Document number 98895, in Book 115 of Deeds, page 305, in the records of Bonner County, Idaho.

See Attached Exhibit "A"

PARCEL 3 Lot 1, Block 5, Talache Village, according to the plat thereof recorded in Book 2 of Plats, page 78, records of Bonner County, Idaho, except that portion described as follows:

Beginning at the most Easterly corner of said Lot 1; thence Southwesterly along the Southeasterly line, thereof 200 feet; thence Northwesterly, at right angles to said Southeasterly line, to the Northwesterly line of said Lot 1; thence Northeasterly along said Northwesterly line, to the point of beginning.

SUBJECT TO the general taxes for the year 1987, a lien in the process of assessment, not yet due or payable.

SUBJECT TO reservations and/or exceptions contained in Warranty Deed, recorded June 25, 1975 as Instrument No. 166559, Book 154 of Deeds, Page 124, as follows: "..excepting therefrom all mineral rights." Affects: Parcel 1.

SUBJECT TO a Deed of Trust to secure indebtedness in the original principal sum of $30,000.00, and any other amounts and/or obligations secured thereby, which Grantors hereby assign to the Grantees, dated October 17, 1977, executed by Lloyd J. Andrews and Winnie May Andrews, husband and wife, as Grantors, with First American Title Insurance Company, Inc., as Trustee, and First Federal Savings and Loan Association of Coeur d'Alene as Beneficiary, to secure payment of $30,000.00 together with interest and any other obligations secured thereby: recorded October 18, 1977 under Document No. 192763, records of Bonner County, Idaho. Grantee herein shall assume the indebtedness secured by said Deed of Trust, as of October _____, 1987, in the sum of $25,125.00, and the terms and conditions of said Deed of Trust. Grantees shall fully satisfy and discharge the same according to the terms thereof, holding the Grantors harmless from any further performance of the indebtedness and Deed of Trust described hereinabove..

345220

SUBJECT TO any reservations and/or exceptions contained in Deed, in favor of Talache Land Company, Corporation, recorded May 17, 1976 as Instrument No. 175113, Book 159 of Deeds, Page 140, as follows: "Grantor reserves mineral rights". Affects: Parcel 2.

SUBJECT TO an easement with conditions reserved by Instrument in favor of Robert Privette, a single man, for ingress, egress, over and across the present existing roadway, and reserving a right of way to lay, install, and maintain a water line, recorded August 7, 1978 as Instrument No. 203310, in Book 176 of Deeds. Affects: Parcel 2.

SUBJECT TO any claims arising out of the difference between the mean high water line and the meander line of Lake Pend Oreille.

SUBJECT TO an estate or interest of the United States of America as per Judgment on Declaration of Taking filed by the United States of America, August 18, 1952, in the United States District Court for the District of Idaho, and recorded under Instrument No. 43056, in Book 14 of Judgments, page 106, records of Bonner County, Idaho. Affects: Parcel 3

SUBJECT TO any reservations and/or exceptions contained in Warranty Deed, recorded November 15, 1974 as Instrument No. 161819, in Book 151 of Deeds, Page 277, as follows: "..excepting therefrom all mineral rights."

TOGETHER WITH all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

AND the above named Grantors hereby covenant that the above described premises are free from all encumbrances, and that they, and their heirs, executors, and assigns will warrant and defend the above premises against all lawful claims and demands whatsoever, EXCEPT easements and rights of way existing or of record.

IN WITNESS WHEREOF, the Grantors have hereunto set their hands on the 30th day of October, 1987.

Lloyd J. Andrews
LLOYD J. ANDREWS

Winnie May Andrews
WINNIE MAY ANDREWS

STATE OF ~~IDAHO~~ Washington)
: ss.
County of ~~Bonner~~ Spokane)

On this 30th day of October, 1987, before me, the undersigned Notary Public, personally appeared LLOYD J. ANDREWS and WINNIE MAY ANDREWS, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

Roberta L. Hergert
Notary Public - State of ~~Idaho~~ Washington
Residing at: ~~Sandpoint~~ Spokane

WARRANTY DEED

EXHIBIT "A"

LESS a tract of land in the Mexico mineral survey number 2559, in Government Lot 2 of Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho, more specifically described as follows:

From the witness corner to corner number 4 of said Mexico claim, which point is North 79°44' West a distance of 104.28 feet from said corner number 4; thence North 79°44' West along the North line of said Mexico claim a distance of 93.21 feet; thence continuing North 79° 44' West a distance of 223.23 feet to the True Point of Beginning; thence leaving said North line, South 33° 14'36" East a distance of 16.65 feet; thence North 56°00'16" East to a point on the North line of said Mexico claim which is South 79°44' East of the True Point of Beginning; thence North 79°44' West to the True Point of Beginning.

FILED BY First American Title
BOOK ____ OF ____
PAGE ____ FEE 12.00
'88 FEB 2 PM 4 08
CLIFFORD D. CHAPIN
RECORDER OF BONNER
COUNTY BY _____ DEP.

INSTRUMENT NO. 8245

STI inc.

AFTER RECORDING MAIL TO
THE GRANTEE.

WARRANTY DEED

414777

11

For Value Received ELDON GRAVES, a single man

The grantor(s), do(es) hereby grant, bargain, sell and convey unto A. E. KEIR NASH and MARGUERITE BOURAAD NASH, husband and wife, as community property

the grantee(s), whose current address is 1033 N. Ontare, Santa Barbara, CA 93105

the following described premises, in BONNER County Idaho, to-wit:

See Exhibit A Attached hereto and made a part hereof.

Assessor's Parcel No: RP 0458005001A A / RP 55N01W085578 A

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee(s), their heirs and assigns forever. And the said Grantor(s) do(es) hereby covenant to and with the said Grantee(s), that he/she/they is/are the owner(s) in fee simple of said premises; that they are free from all encumbrances except specific matters of record as shown above,

and that he/she/they will warrant and defend the same from all lawful claims whatsoever.

Dated: October 23rd, 1992

X Eldon Graves
ELDON GRAVES

STATE OF)
) SS.
COUNTY OF)

On this 27 day of Oct, 19 92 before me, the undersigned, a Notary Public in and for said State, personally appeared Eldon Graves

known or identified to me to be the person(s) whose names is/are subscribed to the within instrument and acknowledged to me that he executed the same.

Notary Public in and for said County and State

Residing at:
Commission Exp:

RECORDING DATA:

FILED
Sandpoint Title Insurance
'92 OCT 30 P1 3:26
REC
COUN
DEP.

EXHIBIT "A"

PARCEL 1:

A portion of Government Lot 2 in Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho, more particularly described as follows:

From the Northwesterly most corner of Lot 3, Block 5 of Talache Village Plat, which point is on the Southerly right of way line of Lakeside Drive; thence North 48 degrees 24' 30" East along said right of way line 15.25 feet; thence North 41 degrees 35' 30" West 50 feet to a point on the Northerly right of way line of said Lakeside Drive; thence Northeasterly along said right of way line, along a curve to the right whose radius is 393.45 feet, a distance of 59.21 feet to the true point of beginning; thence North 46 degrees 34' West 135.0 feet; thence South 84 degrees 25' 24" East 218.82 feet to a point on the North line of said Lakeside Drive; thence South 59 degrees 15' 39" West along said right of way line 124.16 feet; thence along said right of way line, along a curve to the left whose radius is 393.45 feet a distance of 15.31 feet to the true point of beginning.

LESS a tract of land in Government Lot 2 of Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho, more specifically described as follows:

From the Northwesterly corner of Lot 1 of Block 5 of Talache Village, a plat recorded in the records of Bonner County in Book 2 of Plats, page 78; thence North 30 degrees 44' 21" West a distance of 50.00 feet to the Northerly right of way line of Lakeside Drive of said Talache Village; thence North 59 degrees 15' 39" East along said Lakeside Drive a distance of 63.68 feet to the true point of beginning; thence continuing North 59 degrees 15' 39" East a distance of 60.48 feet; thence leaving said Lakeside Drive, North 84 degrees 25' 24" West a distance of 93.82 feet; thence South 46 degrees 34' 40" East a distance of 57.58 feet to the true point of beginning.

PARCEL 2:

A tract of land in the Mexico Mineral Survey No. 2559, in Government Lot 2 of Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho, more specifically described as follows:

From the witness corner to corner Number 4 of said Mexico claim, which point is North 79 degrees 44' West a distance of 104.28 feet from said corner Number 4; thence North 79 degrees 44' West along the North line of said Mexico claim a distance of 93.21 feet to the true point of beginning; thence continuing North 79 degrees 44' West a distance of 223.23 feet; thence leaving said North line, South 33 degrees 14' 36" East a distance of 46.65 feet to the Northerly right of way line of the existing 30.0 foot public access road; thence South 62 degrees 39' 16" East across said access road a distance of 32.99 feet; thence South 84 degrees 25' 24" East a distance of 125.0 feet; thence North 56 degrees 41' 23" East a distance of 48.30 feet to the true point of beginning. EXCEPT any portion of the above-described tract lying within the 30.0 foot public access road as deeded in Document No. 98895, in Book 115 of Deeds, page 305, in the records of Bonner County, Idaho.

LESS a tract of land in the Mexico Mineral Survey No. 2559, in Government Lot 2 of Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho, more specifically described as follows:

From the witness corner to corner No. 4 of said Mexico claim, which point is North 79 degrees 44' West a distance of 104.28 feet from said corner No. 4; thence North 79 degrees 44' West along the North line of said Mexico claim a distance of 316.44 feet to the true point of beginning; thence leaving said North line, South 33 degrees 14' 36" East a distance of 46.65 feet to the Northerly right of way line of the existing 30.0 foot public access road; thence along the Northerly access road to a point that is South 79 degrees 44' East from the point of beginning; thence North 79 degrees 44' West to a point of beginning.

PARCEL 3:

Lot 1, Block 5, Talache Village, according to the plat thereof recorded in Book 2 of Plats, page 78, records of Bonner County, Idaho, except that portion described as follows:
Beginning at the most Easterly corner of said Lot 1; thence Southwesterly along the Southeasterly line thereof 200 feet; thence Northwesterly at right angles to said Southeasterly line to the Northwesterly line of said Lot 1; thence Northeasterly along said Northwesterly line to the point of beginning.

414777

SUBJECT TO:

GENERAL TAXES FOR THE YEAR 1992, A LIEN IN THE PROCESS OF ASSESSMENT, NOT YET DUE OR PAYABLE.

COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS AND/OR EXCEPTIONS CONTAINED IN INSTRUMENT:
FROM: TALACHE LAND COMPANY
RECORDED: NOVEMBER 15, 1974, JUNE 25, 1975 AND MAY 17, 1976
INSTRUMENT NOS.: 161819, 166559 AND 175113
AS FOLLOWS: "..EXCEPTING THEREFROM ALL MINERAL RIGHTS."
AFFECTS: PARCELS, 1, 2 AND 3, RESPECTIVELY

EASEMENT AND CONDITIONS THEREOF RESERVED BY INSTRUMENT:
IN FAVOR OF: ROBERT PRIVETTE, A SINGLE MAN
FOR: INGRESS, EGRESS, OVER AND ACROSS THE PRESENT EXISTING ROADWAY, AND RESERVING A RIGHT OF WAY TO LAY, INSTALL AND MAINTAIN A WATER LINE
AFFECTS: PARCEL 2
RECORDED: AUGUST 7, 1978
INSTRUMENT NO.: 203310

ANY CLAIMS ARISING OUT OF THE DIFFERENCE BETWEEN THE MEAN HIGH WATER LINE AND THE MEANDER LINE OF LAKE PEND OREILLE. (AFFECTS PARCEL 3).

ESTATE OR INTEREST OF THE UNITED STATES OF AMERICA AS PER JUDGMENT ON DECLARATION OF TAKING FILED BY THE UNITED STATES OF AMERICA, AUGUST 18, 1952, IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO, AND RECORDED UNDER INSTRUMENT NO. 43056, IN BOOK 14 OF JUDGMENTS, PAGE 106, RECORDS OF BONNER COUNTY, IDAHO. (AFFECTS PARCEL 3).

12

FILED BY Talache Land Co. Inc.

'94 AUG 2 PM 2 98

3.00

RECORDER OF BONNER COUNTY BY _____ DEP.

449888 EASEMENT

Talache Land Company, Inc., Grantor, for $1.00 and other valuable considerations, receipt of which is now acknowledged, now grants and conveys unto Francis L. Swanson, a single woman of Sagle, Idaho, the Grantee, the right of easement for the purpose of ingress and egress upon, over, and across the real property as described as follows:

The existing easterly 10' (ten feet) of Lots 1, 2, 3, 4, 5, 6, 7, and 8 of Block 5, Talache Village, Bonner County, Idaho.

To have and to hold all and singular the said easement rights to Grantee, her heirs, and assigns forever.

In witness whereof, Grantor has hereunto set his hand and seal this 1st day of August, 1994.

Talache Land Co., Inc.

Robert B. Goebel

by Robert B. Goebel, President

State of Washington)
)
County of Spokane)

Notary: Cindy L. Andrews

My commission expires: 3/18/98

CINDY L. ANDREWS NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES MAR. 18, 1998

I.C. Agency
Talache Rd

13

Robert B. Goebel
136 E. Rockwood
Spokane, WA 99202

August 24, 1994

Deborah Bennet
Keir and Marguerite Nash
Glen and Barbara Bandelin

Dear Neighbors:

So sorry about the inconvenience "my goof" created for you. When Francis came to me with the drafted easement, as approved by Hoffmeister, I stupidly acknowledged it without pursuit of the fact that it was your private land; you had every right to object.

I immediately directed Francis to amend the recorded easement, and clear your property. Prior to me going out of town for the past week, she had told me she had cleared your problem.

If this is not the case, call me and I will have Everett Coulter (my lawyer) take care of it. He is well versed with Talache problems as he has worked with me on the Kimes/Werd deal.

Harriet and I have always endeavored to improve our area. Community harmony is important to us, and we will endeavor to make this up to you.

Sincerely,

Bob Goebel

/kk

Mr. Hosack - for the background of Talache land mess, See p. 2, Section 2 through p. 6, Section 5

14

A. E. KEIR NASH

RESEARCH PROFESSOR (AMERICAN LEGAL HISTORY)

Talache Landing
P. O. Box 492
Sagle, Idaho. 83860
(208) 263-0765

Political Science Department
University of California
Santa Barbara, California. 93106
(805) 687-9315

August 21, 1994

Everett B. Coulter, Jr.
Turner, Stoeve, Gagliardi & Goss, Lawyers
301 West Indiana, P. O. Box 5210
Spokane, WA. 99205-0210.

Dear Mr. Coulter:

Discussions with Bonner County's Clerk of the Court Marie Scott and Assessor Tim Cochran cause me to write concerning the astonishing notarized document filed in county records on 2 Aug 1994 by your client, Robert Goebel. One official observed that the document's filing has created a legal mess. *The document declares that Robert Goebel, as president of Talache Land Co. (in a state of forfeiture in Idaho since 1973), has, without consultation, granted on August 1, 1994 an easement across properties separately belonging to three families (Cahn, Nash, and Bandelin) to a 3rd party, Frances Swanson. Of course, neither he nor the defunct company has such power.* See Idaho Code Title 30, Chapter 1, sections 134 to 148 -- **particularly section 135: "Consequences of forfeiture. (a) It shall be unlawful for any forfeited domestic or foreign corporation to excercise its corporate powers or to transact any business in this state."** I understand the title-insurance company involved in the potential Talache Landing property sale giving rise to the document's filing thought it inadequate to the purpose.

1. Implicit Threat to Numerous Talache Titles & Owners' Need to Apprise Title Insurance Companies?

However, an implicit threat to numerous Talache property titles tracing back to Talache Land Company seemingly underlies Mr. Goebel's document, and suggests the need for potentially affected owners to let their title insurance companies know. My title insurance policy from Stewart Title (Texas), for example, states: ".. The insured shall notify the Company promptly in writing ... (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title ... and which might cause loss or damage...." Prudence suggests informing the realtor and previous owner from whom such property was purchased.

The larger difficulty is this. There now lies in Bonner County records this document with adverse implications for these properties' marketability -- and damage to their current and future market value. *What happens (even if the purported easement is let drop) years hence when one of these properties is up for sale and title-insurance companies come across this document in the records?* Is such property's chance of sale at a good price enhanced, unaffected, or diminished? *There could be similar adverse implications and potential market value damages to all owners (whom I therefore "cc") of Talache properties whose titles trace back to E. C. Wert, Paul Wert, Charles Kimes, or the Talache Land Company.* If Mr. Goebel thinks today that his and Carver Kearney's recent purchase of Kimes and Wert interests in the defunct Talache Land Co. empowers his altering at will the terms of its sundry property sales 2 decades ago, documents might tomorrow appear in Bonner County records purporting, say, to grant a corner of Wayne and Kim Penttilas' property to Dan and Dee Soss, to turn one of the Eickermans' bedrooms into a guestroom for Robert Privette, or to rent Ms. Swanson's boat station to Dr. Mark Mays. Grantees might be thereby delighted. Involuntary "donors" might not.

Because Deborah Cahn has had a not altogether satisfactory conversation with Mr. Goebel and my efforts to reach him have not succeeded, I write to you. I also"cc" him, Deborah Cahn, Everett Hofmeister

Attachment F. Discussion of
the Idaho Nonprofit Corporation Act & the old Talache Shoreside Water Users Association

F1. Under the Idaho Nonprofit Corporation Act (Title 30-3), {1a} *although* the corporation was formed to the point of coming into legal existence [30-3-10-(2) "...a certificate of existence issued by the secretary of state may be relied upon as conclusive evidence that the ... corporation is in good standing"], and {1b} *although* it had an incorporator and Board of Director [sic=Andrews], {1c} it *never drew up* the bylaws required to function [30-3-21 "The board of directors shall adopt the initial bylaws for the corporation"] *nor* {1d} *appointed any other directors* beside Andrews, *nor* {1e} *held* the meetings required [30-3-46 "A corporation with members shall hold a meeting annually..." but note 'with members'], *nor* {1f} *secured the judicial relief required* not to meet periodically [30-3-14].

F2. The TSWUA Incorporation Articles provided: "VI. A certificate of membership shall be issued to each member based upon such requirements as shall be set forth in the By-Laws and no transfer of membership shall be valid or recognized...unless such transfer be in the manner provided therein." *Absent bylaws, there seem to have been no valid members besides Andrews ever--and no valid transfers.*

F3. 30-3-34 (3) says, "No person who is not an incorporator shall become a member of a cooperative corporation **unless such person shall agree to use services furnished by the corporation when such service shall be available through its facilities.**" Could it be said that the rights of persons who purchased memberships but failed to use them once the pipe got to the edge of their properties were lost by non-use? Could Andrews be successfully asked to repay such money?

F4. What are the effects, if any, of Andrews' declaration in October 27, 1980 letter to Finney that: "The names and addresses of all members...is [sic] as follows... Andrews... Nordeen...Harrell...Johnson...Foutz...Cahn (two)..Privette...unsold lots: Andrews...Swanson - two memberships." What of: "To date I have been fully paid by Nordeen, Johnson, Fouts, Privette, Andrews...."? What of: "I think the note from the Association to me should have a face value of $4900.00 with an interest rate of nine percent...the lowest allowed for this type of venture." *Do Association members, if any, owe Andrews $4900 + 9% interest?* And what of: "The small parcel of ground as laid out on the map last week when I was in your office with Allan Kaibert, should be transferred from Frances and me to the Association." This seems to have been about the only follow-up accomplished.

F5. Whatever the status of the bylaw-less and board-of-directors-less corporation for 1980-81, on December 1, 1982 the still bylaw-less and board-of-directors-less corporation went into a state of forfeiture because it [20-3-136 and -137] "failed to file its annual report." It became on that date [20-3-138] "unlawful ... to exercise its corporate powers or to transact any business in" Idaho.

F6. Although, for ten years thereafter [see 30-3-139] the director[s] "or any other person or persons appointed by any court of competent jurisdiction" could have [30-3-140] gotten it reinstated, on Mar 1, 1993 [30-3-141] the corporation was "dissolved by operation of law." All this inattention occurred, despite the fact that Privette in writing pointed the situation out to attorney-owners of the Fouts/Harkin cabin and to Soss [who did, however, point the matter out to the former.] *Further, during all this time no one took any steps to comply with the requirement known perfectly well to the "founder" and his attorney: As David Welch observed in Mar 6, 1980 letter to Gary Finney, "..I have not filed for a State of Idaho Water Resources Permit. As you [Finney!] pointed out, this will have to be done to conform to state law.."*

F7. Note in this connection that [30-3-141 (2)] "upon request, the secretary of state shall issue a certificate verifying the dissolution of any [such] corporation" and (3) "the district court in the county of the corporation's registered office shall have full power to liquidate the assets of a corporation so dissolved...."

F8. Note that though Andrews' 1980 letter counts Privette as paid (and one can't tell from the letter the actual circumstance that it wasn't a cash--rather a work--"payment"), we know from Privette's own declarations that the payment was in the form of work for Andrews and Cahn--on the dock & seawall.

F9. Finally, what of the assurances of Finney in letter to Cahn of May 27, 1986--though seemingly Finney had never followed up on Andrews' requests that Finney secure a withdrawal permit. N.B., the geographic restrictiveness of Finney's May 27, 1986 letter's statement of Cahn's & presumably anyone else's rights: **"...you have two (2) parcels of real estate that are entitled to be served by the system. These are your two .. adjacent to the other present users. Each parcel's use is only for the use of a normal family residential use. The water usage is transferrable with the parcel of land to which it is attached."** *If Finney's version of the original restrictions is correct, the rights not only are restricted to parcels "adjacent to the other present users," but are also not separable from their original properties. On this view, Privette couldn't detach his now-Soss-land water-right or convert it into an easement to another parcel as his deed of sale to Soss purports to do. Cahn's 2nd right is mysterious as to location.*

(Frances Swanson's attorney), the Bandelins and their attorney in related litigation (Daniel Featherston). Mr. Featherston was, I gather, recently consulted by the possible purchaser of Frances Swanson's Talache Landing Block 5 shoreside Lots 7 & 8 whose concerns seem to be the specific impetus for this odd document. The possible purchaser's concern is posed in the following question.

> Is there is a lawful easement from lots 7 & 8 across sewage system lot 6 [whose ownership is in legal dispute -- Swanson, *or* Swanson & Stewart (lots 9, 10, 11 owner), *or* Swanson, Stewart, & Bandelin?] across lots 2 & 3 [Bandelin], across "lot 1 less Tax 1" [Nash], and across Tax 1 of Lot 1 [Cahn] to the only topographically practical egress, the county road [Lakeside Drive on 4 March 1961 plat map]?

Before doing my best to outline my understanding of the relevant law and the history of Talache properties as both affect current property holders [for the benefit of these non-lawyers' information, I include some details with which you are doubtless familiar], may I make three observations? One, as several adjacent property owners on the same water system and as Everett Hofmeister know, I have heretofore assisted Frances Swanson's efforts to gain a water system hookup to a nearby property she is also trying to sell. So I am dumbfounded by this effort behind Cahn and Nash backs.

But two, the inescapable effect of this document (at least until rescinded) seems to be to make it impossible for the Cahns, the Bandelins, or the Nashes to sign any easement agreements. We could be taken as concurring in the document's broader implications. Perhaps Frances Swanson can obtain an easement not freighted with such broader implications about defunct Talache Land Company's posthumous powers and that does not pose the spectacle of one private party long afterwards seeking to engraft limitations on sales completed without any scintilla of evidence of an easement apparent in the property purchase documents. But Mr. Goebel and Ms. Swanson seem to have tied at least Cahn and Nash hands for now. One consequence, I'm sure you'll agree, is: Given Idaho's new property sale disclosure law (effective July 1994), there is need to inform selling realtors.

Three, during Mr. Goebel's negotiations re acquiring Talache Land properties, I freely loaned him documents I had gathered during my own inquiries. His May 6, 1994 letter to me states: "All things have a conclusion! ... Hopefully, this will conclude your research .... It appears everyone will be a winner." Unfortunately, the August-2-recorded document looks more like re-opening a troubled history of Talache litigation and alleged fraud going back into the 1960s, taking a very odd turn in September 1974, quiescent until 1989, and more recently threatening lengthy lawsuits. I am enormously puzzled as to why Mr. Goebel should choose this course. Perhaps you can enlighten me. The following points appear relevant. Kindly let me know if you disagree with my conclusion that Mr. Goebel had on August 1, 1994 no legal power to grant the easements in question as, purportedly, president of Talache Land Company.

2. Idaho Status of California-Incorporated Talache Land Company in 1972 When it Acquired Talache Properties

Talache Land Company was originally incorporated in California by dentist Charles Kimes (then of Salinas, now of Phoenix) at some point perhaps prior to[1] conclusion of a Kootenai County suit in which Kimes won on April 17, 1970 (recorded April 21, Bonner County Records, Instrument #126889) a judgment of $190,690.50 (itself wholly unconnected with Talache properties) against E. C. Wert, Sr. (then of Spokane and now of somewhere in South America). Talache Land Company was incorporated in California prior to (or just after) a February 1972 Bonner County sheriff's sale (#138872) to satisfy Wert's debt to Kimes of Talache property allegedly held variously by E. C. Wert himself or as trustee for some unstated purpose in consequence of a 15 March 1968 quitclaim deed (Instrument # illegible on my copy but filed 18 March 1968 and in Book No. 127 of Deeds, p. 424) to him from a Washington corporation named D-K-C, or by Wert as trustee

[1] I say "at some time perhaps prior to" because the incorporation date given on the California document available (not the original charter) is 1956. This is probably a later typo because Kimes had no holdings in Bonner County prior to the 1972 sheriff's sale and is unable (in conversation) to recollect so early an incorporation date.

for a family trust set up on 3 December 1969 a few months before trial (#125542), or under the name of a Spokane-based mining corporation he controlled, Imperial Silver, and to which he had conveyed mineral rights in a document dated 15 March 1968 but not recorded until May 2, 1969 (#121564). As of the sheriff's February 1972 sale, the California corporation was seemingly empowered under Idaho statute to conduct Idaho business. It is further clear: (a) that Kimes immediately after the sheriff's sale quitclaimed the properties received to (his) Talache Land Company; and (b) that, leaving someone in charge here (I believe, one Basil Hartley) and the Stockton-California-based secretary and treasurer, Comer and Comer, of Talache Land Company handling matters in California, Kimes (busy with dental practice and hotel/motel holdings outside of Idaho) thought little or nothing further about the matter for some 17 years. He was alerted to the subsequent history in 1989 by one Robert Privette (of Talache and Spokane).

Kimes was so inattentive to his rights (sleeping upon them for almost 2 decades) that he failed to secure a sheriff's deed confirming his title until May 14, 1992 -- rather than, as one acting with normal attentiveness would have done, securing such sheriff's deed in February 1973, at the expiration of the 1 year redemption opportunity provided by Idaho law to Wert. In the meantime there happened **[without title insurance companies noticing -- despite obvious tip-offs in a bizarre document (#162406), entitled "Release of Judgment Lien," dated 30 September 1974, but not filed for record until December 12, 1974, at the request of Gem State Title Co.]** an extraordinary sequence of events. Key to all is this document.

3. The Bizarre Sept 1974 "Release of Judgment Lien" Document, notarized by Glen Bandelin as signed by E. C. Wert "as Vice President of Talache Land Company," but seemingly signed by son Paul Wert

Instrument #162406 (enclosed) "Release of Judgment Lien" is surely one of the oddest documents in Idaho records. It is important because on it chiefly rest all sales of Talache Land parcels under the company's name from 1974 on. Please examine it -- bearing in mind:

(1) that, as of the February 1972 sheriff's sale to Kimes, E. C. Wert had no power to dispose of Talache properties (unless an effort, never made, had succeeded in showing that he held legitimately as trustee for the Wert family or some other beneficiaries and that hence the properties were immune from sheriff's sale -- perhaps the incompleted purpose of the above-mentioned Dec 1969 trust document);

(2) that Talache Land Company was Kimes' company and he its president (but which, interestingly, in its April 3, 1972 California-filed list of officers *contained a blank beside the title "Vice President"*);

(3) that the notary public signing the document was Glen Bandelin, who grew up and practiced law in Sandpoint but who in recent years has been principally located in Costa Rica, who is listed as early as the 1961 Talache plat map as the Secretary-Treasurer of Talache Lodge, Inc.,[2] who is mentioned as Idaho statutory agent for Wert's Imperial Silver Corporation in the 24 Sept 1975 Certificate of Qualification signed by Idaho's Secretary of State, and who was a principal officer of Gem State.

Three oddities are immediately apparent. First, *Bandelin notarizes that E. C. Wert appeared before him, but the signature is obviously not that of E.C. Wert -- rather seemingly that of his son Paul Wert, currently a Spokane physician, I believe.* The signature looks utterly unlike E. C. Wert signatures on many other documents available to Bandelin as Gem State Title officer, not to mention as agent of Wert's

[2]A predecessor Idaho corporation to which assets of the earlier in-the-1920s-very-profitable, but by the 1940s not-profitable Talache silver mining company were turned over in the late 1940s, which sought to develop the area as a vacation site, and operated a lodge near the site of Goebel's property until it burned down. *It engaged in land swaps with the U.S. government in the early 1950s.* In the early 1960s Talache Lodge sold out to Lou and Vern Gabel (aka Talache Development), and during the 1960s a complicated series of suits ensued involving Talache Lodge, Gabel/Gabel/Talache Development, E. C. Wert, one of the partners in D-K-C (Crick) which quitclaimed (see above) to Wert in 1968. The succession is complex and I shall not go into it here -- unless you need the information. Suffice it to say here: (1) only the small minority of Talache Landing properties with title chains *Lodge > Gabel&Gabel/Talache-Development > next purchaser* look plainly "regular"; (2) it remains unresolved whether Wert's 1968-1970 title-claims were sound.

mining company. Does it not seem a little remarkable that Bandelin, so long a Wert associate, confused the physical appearance of father and son?

Second, the document purports to have E. C. Wert be vice president of (Kimes') Talache Land and forgive E. C. Wert as debtor to Talache Land. Vice-president of course was the office never filled by Kimes. *Any innocent but alert Sandpoint title officer should have seen something might be amiss* -- and checked further into the public records of the suit and sheriff's sale. Among the first fruits of exploration would have been finding that Kimes' company had forfeited its right to do business in Idaho nearly a year earlier.

Third, in Gem State Title's case, however, the evidence lay closer to hand -- in the company's own then recent letter files. A Gem State letter of May 16, 1974 had replied to one Lucinda Weiss' inquiry concerning the possibility of obtaining title insurance were there to be a purchase of certain Talache property of whom the then "Vestee: [was] Robert B. Goebel." The letter gives a lengthy list of 10 fee title exceptions, including the 1970 Kimes-Wert suit and the 1972 assignment of judgment from Kimes to Talache Land Company.

Robert Goebel's first business activities in the area date back to the middle 1960s and include: (a) purchase 29 Aug 1966 of beach lots 11 and 12 in Block 5 from (Gabel's and Gabel's) Talache Development; (b) purchase again on 18 Oct 1968 of the same properties (as well as of beachlot 10) from Wert; (c) on the same day a mortgage loan from Goebel to Wert in the amount of $20,000 for which the security was Wert's (alleged) title in certain St. Reca/Talache properties (now largely owned by Goebel and purchasers from him) and in nearby Exchange 821B properties (which later went to Cahns in the aftermath of another suit against Wert for failure to pay back an entirely different mortgage).

Bandelin was the notary public for the 1968 Wert/Goebel mortgage. At about the time of the 1974 "Release of Judgment Lien" document, Frances Swanson -- earlier introduced by Goebel to Wert -- came into the employ of Gem State Title and also took options and/or became agent for the Wert claimed properties which began to sell shortly after the document's recording. My copy of the 16 May 1974 Gem State letter to Lucinda Weiss is extensively annotated perhaps in Swanson's handwriting.

Local title company knowledge of the tangled state of Talache properties was not limited at the time to Gem State Title. Thus Bonner Title replied on March 10, 1972 to Lloyd Andrews' attorney (Patterson of Humphries, Patterson and Humphries, Spokane) with an essentially similar list of judgments and tax liens -- and noted that the last deed of record on a St. Reca parcel "runs to: Andrews... and Andrews .... undivided 1/2 interest, and ...Swanson...undivided 1/2 interest....warranty deed ... November 30, 1970. An August 4, 1972 letter from Patterson to Swanson and Andrews discussed the "property ... mixed up with Kimes, Hartley, Wert and the Wert family" and *Bonner Title's view "that it was getting such a mess that .... they were concerned about insuring any of the property in that area...."* A June 19, 1973 letter from Patterson to Andrews relates that Basil Hartley had stopped into see him the previous day and said "they are getting things unraveled and the property is going to revert to Wert... and Kines[sic] will apparently be out of it."

The prediction seemed to be born out a year later with the 1974 Release of Judgment Lien -- with one exception. Kimes was out of it [indeed, perhaps out to lunch] but didn't know he was. How could this all have come to pass? Was a bold scheme afoot, but a foolhardy one with no protection against Kimes' coming back to life in Idaho? Writing 18 years later, on July 14, 1992, to his Sandpoint lawyer, Kimes complained that the lawyer had informed him "several times by telephone of gross fraudulent sales of Talache Land Company properties by several parties in Sand Point [sic] which possibly could be defined as a conspiracy" but let his "letters and faxs go unanswered."

4. Changed Addresses on Tax Notices and A Curious Redemption by Cominco American

Three documents of the middle 1970s offer a partial possible explanation as to why -- if Kimes' letter's description of what was going on is correct -- by September 1974 the parties could anticipate getting away with, to quote Kimes, "gross fraudulent sales." An 8 Feb 1974 Tax Deed (Instrument #155494) shows that Wert had been in arrears in tax payments on these Talache properties from 1970 (two years before the sheriff's sale). For whatever reason, perhaps habitual casualness in financial matters, Kimes did not notice this when taking them over in 1972. Additionally, he made no efforts to pay 1972 or 1973 property taxes. On 8 Feb 1974, accordingly, Alice Nelson, County Treasurer/Tax Collector, conveyed all Talache Land Company properties to Bonner County. Not quite three months later, on 2 May 1974, a Redemption Deed (#157129) reconveyed the properties back to Talache Land Company -- not because Charles Kimes had bothered to do anything about the situation (he had not), but rather because the delinquent taxes were paid off by Cominco American, a mining company which, prior to Kimes' 1972 acquisition, had leased, and retained, the right to conduct exploratory operations with an eye to re-opening the old silver mines. Or (inasmuch Kimes' attorneys, in the 1990s, could find neither a person recollecting, nor a record, at Cominco American of such tax redemption payments) someone else -- not Kimes -- purporting to represent Cominco American, redeemed.

The third relevant middle 1970s document is a sheet called "Real Property Valuation Summary" detailing the market values and assessed values of 11 mining claims and 2 lots in Exchange 821 for the years 1971 to 1976. *The curiosity lies not in the values, but in the alterations of addresses* whither the assessment notifications were sent. *The first address, typed, is to "Talache Development Corp c/ E. C. Wert, Trustee, 327 W. 8th, Spokane, WN."* Trustee of Talache Development?? No such beast. This is curious also inasmuch as Wert, in taking the properties from D-K-C on 15 March 1968, in deeding the mining rights over to his Imperial Silver on the same day, and in trying to set up the 3 Dec 1969 family trust, never used the name Talache Development, and, by the latter date, technically couldn't. That was the old Gabel & Gabel company, which was forfeited for non-payment of annual fees by the Idaho Secretary of State on 2 December 1968.

The second address, written in, with the first crossed out, is to: "Talache Land Company Corp., P. O. Box 577, Salinas, Calif." That address -- in the city of Charles Kimes' then residence -- suggests that at some point he received tax notices (but ignored them), or alternatively intended to receive them, but didn't and forgot to follow up. The alternative is possible because that second address is crossed out, though the name Talache Land Company is retained, and a third address (illegible as to city in my copy) is added. The third is presumably where the tax notices were thereafter sent -- for some time. I say "for some time" because as a later document (Bonner County Property Record Card) and Assessor Office computer printouts show, at least by the early 1990s, the old Talache Development name was still in use as well as the following name and address: "Talache Land Co, Corp., c/o Ted Wert Jr., 1741 W 11th, Spokane, WA. 99204."

5. Fair Inferences About Charles Kimes' "Protection of His Interests" and Possible Capitalizing Thereon By Others

Ted Wert, Jr. of course is a different son of E. C. Wert from Paul Wert. But from all the foregoing, the following inferences seem reasonable.

1. BY 1974 CHARLES KIMES WAS DISPLAYING A PATTERN OF CARELESSNESS ABOUT HIS TALACHE LANDING INTERESTS.

2. SUCH CIRCUMSTANCE WAS OBVIOUS TO A "LOCAL" FAMILIAR WITH THE SITUATION.

3. A PERSON, RIGHTLY SITUATED, COULD CAPITALIZE ON THIS BY CONVERTING THE NAME TALACHE LAND COMPANY TO HIS OWN USE.

An alternative explanation is possible -- that Kimes in fact deeded over the right to use the Talache Land Company name to E. C. Wert, Ted Wert, and/or Paul Wert and to redeem the properties. But neither the diligent searches of two different attorneys employed by Kimes in the 1990s, nor Kimes' (hazy) recollections, nor the failure of any Wert to come forward with such evidence, nor their willingness to quitclaim in 1994 to your client, Robert Goebel, and Carver Kearney -- points in such a direction.

Fortunately, we need not resolve this matter here to deal with the instant situation and Mr. Goebel's current powers. What happened generally from 1974's Redemption of Judgment Lien on as to property sales in the area is now clear. They were made either in E. C. Wert's name to others (as they had to Goebel -- see Part 3, p. 4 above) or in Talache Land Company's name to others (frequently via the agency or assistance of Frances Swanson). Innocent parties purchased recreational properties with written deeds that they reasonably took to be valid. Title companies, local and national, issued insurance policies.

Such might have continued to be the case for good -- with no "noise" from Kimes -- had it not been for a second track of mineral rights business conducted by one or more Werts. On 28 May 1976 Wert (this time with a signature that looks very much like his) deeded both "Imperial Silver Corp., a Washington Corporation" and "Talache Land Co., Corporation, a California Corporation" (Instrument #181568) mineral rights in various patented claims to Silver Butte Mining Company. On the same day the document was notarized in Washington with Wert appearing as president of Imperial and vice president of Talache Land and Sarah Wert (wife or daughter) as secretary of both corporations. On 22 November 1976 the deed was filed for record in Bonner County "at the request of Harlan McConnaughey," an E. C. Wert associate. Twelve years later, on 2 February 1988, Clifford Hohman, acting as President of Silver Butte, quitclaimed various of these mineral rights to Robert A. Privette. Sometime thereafter Privette (I believe because, having no bank account, and paying in cash, he had no cashed check as evidence) became dissatisfied with some of the uncertainties in the quitclaim. Unable to obtain satisfaction from Hohman or the Werts and researching documents in county records, Privette came across Kimes' name, tracked him down in Arizona, and informed him of what had transpired. The rest of the story is familiar and recent.

6. Implications Specifically for Goebel's August 1, 1994 Document and More Generally for His Powers and their Effects Upon the Rights of Other Talache Landing Property Holders

Goebel's 1994 acquisitions of Kimes' and various Werts' interests in Talache area properties suffice, of course, to remedy any defects in Goebel's own titles deriving from Wert or Talache Land. The same applies to situations where there are no 3rd parties in possession with written titles whose provisions potentially conflict and where the only prior conflict pertained to whether Kimes or Wert possessed a parcel or appurtenant right.

Judging from Mr. Goebel's filing of his August 1, 1994 purported-easement document and from brief comments he has made to me in passing concerning his purchases, I am not convinced that he has thoroughly thought through the implications for situations where 3rd party interests and rights are also involved. Let me see if you do not agree with me as to these.

To use the well worn legal cliche -- like water, legal powers can't rise higher than their sources. Wert/Talache Land and Kimes/Talache Land are the relevant sources. I put aside here the unlikely alternative mentioned atop page 6 above and whether there might be other sources than Goebel's 1994 powers (e.g., some pertinent declaration in some other public record) to resolve Ms. Swanson's easement dilemma. The former would abort the instant difference (as Goebel could not take back what Wert had legitimately granted, or give what Wert had not). The latter is irrelevant to limits on Goebel's powers.

Assume the more likely situation -- as characterized in Kimes' above quoted letter to his attorney. Against 3rd parties in titular and actual possession, Goebel cannot derive positive powers of his own just

from defects in Wert's powers. For that to happen, something has to come from the powers and rights that Kimes could have exercised, had he chosen to proceed further on his own against Wert and won, rather than quitclaim to Goebel.

Goebel's powers, in other words, are limited both by what Kimes' would have been and by the same Idaho statutes and case decisions that would have limited Kimes -- particularly those pertaining to statutes of limitations, to due diligence in exercising rights (so not to lose them by sleeping on them), and to adverse possession. Most particularly limiting are the relevant provisions of Idaho Code 5-201 to 5-210. As I understand you are licensed to practice in Idaho as well as Washington, and as this letter is already detailed, I shan't burden you or it with a rehearsal of the relevant precedent applying to the Swanson easement question. Rather, let me suggest that the Idaho precedent discussed in the attached letter to Thomas Cooke (and commented upon in the attached letter by Everett Hofmeister) bears here with equal force but in different direction from how it does in the situation described and analyzed in those letters.

There the situation was such that the law winds up for the title holder, against the would be adverse possessor without written contrary deed (i.e., an I.C. 5-209 situation). Here, if [from Kimes' position (now Goebel's)] the adverse possessor be the current Talache-Land/Wert-deriving title holder, one has, at worst from the title-holder's perspective, an I.C. 205-7 & 8 situation.

Moreover, behind lie two generally applicable circumstances that would further weaken any Kimes'-based Goebel claims against such parties. First is that the name used by Wert was the one most plausibly acceptable by property purchasers exercising reasonable prudence -- it was on its face the legally/historically correct name, Talache Land Company. It was precisely Kimes' own carelessness about officer-staffing from 1972-1974 that permitted any such Wert usage. Second is the long passage of time after 1974 before Kimes did anything about it -- and then not because of his own belated diligence, rather because Mr. Privette bopped him on the head with the news. As Mr. Goebel knows, at Mr. Privette's instigation, I conferred extensively during Fall 1993 and early Winter 1994 with Dr. Kimes as to the possibility of my entering into some arrangement in partnership with Kimes to try to produce resolution of all the Talache Landing property doubts and conflicts relating to Wert/Kimes. The more I got into it, however, the more convinced I became that Kimes continued to display similar characteristics. Let me charitably describe them as embodying to a discomforting degree fecklessness in relating one day's discussions to the next and erraticness in timely reponsiveness. Increasingly, it struck me that his case against all except Wert and associates was as weak as it could be. And, I had no interest in coming against innocent bona fide purchasers. Therefore, about the time that in a moment of low comedy (according to Privette) Kime's just-retired-from-military-intelligence son-in-law came here from Salinas to conduct explorations and inadvertently allowed a handgun to drop from his briefcase to the floor of his motel room, I decided this was "no go." I think Mr. Goebel's "easement effort" is "no go" also. As Roger Hanlon (one of Kimes' attorneys) once observed, the greatest value in the Kimes/Wert situation may have been its entertainment value.

The instant situation has the additional irony that, if Mr. Goebel could succeed on behalf of himself or Swanson against Cahn or Nash, it would in turn be against the chain of previous owners of their parcels Cahn or Nash or title insurance companies could come. In this chain, right after Wert/Talache is Frances Swanson. The final irony is that I, at least, had previous to this contretemps given no reason whatsoever to Frances Swanson to think Nashes would not grant an easement, if needed, when formally approached. Now as I observed earlier, by obtaining this Aug. 1 document, she has tied Cahn and Nash hands, making them powerless to help her.

I therefore ask that you persuade your client to adopt what the Bonner County Clerk of the Court indicated would be the least conflictual and most efficacious course, a course that would lessen the damage done. That is to file with that Court a notarized document indicating that the August 1 document

was filed there in error. If Mr. Goebel does so, other Talache/Wert-deriving property-owners can be at ease. If he does not, they had best en masse inform their title insurance companies. Presumably, further, Goebel's agreements don't prevent damaged 3rd parties from suing one or more Werts, if appropriate. I shall be happy to discuss the situation with you over the phone. In the meantime I am writing Everett Hofmeister urging him to advance with his client the view that she presents a much more elegant picture of elderly serenity on her rocker than off. Thereon situated, she will be better able to practice the motto on her desk, "Old age and treachery will outwit youth and skill."

Sincerely yours,

A. E. Keir Nash

cc: Robert Goebel
Deborah Cahn
Hofmeister
F. Swanson
Bandelins
D. Featherston
Other Talache Land/Wert title deriving owners
Sandpoint Title
Stewart Title Insurance (Texas)
Kaniksu Realty (att: Sue Moon, seller's agent for our property)
Panhandle Realty (seller's agent for our property)
Coldwell Banker (att: Paul Dukes, seller's agent for Nash/Swanson property)
Marie Scott, Clerk of County Court
Tim Cochran, Bonner County Assessor

15

FILED BY E Hufsmith
'94 OCT 18 AM 8 20
MARIE SCOTT
RECORDER OF BONNER
COUNTY BY SK DEP.

454051

ACKNOWLEDGMENT OF NULLITY OF INSTRUMENT

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, that certain instrument purporting to convey an easement was recorded August 2, 1994, as Instrument 449888, records of Bonner County, Idaho, wherein Frances L. Swanson was grantee; and

WHEREAS, the grantor, TALACHE LAND COMPANY, INC., was at said time a corporation that forfeited its right to do business on November 30, 1973, and was and is a defunct corportation; and

WHEREAS, it is acknowledged that said instrument did not convey any right, title or interest, NOW, THEREFORE;

COMES NOW, Frances L. Swanson, a single woman, without relinquishment of any right or claim to a pre-existing easement or easement which may otherwise exist, does hereby acknowledge that said instrument No. 449888 was executed and filed in error and should be deemed a nullity and cancelled.

This acknowledgment shall be binding upon the heirs, successors and assigns of Frances L. Swanson.

DATED this 5th day of October, 1994.

Frances L. Swanson
Frances L. Swanson

454051

STATE OF IDAHO)
ss
County of Bonner)

Frances L. Swanson being first duly sworn, deposes and says:

That she is the declarant in the above entitled matter and has read the above and foregoing acknowledgment, knows the contents thereof and that the same is true as affiant verily believes.

Frances L. Swanson
Frances L. Swanson, Affiant.

SUBSCRIBED AND SWORN to before me this 5th day of OCTOBER ~~SEPTEMBER~~, 1994.

Notary Public in and for the State of Idaho, residing at [illegible]
My Commission expires 4-16-98

State of Idaho)
ss
County of Bonner)

I, Marie Scott, County Recorder in and for the County and State aforesaid, do hereby certify that the foregoing instrument is a true and correct copy of the original thereof, recorded in my office for instrument number

454051

In Testimony Whereof, I have hereunto set my hand and affixed my official seal this 22 day of December 1994

[illegible]
County Recorder, Bonner County, Idaho

By [illegible] Deputy

453477

REVOCATION OF EASEMENT ORIGINALLY GRANTED IN ERROR

Robert B. Goebel, individually, and on behalf of Talache Land Company, Inc., a defunct corporation, now revokes and rescinds that certain easement as contained in the easement under Recorder's File No. 449888, recorded in the Bonner County Recorder's Office on August 2, 1994, which describes the following real property:

The existing 10' of Lots 1, 2, 3, 4, 5, 6, 7, and 8 of Block 5, Talache Village, Bonner County, Idaho.

The undersigned revokes the easement for the reason that it was granted in error and that Talache Land Company, Inc., has no power or authority to convey any easement and that Robert B. Goebel does not have the power or authority to convey the easement as granted.

IN WITNESS WHEREOF, Robert B. Goebel has set his hand and seal this 30 day of September, 1994.

ROBERT B. GOEBEL

STATE OF WASHINGTON)
) ss.
County of SPOKANE)

On this day personally appeared before me Robert Goebel, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 30 day of September, 1993.

NOTARY PUBLIC in and for the State of WASHINGTON, Residing at SPOKANE
Commission Expires 4-1-98

State of Idaho)
) ss
County of Bonner)

I, Marie Scott, County Recorder in and for the County and State aforesaid, do hereby certify that the foregoing instrument is a true and correct copy of the original thereof recorded in my office by Instrument No. 453477

In Testimony Whereof, I have hereunto set my hand and affixed my official seal this 22 day of December 1994

MARIE SCOTT
County Recorder, Bonner County, Idaho
By Deputy

FILED BY L. Caulk
'94 OCT 5 PM 3 08
RECORDER OF BONNER COUNTY
DEP.

A

17

INSTRUMENT NO.

QUITCLAIM DEED 460397

For Value Received Robert B. Goebel and Harriet M. Goebel, Husband and Wife

do hereby convey, release, remise and forever quit claim unto A. E. Keir Nash and Marguerite Bouraad Nash, Husband and Wife

the following described premises, to-wit:

See Exhibit A Attached hereto and made a part hereof.

Sandpoint Title Insurance
FILED BY
'95 FEB 13 PM 12 50
MARIE SCOTT
RECORDER OF BONNER
COUNTY BY DEP.

together with their appurtenances.

Dated January 11th, 1995

Robert B. Goebel

Harriet M. Goebel

STATE OF Washington)
) ss.
COUNTY OF Spokane)

On this 30th day of January 19 95 before me, the undersigned, a Notary Public in and for said State, personally appeared Robert B. Goebel

known or identified to me to be the person(s) whose names is/are subscribed to the within instrument and acknowledged to me that he executed the same.

Notary Public in and for said County and State

Residing at: Spokane
Commission Exp: 2/18/98

RECORDING DATA:

614

162406

RELEASE OF JUDGMENT LIEN

KNOW ALL MEN BY THESE PRESENTS:

That for and in consideration of One ($1.00) Dollars and other valuable considerations paid to TALACHE LAND COMPANY CORPORATION, a corporation, by E. C. WERT and JOCELYN M. WERT, husband and wife, receipt of which is hereby acknowledged, now TALACHE LAND COMPANY CORPORATION does hereby release property in the County of Bonner, State of Idaho a description of which is hereby attached as Exhibit "A" and made a part hereof by this reference as if fully set forth herein: from all claim to or interest in the same, or any part thereof which the said TALACHE LAND COMPANY CORPORATION may have under and by virtue of the Judgment rendered on the 17th day of April, 1970, in The District Court of the First Judicial District in the County of Kootenai against the said E. C. WERT and JOCELYN M. WERT, husband and wife, for the sum of $190,690.50, and from all liens or encumbrances that have attached to the same by reason of the recovery of the Judgment as free and clear, in all respects, as though the Judgment had not been rendered.

DATED this 30 day of September, 1974.

TALACHE LAND COMPANY CORPORATION

BY: _____
Vice President

STATE OF IDAHO)
) ss.
County of Bonner)

On this 30 day of September, 1974, before me the undersigned, a Notary Public, in and for said County and State personally appeared E. C. WERT as Vice President of TALACHE LAND COMPANY CORPORATION, respectively, and known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal the date last above written.

_____
Notary Public in and for the State of Idaho.
Residing at: Sandpoint.
My Commission expires: July 26-78

Sam State Title Co.

BANDELIN & ASSOCIATES
ATTORNEYS AT LAW
P.O. BOX 816
SANDPOINT, IDAHO 83864
TEL. (208) 263-3109

RELEASE OF JUDGMENT LIEN

ARTICLES OF INCORPORATION

OF

TALACHE SHORESIDE WATER USERS ASSOC., INC.

18

KNOW ALL MEN BY THESE PRESENTS:

That I, the undersigned, have this day voluntarily associated myself and do hereby and by these Articles of Incorporation unite and associate myself for the purpose of forming a non-profit corporation pursuant to the Idaho Nonprofit Corporation Act, Idaho Code §30-301 and following, for the maintaining, operation and distribution of water for the property lying within Bonner County, Idaho, in the area known as Talache, Idaho.

ARTICLE I

The name of this corporation shall be TALACHE SHORESIDE WATER USERS ASSOC., INC.

ARTICLE II

The objects and purposes for which this corporation is organized are as follows:

(1) To own, operate, provide, care for, and maintain a water distribution system in such a manner as to protect the health of the association members in accordance with state and Federal laws and regulations, for the maximum social and residential use of the members and their guests; and generally to further those purposes for the members, and to do and perform any and all acts or make such contracts that may become necessary or convenient for the full and perfect enjoyment and the carrying out of the purposes aforesaid; and in that behalf, to purchase, sell, own, use, lease or improve personal property and real

estate which may be acquired or deemed necessary or convenient for the purpose of carrying out any of the objects of the corporation.

(2) To borrow money and mortgage or hypothecate any of the property of the corporation as a security for the payment thereof, with power to receive gifts or bequests on behalf of the purposes of said corporation, and to loan and extend credit in the furtherance of said purposes.

ARTICLE III

The initial registered agent and his location are Mr. Terence Nordeen, P.O. Box 682, Sandpoint, Idaho 83864.

ARTICLE IV

The number of directors who shall manage and conduct the affairs of this corporation shall not exceed seven (7), but shall be in the number as provided by the By-laws. The directors shall be elected by the members at the organization meeting for a term of one (1) year. The directors, by the By-laws, may increase the term of the directors.

ARTICLE V

The duration of this corporation shall be perpetual. It is not organized for pecuniary profit and has no capital stock.

ARTICLE VI

A certificate of membership shall be issued to each member based upon such requirements as shall be set forth in the By-laws as established by the Board of Directors and no transfer of membership shall be valid or recognized by this corporation unless such transfer be in the manner provided therein.

ARTICLE VII

The initial incorporator and Board of Director is as follows:

Lloyd J. Andrews, P.O. Box 1866, Bellevue, Washington 98009

Whose numbers may from time to time be changed in accordance with the duly adopted By-laws of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hands and seal this 14TH day of ~~August~~ October, 1980.

Lloyd Andrews
LLOYD J. ANDREWS

STATE OF ~~WASHINGTON~~ Idaho)
) ss.
County of ~~King~~ Bonner)

On this 14TH day of ~~August~~ October, in the year of 1980, before me, the undersigned Notary Public, personally appeared LLOYD J. ANDREWS, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same.

Mary A Feeney
Notary Public - State of ~~Washington~~
Residing at Sandpoint Idaho

19

State of Idaho

Department of State

CERTIFICATE

TALACHE SHORESIDE WATER USERS ASSOC., INC.

I, PETE T. CENARRUSA, Secretary of State of the State of Idaho, hereby certify that I am the custodian of the corporation records of this State.

I FURTHER CERTIFY That the records of this office show that the above-named corporation was incorporated under the laws of the State of Idaho and was issued a certificate of incorporation in Idaho on October 17, 1980.

I FURTHER CERTIFY That the corporation forfeited its right to do business in Idaho on November 30, 1982 for failure to file the required annual report and pay its annual franchise tax for the fiscal year ending June 30, 1983 and that said corporation is not now and has not been authorized to transact business as a subsisting corporation in the State of Idaho since the forfeiture date.

I FURTHER CERTIFY That the corporation was dissolved by operation of law on March 1, 1993, pursuant to Section 30-1-138, Idaho Code.

Dated: November 5, 1993

GREAT SEAL OF THE STATE OF IDAHO ESTO PERPETUA

Pete T. Cenarrusa

SECRETARY OF STATE

By _____

DO NOT WRITE IN THIS AREA
* FINAL NOTICE *
IF YOU HAVE FILED IN THE PAST TEN DAYS - PLEASE DISREGARD

ENTERED

IDAHO CORPORATION ANNUAL REPORT

INSTRUCTIONS

A. IF ANY OF THE PRE-PRINTED INFORMATION IS INCORRECT, ENTER THE CORRECT INFORMATION.
B. IF YOU WISH TO CHANGE THE REGISTERED OFFICE OR AGENT FROM THE PRINTED INFORMATION IN BLOCK [3], YOU MUST FILE AN OFFICIAL NOTICE OF THE CHANGE. OBTAIN FORMS FROM THE SECRETARY OF STATE.
C. ENTER COMPLETE INFORMATION IN BLOCKS [4], [5], AND [6].
D. RETURN COMPLETE ANNUAL REPORT TO THE ADDRESS SHOWN ON THE REVERSE SIDE NOT LATER THAN NOVEMBER 1.

SEND NO MONEY

[1] CORP. #, FED. EMP. ID #, NAME, PRINCIPAL OFFICE, OFFICER AT THAT ADDRESS

CORP. #: 065049

TALACHE SHORESIDE WATER USERS ASSOC., INC.

TERENCE NORDEEN
PO BOX 682, TALACHE AREA
SANDPOINT, IDAHO 83864

[2] INCORPORATED UNDER LAWS OF:
ID

[3] NAME AND ADDRESS OF REGISTERED AGENT AND OFFICE IN IDAHO:
TERENCE NORDEEN
PO BOX 682, TALACHE AREA
SANDPOINT, IDAHO 83

[4] NATURE OF BUSINESS OF CORPORTION:
Community Water Assc

[5] NAMES AND ADDRESSES OF OFFICERS AND DIRECTORS:

	NAME	STREET OR P.O. ADDRESS	CITY	STATE	ZIP CODE
PRESIDENT:	L. Andrews		Sandpoint	Id	8
SECRETARY:	T. Nordeen	Box 682	Sandpoint,	Id	8
DIRECTORS:					

RETURN THE COMPLETED ANNUAL REPORT TO:
PETE T. CENARRUSA
SECRETARY OF STATE
ROOM 203, STATEHOUSE
BOISE, ID. 83720

SEND NO MONEY. THE CORPORATION FRANCHISE TAX IS PAID TO THE TAX COMMISSION WHEN YOU FILE YOUR CORPORATION INCOME TAX.

[6] THE FOLLOWING CERTIFICATE MUST BE SIGNED BY AN OFFICER OF THE CORPORATION.

I CERTIFY THAT THIS ANNUAL REPORT HAS BEEN EXAMINED BY ME AND IS, TO THE BEST OF MY KNOWLEDGE, TRUE, CORRECT, AND COMPLETE.

Terry W. Nordeen 9-10-9

SIGNATURE DATE

Terry W. Nordeen Sec.-Treas

NAME (TYPED OR PRINTED) TITLE OR POSITION

21

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IDAHO NONPROFIT CORPORATION ACT

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APR 10 1997

[redacted]

(3) This section does not prescribe the only means, or necessarily the required means of serving a corporation.

30-3-34. Admission of members. (1) The articles or bylaws may establish criteria or procedures for admission of members.

(2) No person shall be admitted as a member without his or her consent.

(3) No person who is not an incorporator shall become a member of a cooperative corporation unless such person shall agree to use services furnished by the corporation when such service shall be available through its facilities.

30-3-35. Consideration. Except as provided in its articles or bylaws, a corporation may admit members for no consideration or for such consideration as is determined by the board.

30-3-36. No requirement of members. A corporation, except a cooperative corporation, is not required to have members.

30-3-37. Differences in rights and obligations of members. All members shall have the same rights and obligations with respect to voting, dissolution, redemption and transfer, unless the articles or bylaws establish classes of membership with different rights or obligations or divide voting rights by voting districts. All members shall have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the articles or bylaws.

30-3-38. Transfers. Where transfer rights have been provided, no restriction on them shall be binding with respect to a member holding a membership issued prior to the adoption of the restriction unless the restriction is approved by the members and the affected member.

30-3-39. Member's liability to third parties. A member of a corporation is not, as such, personally liable for the acts, debts, liabilities or obligations of the corporation.

30-3-40. Member's liability for dues, assessments and fees. A member may become liable to the corporation for dues, assessments or fees; provided however, that an article or bylaw provision or a resolution adopted by the board authorizing or imposing dues, assessments or fees does not, of itself, create liability.

30-3-41. Resignation. (1) A member may resign at any time.

(2) The resignation of a member does not relieve the member from any obligations the member may have to the corporation as a result of obligations incurred or commitments made prior to resignation.

30-3-42. Termination, expulsion and suspension. (1) No member, except a member of a religious corporation, may be expelled or suspended, and no membership or memberships in such corporations may be terminated or suspended except pursuant to a procedure that is fair and reasonable and is carried out in good faith.

(2) A procedure is fair and reasonable when either:

(a) The articles or bylaws set forth a procedure that provides:

(i) Not less than fifteen (15) days' prior written notice of the expulsion, suspension or termination and the reasons therefor; and

(ii) An opportunity for the member to be heard, orally or in writing, not less than five (5) days before the effective date of the expulsion, suspension or termination by a person or persons authorized to decide that the proposed expulsion, termination or suspension not take place; or

(b) It is fair and reasonable taking into consideration all of the relevant facts and circumstances.

(3) Any written notice given by mail must be given by first class or certified mail sent to the last address of the member shown on the corporation's records.

(4) Any proceeding challenging an expulsion, suspension or termination, including a proceeding in which defective notice is alleged, must be commenced within one (1) year after the effective date of the expulsion, suspension or termination.

(5) A member who has been expelled or suspended may be liable to the corporation for dues, assessments or fees as a result of obligations incurred or commitments made prior to expulsion or suspension.

30-3-43. Purchase of memberships. A corporation may purchase the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions set forth in or authorized by its articles or bylaws. No payment shall be made in violation of section 30-3-108, Idaho Code.

30-3-44. Derivative suits. (1) A proceeding may be brought in the right of a domestic or foreign corporation to procure a judgment in its favor by:

(a) Any member or members having five percent (5%) or more of the voting power or by fifty (50) members, whichever is less; or

(b) Any director.

(2) In any such proceeding, each complainant shall be a member or director at the time of bringing the proceeding.

(3) A complaint in a proceeding brought in the right of a corporation must be verified and alleged with particularity the demand made, if any, to obtain action by the directors and either why the complainants could not obtain the action or why they did not make the demand. If a demand for action was made and the corporation's investigation of the demand is in progress when the proceeding is filed, the court may stay the suit until the investigation is completed.

(4) On termination of the proceeding the court may require the complainants to pay any defendant's reasonable expenses, including attorney's fees, incurred in defending the suit if it finds that the proceeding was commenced frivolously or in bad faith.

(5) If the proceeding on behalf of the corporation results in the corporation taking some action requested by the complainants or otherwise was successful, in whole or in part, or if anything was received by the complainants as the result of a judgment, compromise or settlement of an action or claim, the court may award the complainants reasonable expenses, including attorney's fees.

30-3-45. Delegates. (1) A corporation may provide in its articles or bylaws for delegates having some or all of the authority of members.

(2) The articles or bylaws may set forth provisions relating to:

(a) The characteristics, qualifications, rights, limitations and obligations of delegates including their selection and removal;

(b) Calling, noticing, holding and conducting meetings of delegates; and

(c) Carrying on corporate activities during and between meetings of delegates.

30-3-46. Annual and regular meetings. (1) A corporation with members shall hold a membership meeting annually at a time stated in or fixed in accordance with the bylaws.

(2) A corporation with members may hold regular membership meetings at the times stated in or fixed in accordance with the bylaws.

(3) Annual and regular membership meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual and regular meetings shall be held at the corporation's principal office.

(4) At the annual meeting:

(a) The president and chief financial officer shall report on the activities and financial condition of the corporation; and

(b) The members shall consider and act upon such other matters as may be raised consistent with the notice requirements of section 30-3-50, Idaho Code.

(5) At regular meetings the members shall consider and act upon such matters as may be raised consistent with the notice requirements of sections [section] 30-3-50, Idaho Code.

(6) The failure to hold an annual or regular meeting at a time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

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DEED of UPPER "PUMPHOUSE" (PRESSURE TANK)
15' x 20' PLOT OF LAND

22

QUITCLAIM DEED

236275

KNOW ALL MEN BY THESE PRESENTS,
that Grantors, FRANCES SWANSON, an unmarried woman, and LLOYD J. ANDREWS and WINNIE MAY ANDREWS, husband and wife, for value and consideration received, do hereby QUITCLAIM unto the Grantee TALACHE SHORESIDE WATER USERS ASSOCIATION, INC., P. O. Box 662, Sandpoint, Idaho 83864, all of Grantors' right, title, claim and interest in and to the following described real property, together with after acquired title, situated in the County of Bonner, State of Idaho, to-wit:

A tract of land in the Mexico mineral survey number 2549, in Government Lot 2 of Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho, more specifically described as follows: From corner number 1 of said Mexico claim; thence South 34°41'12" East a distance of 164.14 feet to the true point of beginning; thence continuing South 34°41'12" East a distance of 15.0 feet to the Northwesterly right-of-way line of the existing public access road; thence North 48°13' East along said road a distance of 20.75 feet, (North 48°24' 30" East by original deed); thence leaving said right-of-way line, North 34°41'12" West a distance of 15.0 feet; thence South 48°13' West a distance of 20.75 feet to the true point of beginning.

IN WITNESS WHEREOF, We have hereunto set our hands on this 5th day of December 1980.

Frances Swanson — Lloyd J. Andrews — Winnie May Andrews

STATE OF Idaho)
: ss
County of Bonner)

On this 5th day of December 1980, before me, the undersigned Notary Public, personally appeared LLOYD J. ANDREWS and WINNIE MAY ANDREWS, husband and wife, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they and each of them executed the same.

Mary A. Finney
Notary Public - State of
Residing at:

STATE OF Idaho)
: ss.
County of Bonner)

On this 5th day of December 1980, before me, the undersigned Notary Public, personally appeared FRANCES SWANSON known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same.

Mary A. Finney
Notary Public - State of
Residing at:

QUITCLAIM DEED
ANDREWS to TALACHE SHORESIDE WATER USERS ASSOCIATION

* Situation is that Lloyd Andrews (1956) had connection 220 - my title of 1956 ½ Lloyd Andrews

COPY

777

STEVEN L. HERNDON
TRUST ACCOUNT
P. O. BOX 1326 263-2108
SANDPOINT, IDAHO 83864

4 May 1982

92-310
1231

PAY TO THE ORDER OF Lloyd Andersen $ 1633.95

One Thousand Six Hundred Thirty-Three & 95/100 DOLLARS

First Interstate Bank
First Interstate Bank of Idaho, N.A.
Sandpoint Office
P.O. Box 716
Sandpoint, Idaho 83864

FOR Harwell - Water

Steven L. Herndon

⑆123103101⑆140146911⑈

1995

VALUATION SUMMARY SHEET

TIME: 19:18:06 DATE: 5/17/95

PARCEL NUMBER: RP 00458005001A A PROPERTY ADDRESS:

EFFECTIVE DATE: 01/21/1983
EXPIRATION DATE: 00/00/0000 TAX CODE AREA: 06200

NAME: NASH, A E K & MARGUERITE LEGAL: 7/8-55N-1W TALACHE VILLAGE
BLK 5 LOT 1 LESS TAX 1

ADDRESS: 1033 N ONTARE COMMENTS:

SANTA BARBARA CA 93105 OLD PARCEL #:

CAI	SHI	BY	QUANTITY	UN	MARKET VALUE	HO VALUE	HO EXEMPT	CB VALUE	HARDSHIP
15		1990	.066	AC	10,247				
32		1995			981				

EXISTING SAID

Change address per Mr. Nash
PO Box 492
Sagle, Id 83860

TOTALS:	.066	11,228

DEED REFERENCES:
DATE: 00/00/0000
414777 WD

RELATED PARCELS:

SUB-SYSTEMS:
LD
RC
SL

ZONING:
PHOTO NUMBER:
MAP NUMBER:
SW UNITS:
SW TYPES:
PARCEL TYPE: 8K
LOCATION CODE: 4300

TAX SPECIALS:
991 961

25

26

A. E. Keir Nash 1033 North Ontare Road Santa Barbara, CA. 93105. (805) 687-9315

16 May 95

Jack and Rachell Johnson
P. O. Box 97
Newman Lake, WA. 99025.

Dear Jack and Rachell:

Jack, you said in our 15 May phone chat you wanted me to put matters and bottom line as plainly as possible without legalese. If you will let me later refer to the legalistic qualifications of previous letters as more precisely what I mean here, I'll try right now. To begin, *it's not a problem* of "A. E. Keir and Marguerite B. Nash ... control[ling] ... the water rights" as if all 3 types of rights needed already existed. [Your 3 May protest to Director, Idaho Dept. of Water, para. 1.]

I. GETTING & DISTRIBUTING 2 OF 3 TYPES OF WATER RIGHTS

There is a problem first of: (a) **obtaining 2 types of rights** which the defunct Talache Shoreside Water Users Assoc never bothered to get, and which is why reviving it, even were such possible, wouldn't be enough;

(b) **distributing these first 2 types** of rights to watersystem users;

(c) **attaching those rights securely** to the lots and parcels whose owners, as you say, "have put money into the water system for many years;"

(d) **setting up a reasonable management structure** that protects these lots, parcels, and owners in water-flow, in property marketability and in quiet enjoyment.

It is a problem, second, of considering the claims of persons who never hooked up in 1980-82 and did not "put money into the system for many years," and seeing what, *given water quality regulations new since 1980-82,* can reasonably be done.

Re (a) and (b). Needed = 3 types of rights, not 1. Let's analogize the water-rights situation to driving lawfully a licensed heavy trailer-truck on certain roads regardless whether the truck belongs either to a truck-leasing club or to you personally. In either case you need for starters:

(1) your own valid driver's-license endorsement for driving heavy trucks [= **property-owner's rights type #1 to withdraw 'x' amount of water** from Lake Pend Oreille, without saying how -- which comes from Idaho Water Resources Dept via shorefront owner's application on your behalf];

(2) a valid license for the truck on particular roads in, e.g., Washington and Quebec [= **property-owner's rights type #2 to encroach via watersystem construction on/in/under Lake Pend Oreille,** saying how -- which comes via separate permits from Idaho Lands and U.S. Corps of Engineers].

This is the process we are engaged in now -- the equivalent of licensing first you (and me) and then the truck. As the Water Resources Dept permit application [for right #1] describes the lots/parcels where de facto water has been distributed, once the permit is granted, (b) **distributing rights type #1 to you and other users is automatic.** Had there not been protests, Margo and I would have already started to obtain rights type #2 for all of us from Lands Dept & Engineers Corps. However, this is more expensive. Until the Water Resources permit is straightened out, perhaps the truck has to go on driving on certain roads illegally. These 2 steps should have been easy and the actual water system well on the way to being legal & you with these rights.

II. DETERMINING COSTS AND COST-DISTRIBUTION OF ADDITIONAL HOOK-UPS

This 2nd part of the problem is intrinsically somewhat more difficult. This is partly, but not solely, because of carelessness among some of the original purchasers into the 1980 corporation. These were they who made little or no effort to make sure it functioned lawfully, who never obtained their membership certificates as

provided for in the incorporation articles, who for ten years did nothing about the corporation's 1982 forfeiture of the right to do business. One result was passage in the 1990s, by warranty deeds, of three properties to bona fide purchasers (BFPs) without notice. *This was particularly strange with respect to two of these properties inasmuch as the selling real estate agent was none other than the designer and construction overseer of the house on one property and also the designer of the 2 buildings containing major parts of the water system -- one of which buildings is located on the second property.*

But let me proceed on an optimistic note. **At most expensive, the initial regulation-driven costs of additional hook-ups** [if the system is not split] **are unlikely much to exceed $100,000** [or about $10,000, if equally shared, per cabin/property]. And these costs would probably be largely recouped on sale of a property. So it's only a temporary outlay. **The annual upkeep [monitoring] costs are very unlikely to exceed $15000** including paying a monitor, or $1500 per property per year.

The costs might be much less, which is why I have asked Beardslee of Dept Water Resources to let us know how many hookups his department would permit on the system now with its reduced [vs. 1980] pump-capacity and main. Here you should consider your reply to last summer's user preference survey wherein you stated: "I believe Swanson to be vested in the water system. I don't believe Privette is." Even if one or both propositions were true, you omitted 2 non-exercised memberships in the defunct corporation with as good or better arguments for "vesting" as Swanson – Cahn's 2 1980 purchases from Andrews. **The bottom line is, you can't talk convincingly about "vesting" 1 claimed membership without also talking about "vesting" 3, perhaps 4.** This is why I think one needs clearly to work out terms of adding system hookups, and foreseeable costs, *prior to voting on Articles of Incorporation. If you wish to go another way such as trying to revive a defunct corporation or produce some new clone, that's your choice. Just be prepared to invest substantial $ in it now and recover capital investment when you sell.*

III. **Re (c).** ATTACHING USERS' RIGHTS SECURELY TO LOTS, & LEGAL STATUS OF DIFFERENT PROPERTIES. Because untangling the present tangle may delay things, it seems important now to attach these prospective government-granted rights we are trying to get to each property – so people rest more easily in the meantime. Also it seems clear that rights and the individual properties should be permanently tied, regardless of what management structure we develop and how well or ill it functions.

Now in come rights type #3 -- rights which don't come from the government, but which rather arise between property owners, pertain to water uses on and through land, and so make usable the government-granted rights #1 & #2. This is where the 1980 Articles were about at their most defective. Other than deeding the upper pressure-tank house 15' x 20' parcel to the defunct corporation, there were no titles, easements, covenants, or equitable servitudes. Nothing else went straight and plain to that corporation. Nothing else was clearly put under corporation ownership. As far as anything written goes, you can't tell whether Andrews thought the corporation members would collectively own the equipment or whether he thought membership was more like in an auto club, a country club, or the Elks. As I noted in an earlier letter, attorney Featherston thinks that the system never left Andrews' personal ownership and that he later abandoned it. Messy.

All one has now to work with is Idaho statutory and case law relevant to 1980-1995 de facto behavior. Without getting legalistic (though I'll be happy to discuss statutes and cases if you care to phone), I think one can safely say the following.[1]

---

[1]Note that though Nashes now own 2 properties – beach and uphill – these are separate lots. The "interests" of one aren't necessarily the same as the other's. Nor need 1 party own both. Would you like to buy either?

1. None of the land involved can be said to have been adversely possessed by the system users. This is obvious from property tax payments, deeds, and Idaho Code 5-208/210. However, arguments can be made about equipment ownership in several different directions. This needs straightening out before more properties are sold to bona fide purchasers without notice.

2. The owners of four uphill cabins/houses and the parcels on which they stand [Johnsons, Sosses, Nashes, Gays] have the strongest legal claims to an easement/covenant/equitable servitude (as appropriate) on the 3 private lots across which the de facto system hauls water from the lake [Nash downhill, Fouts, Mays]. Only these 4 dwellings were built in clear contemplation of the water system, and started or became dependent on it. Only these have anything approaching privity in terms of title-chain. So there is a strong argument for irrevocable license [or easement by estoppel, which amounts to the same thing]. Among these 4 there is an additional distinction. 2 sets of owners [Gays and Nashes] were Bona Fide Purchasers [BFPs] without notice of system unlawfulness. As such they have potentially some breach of covenant claims against sellers and title insurance issues, not open to Johnsons and Sosses.

3. Other dwellings uphill, lacking title-chain privity, built well before and not at all in contemplation of the shoreside water system, and having alternate water system membership, are in somewhat different legal positions. At least one did not pay $ for shoreside watersystem membership [another problem with corporation revival], but permitted installation of the main on its land. The claims of at least one thus rest chiefly on this and on system upkeep and capital replacement $ payments.

4. Given these differences and that uncertainties as to additional hook-up costs and attitudes toward them of current users aren't likely to clear up and reach complete consensus by tomorrow, it seems sensible for us to proceed now by working out 1-on-1 easement/servitude/covenant agreements between willing owners – or at least to see if it is possible.

Penttila's successors and Nashes are going to run some possibilities past their attorneys and title insurance companies in the next few weeks. It seems best to begin here because the aforementioned breach of covenant and title insurance issues make solid, careful drafting most imperative. If we find this a feasible approach, would you be interested in a similar guarantee as to your rights type #3, while #1 and #2 get worked out?

IV. Re (d): if we could get these security guarantees to all users, then management structure [incorporation] could follow with everyone more at ease.

Margo and I look forward to seeing you at the conference sometime between June 10 and June 15, assuming the Department of Water Resources agrees to schedule one. If I don't hear from you to the contrary, I'll assume your protest is withdrawn.

Sincerely yours,

A. E. Keir Nash

CC: A. BEARDSLEE, IDAHO DEPT. WATER RESOURCES

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A. E. Keir Nash
1033 North Ontare Road Santa Barbara, CA. 93105.
(805) 687-9315
14 May 95

Mr. Sidney E. Danyow
P. O. Box 4095
Coos Bay, OR. 97420.

Dear Mr. Danyow:

It was good to speak with you. Let me put in writing the chief points we discussed, as I understand them, of the present water situation of your Lot Tax 3 (what splendid trees it has!) on the 2nd tier above Talache Landing. Correct me if I'm wrong. Otherwise I'll assume I've got matters straight.

1. Your lot was, as a condition of closing escrow when you bought in the "good Talache title chain" [Gabel and Gabel], connected in the early 1960s to the old Talache Water Association system coming down from the mountain. But you never built there and used that system, and never obtained membership in that system. *The last I have been able to trace of Gabel and Gabel is a 1968 lis pendens protesting a tax delinquency judgment and pursuant award of other Talache property to a third party [including land later, beginning 30 Sept 74, sold off as Wert-Talache-Land-Company (seemingly not-so-good title) parcels via Swanson/Bandelin and others to Bona Fide Purchasers without notice].* Gabel and Gabel never pursued the lis pendens, and disappeared from Talache land dealings over 25 years ago. Therefore, I doubt you have any enforceable hook-up to that system because [I believe] it was later [re]constituted as a corporation with 25 memberships [of which probably not more than half are actually in use]. There is a map of it, drawn circa 1980, on file with Dept of Water Resources or DEQ in Coeur d'Alene. I think that system's watermaster Cal Kelley [208-263-8168] has a copy that I saw some weeks ago. My recollection, which may be wrong, is that the map does not show a hookup to your lot. To find out your status, you should probably phone Leonard Haugse [208-263-3777] because I was told he is president or chair of the board of directors of that system.

2. You have never had any connection, physical or financial, with the other system built 1979-80 and coming up from the Lake across my Block 5, Lot 1 less Tax 1 shorefront property. It is this system's application that gave rise to your protest (more of an information request). It is not, let me emphasize, an exclusive application. Any upper tier Talache landowner could, by securing consent of any Block 5, Talache shorefront landowner to apply for the appropriate rights, and the consents of DWR, Dept Lands, and Corps of Engineers, build his own system up to his lot. It's just expensive to do so *solo.*

3. If you find you have no enforceable access to the old down-from-the-mountain Talache Water Association system and find your lot is unable so to obtain water, you might be interested [*if the up-from-the-Lake system winds up split into 2]* in joining in the construction and use of the new system.

4. I emphasize *"if"* just above advisedly since I have no authority to offer a membership in a still unbuilt [and perhaps never to be built] system. I am making no offer of course.

5. I urge you to talk directly and soon with Mr. Allen Beardslee of DWR [208-769-1450, whom I'm ccing]. He should be able to help you. If I do not hear from you within the next 10 days, I'll assume all is settled as you wish with this application and your old TWA down-from-the-mountain water supply is OK, and you would not be interested in pursuing the possibility mentioned under **#3 above,** *if* it ever materializes.

Sincerely yours,

A. E. Keir Nash

cc A. Beardslee, DWR Idaho

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A. E. Keir Nash
1033 North Ontare Road
Santa Barbara, CA. 93105.
(805) 687-9315

13 May 95

Deborah Cahn (and Robert Cahn)
P. O. Box 47
Philo, CA. 95466.

Dear Deborah:

Please find enclosed documents that will I think clarify the consensual direction in which my wife and I are trying to get people to go, while protecting everyone's legitimate rights. You'll probably find it most helpful to read my 5 May 95 memo first; then the others in chronological order.

We'll be happy to see you at UCSB on May 20; perhaps we can also get to some conclusion about repairing the seawall then, as Dept of Lands has drawn a little sketch of what we should do and been quite helpful.

In the meantime, a word or two about the 3 specific bases of your protest in your letter to the Dept of Water Resources.

Re 1) [Nash can't establish his water right without trespassing on Cahn land.] Not so, because [besides that it isn't just my right; it's about other de facto users too]:

a. The system applied for is already built;

b. I think there is already a prescriptive "drive through" easement for the following Block 5 lots across Tax 1 of Lot 1 -- 11, 10, 5, 4, 3, 2, and Lot 1 less Tax 1;

c. There's the steps directly from the county road [for pedestrian access] to the chlorinator house.

Re 2). [Nash may not be filing his application in good faith.] That's not a nice thing to say. I think my faith is remarkable given all the circumstances. The permit is so far just for all de facto users because they are the only ones currently breaking state law [most of them innocently, having been bona fide purchasers without notice of the problem]. No additional actual user has been named. Propose a better procedure and we'll be delighted.

Re 3). [Whether Nash and current water users' group have enough $ resources.] How about a grant from the Cahn Foundation?

I wish you would get your attorney to go over the logic of "Attachment F" to my June 8, 1994 letter to Everett H -- (as long as you mention "Attachment E"). If someone could show me "F" is wrong, that might make it a lot easier to deal with all the different current users and claimants. Have him phone me and I'd be happy to be enlightened.

Sincerely,

A. E. Keir Nash
Professor Emeritus, UC Santa Barbara

Appendix --- 5 May 95

TURNING SEVERAL 2-PARTY TALACHE CONFLICTS INTO MULTI-PARTY TALACHE CONSENSUS

Mr. Soss' note, with whose sentiments I entirely agree if he will include a 3rd longtime Talache family (Bandelins), prompts me to see if those sentiments can yield specific courses of action. Suppose we look at 6 Talache problems, together more readily solvable than separately. *Key is Dr. Mays' new concern for Ms. Swanson's property rights as well as where the Swanson-Bandelin trial* over the shoreside Lot 6 Armon sewage system has gotten to. *Key also is that Lot 6 is* overutilized from a health official's point-of-view, but *underutilized (at least by $60,000) from an economist's point-of-view.*

The 6 problems are:

1. **How to enable Ms. Swanson & "related" property-owners of Shoreline Lots 7, 8 (Deshon) and hairpin-bend parcel (Kites) to proceed** while satisfying legitimate Bandelin concerns.
2. **How to improve various sewage/drainfield layouts relative to Lake Pend Oreille** so to alleviate Panhandle Health concerns.
3. **How to bring both Privette and Swanson (Kites) into the current Lot 1 less Tax 1 water system while:** (a) legalizing it on a readily defensible basis; and (b) providing adequate mutual guarantees for property owners currently on the system that protect both dominant estates in their water flow and servient estates in their quiet enjoyment; but (c) without incurring ruinous costs because of Idaho's adoption of federal water-purifying/monitoring regulations between 1980 and 1995.
4. **How to restore some confidence as to the governance of that water system.**
5. [Less important in itself, but crucial to solving problems] how to get Mays/Dillon and Nashes to agree on uses/non-uses of the O'Higgins parcel given Idaho's non-exclusive use requirement of tenants-in-common--*short of a partition by sale, whose cost would almost require the winner to develop it.*
6. **How to expedite sale of Talache properties that current owners now or soon may plan to sell.**

I refer hereafter to realizing desirable goals as Sossian solutions [he has best captured the right spirit] and to Featherstonian means [my generalizing from his Solomonic "cut the baby in 2" idea for the future is just my derivative idea] and to $-freeing means [another means available]. I try to lower transaction [imperfect communication] costs. These have become high due to misperceptions and unilateral refusals to discuss.

A. Problems #1 and #2 are intertwined in the Swanson-Bandelin suit. *From a practical standpoint,* Panhandle Health officials would prefer to see the sewage from the 3 houses on the Armon system [Stewarts, Swanson, Bandelin] further from the Lake. But having okayed it in the 1970s and unable to find leakage, they have no power to order their preferences. Swanson has found places uphill for 3 of the 4 houses involved if Lots 7&8 are sold and a new house built on Lot 6 [1 drainfield to hairpin bend; 2 to Gibbs]. Bandelins have no place to go even were they willing to see the system closed down.

From a doctrinal standpoint, Hofmeister's "the system is a Swanson revocable license system" argument lacks a chief rationale propelling courts who buy the argument. That minority rationale is that it's unfair to saddle permanently with an easement propertyowner A who may have let property owner B do something on his land which turns out to have unforeseen debilitative consequences for property owner A's use of his land, just because B has invested $. Here, however, there has been joint investment, and/or taxpaying, and/or upkeep from the start by A, B, and C. *Second, because of the dates of various lots' subdividing, chain of title complications, and Idaho caselaw, Hofmeister's earlier [Sept 1994] arguments underpinning a 7&8 driveway easement aren't strong.* The easements need to come *ex gratia,* not *ex necessitate legis,* from the Lot 1, 2, 3 owners. I think they could well be.

From a human standpoint, this case between once-close octogenerians shouldn't have gotten to court at all. Grinding on for 4 days through various financial transactions is mainly helping attorneys' billings. If Bandelins have somewhat the better of the merits so far on the substance of the issue, Swanson's defense on cross-examination has been vigorous. This case needs to come out of court before appeal.

Suggested Sossian solution I via $-freeing means: (1) 40' Lot #6 is currently "fallow," but if sold together in whole or in part with Lots #7 & #8 [(@ $1500/front foot] would yield in total up to $180000, rather than $120000. (2) If Swanson would concede sub silentio that Stewarts and Bandelins have 1/3rd interests in #6, each party would gain $20,000 on sale -- or the two abutting property-owners, Stewart on one end and Swanson on the other, could separately elect [by "sliding" the total #6,#7,#8 footage for sale] instead to retain all or part of 13.3' each as "buffer." (3) Realizing such a prospect would require Bandelins to give a driveway easement to the new owner of #7,#8 (and part of #6). (4) For remaining prerequisites (Kite watersystem access and Bandelin sewage disposal site) see Sossian solutions II and III below.

B. Problem #3 presents an insoluble problem unless the water system is split into 2 (which is easy to do). Andrews (in selling 2 memberships to Cahns) gave/sold too many memberships in the dead corporation [10]. Privette wants "in" understandably. But de facto Soss has had 2 service lines in use these past 5 years [his original + what he bought from Privette]. He is now, I think, selling for "1 1/2 houses worth" [house + guesthouse or trailer]. Then there's the Lot 1 less Tax 1 chlorinator house outlet. Given system-downsizing in 1987 and 1991, it is impossible both to recognize, out of grace, all the defunct memberships & de facto uses and be on a sound legal basis. Putting 9, 10, or 11 hook-ups is much too close to the 25 user/60 day rule.

Sossian solution II via Featherston/Solomon division. Since $ infusion is necessary anyhow to bring the system's power back up to handling additional hook-ups [pipe friction, and head -- see Feb. 17 and Apr. 12 letters], **why not spend those dollars in a fashion that solves the 25/60 rule? I.e., split the system -- keeping the present one at its reduced power and flow; and put a 2nd system in [coming up either right below Kites from Privette's #15 beachlot [and so reducing pipe length] or from #7/#8?** On this system would go Kites, a new Privette #15 outlet [with easement], #7/#8 house, Johnsons, and Mays and/or Soss [=6 or max of 7 hookups]. By splitting and adding to the new, one would then on the old have 5 of the lots using the current system these past 5 years, and one could add a Privette hook-up for his triangle parcel + Cahns [=max of 8]. Each system would be clear of $100,000 purification requirements and monitoring.

C. Finding a place for Bandelins' sewage drainfield and an O'Higgins tenants-in-common solution [#5] need to, and can readily, go hand in hand. Please examine the attached map [used in negotiating with Panhandle the recently installed drainfield in Nash front garden]. There is only 1 available location on the upper tier [other than Danyow's lot which isn't available and is the only place where still another upper tier house would make good-planning sense] where Bandelin sewage can have a drainfield. Note how much further from the Lake the O'Higgins [Mays/Nash] property is in its upper half than Swanson hairpin [Kites] or Gibbs [Swanson/Stewart]. Dr. Mays wants to use part of this property abutting his cabin's lot. Easy.

Sossian solution III: Why not just have Nashes and Mayses sign an agreement that informally allocates use/non-use [so avoiding partition by sale] with the following provisions: [1] Mayses so to use that portion as long as they choose -- they can later use it or somewhere nearby on what would be tacitly "the Mays' half" for a drainfield if needed; [2] (if Panhandle Health okays this, as I think they would since they will agree to any reasonable improvement in respect to an existing subpar situation), one drainfield [technically new construction standards] in the southwest highest lawful portions of the O'Higgins "informally Nashes half" for Lot 1 less Tax 1 and one right below in the same half for Bandelin drainfield. Given new Infiltrator drainfield techniques, the area needed is 40% reduced. Both should fit comfortably, and the pipes' coming up together from Bandelins in one trench would halve digging costs. Careful cutting of trees and bushes, would leave aesthetically attractive flora and leave the O'Higgins lot unbuilt-on more or less in perpetuity.

D. Problem 4 would probably become self-righting if we could all agree on such a consensual approach to Talache matters. There remains only putting in writing appropriate reciprocal shoreline driveway easements, equitable servitudes, covenants, whatever for all the beachfront lots and similarly for the water system(s) -- which, once done, should solve the rest of #4. Then #6 is solved too.

AEKN ---A. E. K. Nash

Featherston Law Firm
Daniel P. Featherston
Brent C. Featherston
Attorneys at Law

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June 2, 1995

Mr. Lloyd Andrews
E. 10110 Greenbluff Road
Mead, Washington 99021

Dear Mr. Andrews,

I am writing on behalf of Mr. and Mrs. Nash, the present owners of a portion of your property at Talache. They purchased from Eldon Graves by deed dated October 27, 1992, recorded October 30, 1992, as instrument number 414777, your portion of Lot 1, your former home on Parcel 1, tax 25, or Parcel 2, tax 30. The records show you sold the property to Graves conveying by Deed recorded February 2, 1988, as instrument number 345220.

As you recall, there is an existing water system that serves these and other properties. Because the legal work concerning this system was never completed, it will be necessary for the present owners and users of the system to bring some semblance of order to the situation.

This letter is to advise you that you should not execute any conveyances of the system at this time without the express written request of Mr. and Mrs. Nash. If you were at this late date to execute Deeds, Bills of Sale, or other conveyancing instruments which were to purport to convey an interest in or have any impact on my client's title, absent the consent of my client, this would constitute a slander of my client's title. Mr. and Mrs. Nash do not intend to stand idly by and allow that to occur, and will exercise their full legal remedies to avoid such.

I am forwarding copies of this letter to Mr. Terry Nordeen and Jack Johnson, as I understand there is some contention that they had a part in the organization of this system, and may or may not claim some continuing authority by virtue thereof.

Sincerely yours,

DANIEL P. FEATHERSTON
Attorney at Law

FEATHERSTON LAW FIRM
DPF/d

enclosures
c: Terry Nordeen
Jack Johnson

105 Pine St., Suite 109 • P.O. Box J • Sandpoint, ID 83864 • (208) 263-6866 • Fax (208) 263-0400

Attachment A. **POSSIBLE LEGAL RELATIONSHIPS OF DE FACTO WATER SYSTEM & AFFECTED PROPERTIES AS OF MAY 23, 1995**

I. Excludable possibilities	Reasons why excludable
1. Adverse possession vis a vis any real property [land or buildings] of owners using the system (Mays, Fouts, Nash).	1.1. Idaho Code 5-208-210. Real property taxes levied on land and buildings have been paid by deed-holding owners of lots with system parts. 1.2. The usage began, 1980, as one of license, and has so continued regardless of legal condition of TSWUA. 1.3. Lacks necessary 5 year adverseness.
2. Express Easement	2.1. No written easements.
3. Easement by Implication	3.1. No horizontal privity. Severance of parcels before system construction.
4. Easement by Necessity	4.1. (Re Fouts and Mays parcels as "potential-dominant") – No, because of alternative water source. 4.2. (Re other uphill parcels as "potential-dominant"– Johnson, Soss, Gay, Nash) – Perhaps re need, but no, since 2 "potential-servient" parcels (Fouts, Mays), going back on separate title chain, lack privity except with each other. Perhaps re Nash-beachlot.
5. Easement by Prescription	5.1. No on same grounds as reasons 1.2 & 1.3. 5.2. See Branson v. Miracle, 111 Idaho 933, 729 P.2d 408; Rice v. Hill City Stockyards, 121 Idaho 616, 826 P.2d 1328, at 620: *"A prescriptive right cannot be acquired if the use of the real property is with the owner's permission."* 5.3. A shift to adverse use has to be made very clear to permitting owner.
6. Real Covenant	6.1. No on same ground as reason 2.1 – must be written or implied from written scheme such as plat map. 6.2. No even if written or implied, as to running on with land unless burdened 3rd party BFP put on clear notice. 6.3. Shelter Rule.
7. Equitable Servitude	7.1. No on same grounds as reasons 6.2 and 6.3. 7.2. Use needs to precede sale.
8. Perpetually Irrevocable License	8.1. No, since in almost all the (minority of) jurisdictions recognizing the doctrine (Idaho is unclear), the irrevocability is thought to come from a combination of licensee investment in good faith and to expire when reasonable return on investment is achieved.
II. Remaining Possibilities	**Reasons pro and con**
9. Considering water system parts as personalty separate from lot and parcel real property with system parts' ownership in **9a** defunct corporation or in **9b** user group or in **9c** various users or in **9d** some combo of **abc**.	**Pro:** Seems fundamentally fair given previous investments and finesses some sticky issues. There is Massachusetts precedent for this [I haven't looked very far yet] re pipelines and power production where uncontested. Also there's the trade fixtures exception. Also the system can keep running regardless whether finally **9a, b** or **c** prevails. Permits one-on-one covenants as here suggested. **Con:** Haven't thought this through yet.
10. License Revocable Now	Doesn't seem very kindly to me, even if possible.
11. 11a, License Irrevocable until Contingency; or 11b, "Easement" by Estoppel	A week ago I'd have said the two were the same and equally apposite to the situation. Several State jurisdictions don't differentiate. Others do. I have here followed the latter and used **11a** terminology since it's probably best to use the same concept for both stronger claim properties [reliant on the system for building] and for weaker claim properties [previously built with alternate water sources] if we are to get any harmony.

SD-0605-2 Township: 5N Range: 01W Section: 8 Tract: 32 Lot:

SEL	Tract	LOT	RDV	Water Right No.	STATE Name Last, First	OWN	ST	Priority Date	Source	Max # Records Total Diver
_	SWNW	2		96-02160	WESKIL, F. C.	C	L	10/27/1945	FISH CREEK	
_	SWNW	2		96-07991	FARRAR, JAY	C	L	08/11/1981	GROUNDWATER	
_	SWNW	2		96-08046	MC MANUS, JAME	C	L	03/31/1982	GROUNDWATER	
_					MC MANUS, KATH	C				
_					CARMAN, TED	C				
_					CARMAN, KATHY	C				
_					MAY, LAUREL	C				
_					MAY, LORRAINE	C				
_					GOEBEL, ROBERT	C				
_					GOEBEL, HARRIE	C				
_	SWNW	2		96-08848	NASH, ARNOLD E	C	A	02/13/1995	PEND OREILL	
_	NWSW	2		96-08360	BANDELIN SWANS	C	L	08/08/1983	PEND OREILL	
_	NWSW	2		96-08854	SWANSON, FRANC	C	A	03/27/1995	PEND ORIELL	
_					VIRNIG, STEPHE	C				
_										
_										

(Enter=Continue) (GOLD 7=This Query) (Menu _

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9 May 95

Allen G. Beardslee, Sr. Water Resource Agent
Dept of Water Resources, State of Idaho
Suite 210, 1910 Northwest Blvd.
Coeur d'Alene, ID. 83814-2615.

Dear Mr. Beardslee:

Thank you for your phone call of yesterday. In response to your request, I am providing a dossier of documents pertaining to:

(1) the origins and demise of the Talache Shoreside Water Users Assoc., Inc.corporation (including a written warning of demise given by a non-hooked-up claimant);

(2) negotiations, among users of a system tapping into Lake Pend Oreille from my property, as to how best to legalize the system, including the June/July 1994 user survey of preferences re how best to deal with non-user claims on a dead corporation;

(3) certain incidental matters which explain delay until 1995 in further pursuing legalization;

(4) 1995 documents written and received in conjunction with legalizing.

I am also glad to know that it would be possible to split the Talache Landing system so to include both properties with hook-ups de facto in use for many years and properties of certain persons, who have never used functioning hook-ups but who believe they have residual claims against the defunct Idaho corporation, Talache Shoreside Water Users Assoc., Inc. Originally incorporated 17 October 1980 by Lloyd Andrews, this corporation [as the attached Idaho Dept of State Certificate dated 5 Nov 1993 states] "forfeited its right to do business in Idaho on November 30, 1982."

As P. Cenarrusa, Idaho Sec. of State, further states therein: **"I further certify that the corporation was dissolved by operation of law on March 1, 1993, pursuant to Section 30-1-138, Idaho Code."** All the protests I have so far received [with one exception which turns out to be more of a request for information] relate to claims about rights unexercised during this corporation's short unhappy lifetime, aborted 13 years ago. Note also provision 30-3-34 in the Idaho Non-Profit Corporations Act. **"(3) No person who is not an incorporator shall become a member of a cooperative corporation unless such person shall agree to use services furnished by the corporation <u>when</u> such service shall be available through its facilities." "<u>When</u>" was 1980.**

As your examination of the enclosed dossier of documents will disclose, despite having no apparent legal duty to these persons, the current users of the current system in the user survey of June/July 1994 indicated an intention to try to honor these claims -- provided that these persons pay a fair share of any costs created by change in system capacity and particularly increasingly expensive environmental regulations adopted by Idaho between 1980 and now. Please note that the system now in use is very little the same system as that installed in 1980. The system now in use has:

different [smaller] pump in Lake Pend Oreille,
different [smaller] main pipe in and from Lake Pend Oreille to the chlorinator house on my property Block 5, Lot 1 less Tax 1,
different chlorinator pump, different chlorine/water concentrate mixer,

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different piping from the mixer to the main,
different valves at the top,
different pressurizing tank,
and in some cases different service-line pipes.

The present application, with corrections/additions you and I worked out yesterday, hence pertains to the system that has been de facto in use; the application map now describes precisely those lots that have been receiving water for at least 5 years and the routing of the main from the Lake. The point is to legalize the usage. *Mixing actual users and claimants on a dead corporation, none of them drawing from the Lake via this system, at this stage would seem rather like a traffic cop telling a too speedy car driver, when passengers object to the speed of the ride, we can't slow you down until you take on board this hitchhiker. The point is to stop the violation -- not to put us in the awkward position of The Flying Dutchman.* Then we can, and will, discuss who else should come aboard. But my wife and I have no power, on our own, to add non-users inasmuch as we have been instructed along certain lines by users.

As you will see [see particularly survey results, 8 July 94; letter Harkins to Nash 13 July 94; letter Nash to Harkins 17 Feb 95; letter Harkins to Nash 16 Mar 95] there was a clear okay from system users and informal "management" to go-ahead in the order so far followed [1st, (Nash and Nash) to legalize the existing system and hook-ups as they have been functioning for at least the past 5 years; 2nd, (the group as a whole) to consider defunct-corporation rights claimants and try to work something out with them].

However, I doubt that you will get some of the users to take the question of system legality too seriously unless you do as you indicated you planned--write to users individually mentioning $100 per day. [Addresses enclosed as you requested.] *It is important also for you to go through the sections of my letters of 17 Feb 95 and 12 April 95 where I assess the power constraints on N of hook-ups and analyze relevant environmental regulations and system size constraints, then inform the other users, myself, and claimants of significant errors you see (if any) that would change the N of houses you would allow on the system and the ease or difficulty of meeting relevant post-1980 environmental regulations I therein try to assess.*

If you think preferable some other method or order of business [e.g., as we discussed, legalizing the water rights withdrawals on an individual hook-up/property basis one at a time], that's fine with my spouse and myself. But we really would like to get our water withdrawal four-square with Idaho and federal law. So too would at least one other user family [like ourselves bona fide purchasers without notice of the system's status and newish to the system]. If other people are too tired from weekday work when they recreate of a weekend in North Idaho to bother about legal matters, perhaps that's their affair. But my wife and I do not agree with this viewpoint. We await your counsel.

May I request that you or Robert Haynes schedule a conference or hearing sometime between June 10 and June 15? That is about the only time my spouse is clear from teaching at the University of California, and this other couple will be available then also. I will be very surprised if all the protests are withdrawn before then -- because they seem grounded in a misunderstanding of Idaho corporate law. We shall of course attempt to reach a resolution -- along the lines suggested in my memo dated 5 May 1995, or along any other better lines anyone cares to suggest.

Sincerely yours,

A. E. Keir Nash
Professor Emeritus on active service

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A. E. Keir Nash, P. O. Box 492, Sagle, ID. 83860. Phone: (208) 263-0765
July 11, 1995

Arlen B. Taylor, Vice President
Stewart Title Guaranty Company
2028 East Fort Union Blvd., Suite 202
Salt Lake City, UT. 84121.

Dear Mr. Taylor:

Your 2 March 95 letter with accompanying quitclaim seemed then to end bogus easement-claims on my Lake Pend Oreille beach property, Talache, Block 5, Lot 1 Less Tax 1. But later events and discussion with Doug Broetje (First American Title, Sandpoint) lead me to take up your offer, "If you need anything further, please don't hesitate to call." The same doubtful-easement hand seems at work clouding my title. Does perhaps the pattern amount to slander of title? Referring you for Talache background to my 21 Aug 94 letter to E. Coulter in your possession, I summarize the first of these recent occurrences below. I will write soon about the other.

A1. The strange 4 May 1995 Bonner County recording by First American Title of documents 464699, 464700, & 464701 [Enclosures 1-3] **in two of which Block 5 Lots 7 & 8 vendor** (F. Swanson) **purports to grant easements to purchasers** (S. & C. Virnig) **across other Block 5 lots vendor does not own.** I learned of these documents chatting with S. Virnig when I suggested easements should be clarified before he built and he replied he already had been granted easements in the conveyances by Swanson. A County Courthouse visit showed he had. This odd grant seems to have occurred as if neither vendor nor her attorney (Everett Hofmeister) nor selling realtor (Coldwell Banker) was impressed by the previous easement go-round or by questions in letters to the realtor from attorney Dan Featherston re his client Bandelins' (lots 2 & 3 owners) interests given Swanson's litigation against them [encl. 4] and from myself [encl. 5].

Near the start of my pursuant visit with First American's Broetje (recently arrived from Boise) he indicated he thought the easement okay. He believed Sandpoint Title had missed a pivotal 1961 conveyance of record (Bonner County #88222) in its 1992 title search (when I purchased and you insured our property) because it had not gone far enough back [just to 1974]. However, after we reviewed Talache title history with my document collection and his tractbook, Mr. Broetje, without abandoning the position that a search ought to go back to the root of the title chain, seemed convinced that something else was amiss. I hear that conversing next day with Bandelins (whose title insurance is with First American), Mr. Broetje opined that questions of vendor candor with First American might jeopardize the validity of the purchaser's insurance. I think you or Dan Waggoner should contact Mr. Broetje [208-263-6833] and Capt. (USAF) Virnig.

A2. What seems questionable about #464700 and #464701.[1] **These,** a Warranty Deed and a Deed of Trust issued with First American imprimatur, **purport to give to Virnigs easements** not only across Swanson lots but also [like the 1994 easement] **across Cahn (Tax 1 of Lot 1), Nash (Lot 1 less Tax 1), and Bandelin properties (2 & 3).** Unlike the 1994 Goebel easement they rely, not on the device of a defunct California Corp donor, **but on reference to** "an easement ... across the Southeasterly 10 feet of Lots 1 -6 ... more particularly described in ... Instrument ... 88222...." **But what is this document #88222? Who issued it? To what does it purport to apply? Did the issuers have any, some, or all of the powers they purported to have? Does Swanson have the power 3 1/2 decades later, after 6 sets of Talache-Lodge-holdings' owners succeeded #88222's issuers without mentioning it, to resurrect and leapfrog its purport from one lot to another?**

---

[1] With one exception, I ignore #464699. It only grants easements across Swanson's lots 4, 5, 6. A question now under litigation whether Bandelins are lot #6 co-owners is best left to them. The exception is this: *If all three documents conveyed valid easements, construed together they seem to grant 2 easements near each other* (sort of a "double-wide"). These seem further to include *either a route potentially lying through Swanson's house* [if one stresses the phrase "perpetual 10-foot wide easement above high water mark" and if the roadway erodes into the lake as it has across Tax 1 of Lot 1] *or a contingent nullity* [if one stresses the phrase "as the roadway currently exists"].

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Problematic answers appear from examining 1950s and 1960s Talache deed records. The problems are both strengthened and clarified by a 3-hour conversation I have had with Mr. and Mrs. Harlan Walker who, dba Talache Lodge Inc., purchased Talache Village in 1947 from Burroughs, the last of the active-mine-operating owners, built up and ran the resort from the 1940s to the late 1950s, and who may well have been the last "unsullied stright-back-to-the-title-chain-root" owners. In 1958 because the husband in the other active couple (Anderson, a Walker brother in-law) wished to return to the printing business, the Walkers regretfully commenced to sell out. They tried first a lease of the surface real estate with option to buy to Marguerite Thompson and then (overlapping) a similar 1960 lease to Lou and Vern Gabel. Resort-operations were complicated by conflicts involving a mineral rights lessee. [I'm told he kidnapped Gabels' grandchildren, was suspected of burning down the Lodge when closed for the winter, and later died of poison a few hours after his dog died similarly]. Neither resort lessee succeeded. Hence came to pass Talache's complicated 1960s sucession of leases, options to buy, devises, mortgages, parallel warranty and quitclaim deeds of the same property by different alleged owners to 3rd parties, and so on -- a pattern of confusion which has made the title searcher's job difficult (not to mention sending one alleged owner to jail for marketing worthless Talache stock in Utah). The chief problems emergent from historical scrutiny about #88222 are as follows.

A2.1. Thirty-four years old, document #88222 [Encl.6] is the 30 August 1961 conveyance of entirely different Block 5 lots [#13 and #14] by purported then-owners [Gabel and Gabel] -- entirely different from the lots [#7 & 8] to which current vendor seeks to have it apply. I have found no precise analogue easement among conveyances of other Block 5 lots since the early 1950s. #88222 says, p. 1, that it is giving an easement to the Lots 13 and 14 purchaser (Majeski) "across Lots 1 to 12 inclusive." Its Schedule A, moreover, gives a metes and bounds description of said easement, and then concludes with an incomplete sentence: "It being the intent hereby to reserve an easement 10 feet wide through and along the Southeasterly line of said Block 5 to provide for ingress and egress to Lakeside Drive over said 10 foot strip for Lots 1 to 14 inclusive."

A2.2. Deferring whether this document's declarations have any bearing upon later conveyances of <u>other</u> Block 5 properties (none of which prior to 1995's #464700 & 464701 mention it), we face 2 difficulties about its 1961 effects upon lots 13 and 14. *One is its internal incoherence. Schedule A's metes & bounds description overlooks (as comparison with the 1961 plat map shows--Encl. 7) that Block 5 is a concave irregular arc of 40' water frontage lots with varying landward Lakeside-Drive-abutting widths.* Lots 10 and 11, <u>e.g.</u>, are about 40% longer on the uphill-landward side than on the opposite lakeward side. There is further the "within the document's four corners" oddity that the metes and bounds description, contrary to its initial declaration "An easement ten feet wide across Lots 1 to 12 inclusive...." in fact also describes a 10 foot easement across Lot 13 and so gives the purchaser Majeski an easement across her own lot. Additionally, the metes and bounds description is a misadventure in Euclidian geometry. Proceeding southeastward from Lots 1 to 13 along their lakeward sides, it forgets (when it turns inland for 10 feet on the Lot 13/14 boundary and then turns back northwestward) that coming back 10 feet inland with identical reverse order description *fails to produce a 10 foot wide easement. It produces instead, after traversing lots 11 and 10, because the angles are thus turned short of the boundary lines, an easement steadily diminishing in width as one returns to lot 1. Schedule A is incoherent.*

A2.3. The second difficulty has to do with intent, lot ownership, and Gabel and Gabel power to convey even to 1961 purchaser Majeski. As the Feb 1961 Talache Village plat declares (and other documents of the time sustain), **Talache Lodge, not Gabel and Gabel, was "owner of the land embraced within the boundaries of the plat." Note that the plat says nothing about any owner-intent to provide a 10-foot easement across Block 5 -- notwithstanding ample language therein about various road dedications to the public.** [See also documents #71059, dated 15 August 1958, Memorandum Agreement between Lodge and Thompson/Parker, particularly p. 579f., and #76905, 8 June 1960 quitclaim by C. Sprague Parker.] Many documents of the time period are involved with trying to sort out various interests among these three parties as Walkers, then Marguerite Thompson, and Gabel & Gabel successively moved into and out of the Talache picture.

B1. A list of relevant deeds I have been able to locate in county records is attached to this letter as Appendix A. The deeds are listed in order of recording, except when [please see the boxes] properties have been conveyed

more or less simultaneously in parallel deeds by Talache Lodge and by Thompson to Gabel and Gabel. As an example, note #87209 [*warranty* deed, dated 26 Sept 1962, Block 5, Lots 16, 17, 18, Talache Lodge to Gabel] and #87520 [*quitclaim* deed, dated 15 October 1962, Thompson to Gabel, same lots]. (Encls. 8-9.) *Important are 4 documents[encls. 10-13] all dated 21 March 1963* -- **when Gabels actually first received title to most of the Talache properties.** #89672 is a Warranty Deed wherein Talache Lodge conveys to Gabel and Gabel title to sundry Talache properties listed in a Schedule A[2], **including the patented Mexico Claim of which Talache Block 5 was a part. #89914 is the parallel quitclaim by Thompson to Gabels, with the significant difference that (presumably having no claim to lakeside Lots 1-5) Thompson didn't convey them.** #89673 and #89674 mortgaged all back (except lakeside 1-5) to Talache Lodge and Thompson respectively.

B2. Comparison of the List and these documents show 3 things. **First, the exceptions at the end of #89672's "Grand Conveyance" almost invariably match those properties already conveyed by the Lodge to Gabel and Gabel. Second, the only Talache shoreside Block 5 properties excepted from the March 1963 conveyance are Lots 13, 14, 16, 17, 18. Third, there is one conspicuous "non-match" between the List and the "Grand Conveyance" -- as to lots 13 & 14 supposedly sold by Gabels in August 1961 to Majeski via document #88222.** I cannot find any document conveying these lots to Gabels in the first place, recorded prior to or after the Majeski sale. [There is error in First American's tractbook. It shows 13 and 14 as conveyed in, rather than excepted from, the Mar 1963 conveyance. Does Sandpoint Title's have the same error?]

C. 2 Conclusions about the Original (In)validity of the #88222 Easement

Two conclusions follow. **Conclusion #1: Gabel and Gabel may have had no power in 1961 to convey *any* easement in Deed #88222 because they may have had no power to convey the lots at all. Conclusion #2: Gabels certainly had no power in 1961 to encumber Lots 1, 2, or 3 because they did not then own them. Whether both conclusions be true, or only #2, the 1961 declaration amounts legally to nothing.** #88222's "easement" has no more present force than another of #88222's provisos: "...4. plans for any structure erected... shall be approved by Talache Land Development Company Planning Commission prior to ... construction." -- a provision it's safe to say Ms. Swanson has not observed constructing her house, inasmuch as no commission ever functioned. Barely a year after "the Grand Conveyance" Gabels deeded the properties to International Sales Co-op, and never recovered satisfactorily clear title again despite efforts, as the properties passed on through sheriff's sale and redemption [#110860] to Wade Patterson, then to James Crick, then to D-K-C, then to Wert, then to Kimes, and then to the 1970s' entanglements discussed in my 21 Aug 94 letter to Coulter. No Gabel successors deeded as if either of #88222's planning commission and "easement" provisos had any force.

Ms. Swanson's attempt to "leapfrog" this purported easement, 34 years later, and encumber Lots 1, 2, & 3 with a servience to lots 7 & 8 seeks to leapfrog zero into greater than zero. So far as I can yet tell, the only clearly valid easements in Block 5 today are prescriptive use ones appurtenant to Lots 1, 2, 3, 4, 5, 6, 9, 10, 11 (but not 7 & 8). These remain inadequately spelled out. *Swanson's attempt is particularly distressing as it is not the first but the third by Ms. Swanson to encumber our property.* [For the second, which I'll soon detail, see Enclosure 14.] **Therefore I hope that you will pursue clearing our title vigorously.** The purchaser is, if I am right, trespassing each day with dumptrucks and backhoes. Apart from questions as to trespass, he [apparently relying on Ms. Swanson's view of law] is investing considerable $ preparing land and sewage system that he might find hard to recover. Shouldn't Mr. Broetje or you apprise Capt. Virnig his reliance may be unsafe?.

Sincerely yours,

A. E. Keir Nash
Professor Emeritus, Univ of California (Poli Sci and Legal History)

cc: D. Waggoner (Sandpoint Title); D. Broetje (First American); G. & B. Bandelin

[2]This Schedule A is wholly different from Schedule A of #88222 above and dates back in substance of property deeded to #71059 and under the heading "Schedule A" to document #77953 of August 1960.

Appendix A. List of Deeds Conveying 1961 Talache Plat Properties from Talache Lodge and/or M. Thompson to L. and V. Gabel[1] and one or both recorded up through the 21 March 1963 "Grand Conveyance" (#89672/#89914)

[plus, in italics, deeds conveying same properties from Gabel and Gabel to others]

#Document	Book	Page	Grantor	Properties Block, Lot	Date of Deed day mo yr	Date Recorded day mo yr
81149	106	451	Talache Lodge	I,1	7 11 61	7 12 61
82040	107	143	"	I,20	14 9 61	15 9 61
82041	107	145	"	III, 3 + 10ft of 2	"	"
82670	107	318	"	I,24	29 9 61	
[82671	*107*	*320*	*Gabel to Jenkins*	*above property*	*29 9 61]*	
85908	109	103	Talache Lodge	I,2 & 3	27 6 62	2 7 62
85945	109	113	"	SE of 37, 50ftsq.	27 6 62 (1970 corr.)	5 7 62
86609	109	303	Talache Lodge	II,10	25 7 62	14 8 62
[87028	*109*	*447*	*Gabel to Van Natter*	*II,10*	*?*	*?]*
92112	112	116	Van Natter back	II,10	9 8 63	17 9 63
87191	109	535	Talache Lodge	II, 59	26 9 62	26 9 62
87891	110	191	Thompson	II,59	15 11 62	15 11 62
87209	**109**	**538**	**Talache Lodge**	**V, 16, 17, 18**	**26 9 62**	**27 9 62**
87520	**110**	**59**	**Thompson**	**V, 16, 17, 18**	**15 10 62**	**18 10 62**
87315	109	577	"	II,9	26 9 62	3 10 62
87889	110	189	Thompson	II,42	15 11 62	15 11 52
89034	110	239	Talache Lodge	II,42	26 11 62	27 11 62
87890	110	190	Thompson	III, 4 & 6	15 11 62	15 11 62
88035	110	241	Talache Lodge	III, 4 & 6	26 11 62	27 11 52
88118	110	266	Talache Lodge	seems same as #82041	27 10 62	3 12 63
?	110	408	Thompson	III, 10ft of 2&1	21 3 63	28 3 63
89672	**111**	**88**	**Talache Lodge**	**Grand Conveyance**	**21 3 63**	**28 3 63**
89914	**111**	**164**	**Thompson**	**Grand Conveyance**	**21 3 63**	**1 4 63**
	112	656	Talache Lodge	II, 11	14 9 61 (!)	21 1 64
?	115	534	Talache Lodge?	?	14 9 61 ?	15 7 65

[1]This list does not include conveyances of unplatted properties mentioned in the exceptions to the "Grand Conveyance." These, however, exhibit a similar Talache warranty deed/Thompson quitclaim deed conveying pattern. E.g.,

87316	109	575	Talache Lodge	"Gibbs"	26 9 62	3 10 62
87521	110	60	Thompson	"Gibbs"	15 10 62	15 10 62
88507	110	381	Talache Lodge	"Fouts"	26 9 62	2 1 63
93897	112	654	Thompson	"Fouts"	15 1 64	20 1 64

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from Talache Landing -- Mail address: P. O. Box 492, Sagle, ID. 83860. 10 August 1995
Captain (USAF) & Mrs. Stephen R. Virnig
1615 S. Buttercup Street
Spokane, WA. 99212.

Dear Captain and Mrs. Virnig:

After extensive discussions with President Claire Bistline of Sandpoint Title Insurance, Inc. [which along with Stewart Title Guaranty Company of Texas (regional office = Salt Lake City) insures my Talache Block 5 property, Lot 1 Less Tax 1], with Sandpoint Title's title expert Dan Waggoner, and with your title insurance company's counterpart [Douglas Broetje of First American Title Company] and after research of my own in Bonner County Records, I write variously to inform you, *to put you on legal notice about,* and to request certain actions from you as well as your sending me any contrary information you may have *re* your (non)right to cross, or to send construction equipment across, my property without my permission, *or re* the easements purportedly, conveyed to you by Frances Swanson [see Bonner County Court Records Documents #464699, #464700, and #464701, recorded 4 May 1995]. My concern arises as the easement nowhere appears in the 1992 Title Insurance Policy for my property -- or in other policies for other Block 5 Talache properties.

1. The considered collective judgment of the above-mentioned title insurance companies' officers and employees and myself is that the easement conveyed in Documents #464700/701 is invalid insofar as it rests on what the documents purport to base it on -- the 1961 Instrument #88222. The details of most reasons for this judgment are given in the enclosed extracts from my 11 July 1995 letter to Stewart Title's Vice President Arlen Taylor. [Enclosure A.] Briefly, the purported easement seems invalid because: (1) there is no recorded document we can find indicating that Gabel & Gabel, conveyors of the 1961 easement, owned at the time of sale the lots, #13 & #14, they purported to sell to Majeski; (2) even if they did own #13 and #14, *they clearly did not then own* all the lots across which the easement was said to lie; and (3) the 1961 document pertains only to #13 and #14, as dominant estates, not to #7 and #8 that you purchased. *If there are any sure points in real property easement law, they include: (1) you can't benefit a property you don't own with an easement over another property you don't own; (2) you can't burden another property that you don't own with an easement; (3) you can't by mere declaration leapfrog a deeded dominant estate status from one lot that you own to another that you own.*

The Sandpoint Title President made to me the day before yesterday the additional argument that all such Gabel and Gabel granted easements of the 1960s disappeared legally when the Talache properties passed to the County for non-payment of taxes, and the easements went unmentioned by the redeemers in later deeds. [This reversion to County occurred twice -- in 1967 and again in 1974.] Finally on this score, may I note a point that only occurred to me last night? All first sales of Talache Block 5 lots made after 30 September 1974 by Wert/Talache Land Company appear to have been fraudulent insofar as based upon the notorious 30 Sept 74 Release of Judgement Lien document. *As such, these sales could not pass even a valid easement along with them.* The 1995 validity of Block 5 Talache titles rests essentially on Idaho statute and case law about adverse possession and prescriptive use and

MICROFILMED
APR 10 1997

the passage of time between that document and the first post Sept 74 sales, on the one hand, and Dr. Kimes' too tardy efforts to recover his 1972-sheriff-sale awarded properties, on the other. **Though these adverse possession based titles are by 1995 sound in and of themselves [as arguably are related prescriptive use easements], such titles can't automatically go back and pick up pre-1974 easements after the fact.**

2. The terms of your title insurance with First American require you immediately to inform them of this notification to you unless you wish to jeopardize such insurance's validity. If you look in the fine print of the Conditions and Stipulations section of your policy, you will doubtless [inasmuch as Broetje tells me it's there] find the equivalent of in mine: **"3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.....promptly in writing ... (ii) in case knowledge shall come to an insured of any claim of title or interest which is adverse to the estate or interest, as insured, and ... for which the Company may be liable...."** It is not telling tales out of court unduly to say that there is some puzzlement at both title insurance companies that you did not take the Bandelins' recent letter as trigger for this legal duty.

3. If I were in your position, in talking with First American I would ask some penetrating questions about the role and knowledge of Coldwell Banker's agents Paul Dukes and spouse respecting this and related aspects of the sale to you. I would also inquire of Coldwell Banker's owner, Don McCanlies. That's because Coldwell B. has been unusually well informed prior to sale about problems by letters of mine and of Attorney Dan Featherston. [Enclosures B1-B3.] Before talking to Coldwell Banker, I would carefully read 2 recent Idaho appeals cases dealing with broker liability to purchasers despite being at law the vendor's agent -- **Hanf v. Syringa Realty,** Idaho 120 Idaho 364, 816 P.2d 320 (1991); **Powell v. Nietmann,** 116 Idaho 590, 778 P.2d 340 (1989). Both involved liability of Bonner County realtors for saying too much or too little to the purchaser.

4. Has there been a mistake within David Bellomy's firm's internal communications, as to your having permission from neighbors whose land his equipment is seemingly trespassing upon? Yesterday Fran McIntire (one of the Block 5, Lots 2 and 3 owners) was told on inquiring of Bellomy's office why his trucks and other equipment were crossing her land that it was your responsibility to obtain permission. Is that garbled? **In any event, you do not yet have my permission respecting Lot 1, and I am ccing Bellomy with this letter so there is no doubt in his mind as to trespassing.**

5. If you are basing what appears to be trespassing on another legal basis than that which appears in your deed, please let me know promptly. If you have a legally sound basis, I'll be the first to welcome you and Bellomy's employees across my property. *Otherwise please take this letter as a formal legal demand that you cease and desist.* Please feel free to phone me at (208) 263-0765.

6. I expect to ask you soon to do what a previous bogus easement obtained by Ms. Swanson a year ago required -- to sign a document acknowledging the defects of the easement in documents #464700 and 464701 and rescinding such part of said documents so the rescission may be entered in the county records. It is regrettable that such clouding of my title should occur twice as it lessens my property's marketability. Perhaps you have a better suggestion. I attach, to assist you, a short list of attorneys whom I understand to be knowledgeable in North Idaho property law problems (especially Talache's) along with notation where one is already retained by a Talache owner and so "taken."

Sincerely yours,

A. E. Keir Nash

Professor Emeritus on active service (Constitutional Law/American Legal History)

cc: C. Bistline, Sandpoint Title; D. Broetje, First American Title; Charles Hosack (Lukins & Annis); David Bellomy

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APR 10 '97

A SHORT [AND INCOMPLETE] LIST OF NORTH IDAHO LAWYERS
WITH RELEVANT EXPERTISE/KNOWLEDGE
(in no particular order)

Name and City of Attorney	Relevant Experience	Name of Talache Client (if any)
Dan Featherston, Sandpoint	Property = 2nd speciality; sewage Lot 6 litigation, hence Talache-familiair	Glenn & Barb Bandelin, Keir & Margo Nash
Everett Hofmeister, C d'A	Swanson's various litigations Cluff v. Bonner County	Frances Swanson
Thomas Cooke, Priest River/S'pt	property speciality Persyn v. Favryn	Mark Mays
Jonathan Cottrell, Sandpoint	Hanf v. Syringa Realty; Privette's hassles with Wert and Goebel and Kimes	Robert Privette
Charles Hosack (Lukins&Annis, C d'A and Spokane)	Has the longest and most impressive record of property and related cases argued in Idaho appeals courts, of any North Idaho attorney; partner in major Spokane-centered firm	Keir & Margo Nash
Gary Finney, Sandpoint	Good local reputation, but problematic re handling of Talache Landing Water System; argued Powell v. Nietmann	Lloyd Andrews (re Talache)
[Romer Brown, C d'A	expertise, but more active in real estate than arguing cases now]	
Ford Elsaesser, Sandpoint		Andrews (re Mall)
James Paulsen, Sandpoint	Long appeals record; argued in Powell v. Nietmann	
Roger Hanlon, Sandpoint	probably knows more re Talache legal difficulties than any other attorney because of work for Kimes	formerly Kimes

EXHIBIT
APR 10 1997

AFTER RECORDING, MAIL TO
Stephen and Cynthia Virnig
1615 S. Buttercup Street
Spokane, WA 99212

FILED First American Title
'95 MAY 4 AM 10 45
MARIE SCOTT
RECORDER OF BONNER
COUNTY BY SL DEP.

EASEMENTS

464699

I.

WHEREAS, FRANCES L. SWANSON, a single woman dealing with her sole and separate property, is the owner of Lots 4, 5 and 6, Block 5, Talache Village, a subdivision located in Bonner County, Idaho; and,

WHEREAS, STEPHEN R. VIRNIG and CYNTHIA J. VIRNIG, husband and wife, are the purchasers of the adjoining Lots 7 and 8 in said Block 5, Talache Village subdivision, NOW THEREFORE:

I, FRANCES L. SWANSON, for good and valuable consideration, do hereby grant and convey unto STEPHEN R. VIRNIG and CYNTHIA J. VIRNIG, husband and wife, a perpetual 10-foot wide easement over and across the southerly portion of Lots 4, 5 and 6, Block 5, Talache Village subdivision, for ingress and egress to Lots 7 and 8, Block 5, Talache Village subdivision, as the roadway currently exists. /above high water mark

II.

We, STEPHEN R. VIRNIG and CYNTHIA J. VIRNIG, husband and wife, for good and valuable consideration, do hereby grant and convey unto FRANCES L. SWANSON, a perpetual 10-foot wide easement over and across the southerly portion of Lots 7 and 8, Block 5, Talache Village subdivision, as the roadway currently exists, for the /above high water mark

APR 1 0 1997

First American Title Company

AFTER RECORDING, MAIL TO GRANTEE.
FATCO #95051/25781

FILED BY First American Title

'95 MAY 4 AM 10 16

300

MARIE SCOTT
RECORDER OF BONNER
COUNTY BY _____ DEP.

464700

WARRANTY DEED

For Value Received

FRANCES L. SWANSON, a single woman

the grantor, does hereby grant, bargain, sell, and convey unto

STEVEN R. VIRNIG and CYNTHIA J. VIRNIG, husband and wife

the grantees, whose current address is

1615 S. Buttercup Street, Spokane, WA, 99212

the following described premises, to-wit:

Lots 7 and 8 in Block 5 of Talache Village, according to the Plat thereof recorded in Book 2 of Plats, Page 78, records of Bonner County, Idaho.

TOGETHER WITH an easement for ingress and egress to Lakeside Drive over and across the Southeasterly 10 feet of Lots 1 - 6 in Block 5 of Talache Village, more particularly described in that certain Instrument, recorded under Instrument No. 88222, records of Bonner County, Idaho.

SUBJECT TO: 1995 General Taxes, a lien in the process of assessment, not yet due or payable. Easements, restrictions, reservations, and provisions of record.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantees, their heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantees, that she is the owner in fee simple of said premises; that said premises are free from all encumbrances except current years taxes, levies, and assessments and except U. S. Patent reservations, restrictions, easements of record, and easements visible upon the premises, and that she will warrant and defend the same from all claims whatsoever.

Dated: April 26, 1995

Frances L. Swanson
FRANCES L. SWANSON

STATE OF Idaho)
: ss
COUNTY OF Bonner)

On This 26th day of April in the year 1995 before me, a Notary Public in and for said State, personally appeared FRANCES L. SWANSON, known or identified to me to be the person(s) whose name(s) is/are subscribed to the within Instrument, and acknowledged to me that he/she/they executed the same.

Donna R Brown
Notary Public
Residing at Sandpoint, Idaho
Commission Expires 10-23-95

DONNA R. BROWN NOTARY PUBLIC * STATE OF IDAHO *

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464701

First American Title Company

Return to FATCO ORDER #95051/25781 FILED BY First American Title

DEED OF TRUST

'95 MAY 4 AM 10 46

MARIE SCOTT
RECORDER OF BONNER
COUNTY BY SC DEP.

THIS DEED OF TRUST, Made this 26th day of April, 1995,
BETWEEN STEPHEN R. VIRNIG and CYNTHIA J. VIRNIG, husband and wife herein called GRANTOR,
whose address is: 1615 S. Buttercup Street, Spokane, WA 99212
FIRST AMERICAN TITLE COMPANY, an Idaho corporation, herein called TRUSTEE, and
FRANCES L. SWANSON, a single woman
whose address is: PO Box 104, Sagle, ID 83860 herein called BENEFICIARY, WITNESSETH:
That Grantor does hereby irrevocably GRANT, BARGAIN, SELL AND CONVEY TO TRUSTEE IN TRUST, WITH POWER OF SALE, that property in the County of Bonner, State of Idaho, described as follows and containing not more than twenty acres:

Lots 7 and 8 in Block 5 of Talache Village, according to the Plat thereof recorded in Book 2 of Plats, Page 78, records of Bonner County, Idaho.

TOGETHER WITH an easement for ingress and egress to Lakeside Drive over and across the Southeasterly 10 feet of Lots 1 – 6 in Block 5 of Talache Village, more particularly described in that certain Instrument, recorded under Instrument No. 88222, records of Bonner County, Idaho.

DUE ON SALE CLAUSE: If Grantor herein sells, conveys, assigns, or alienates the above described real property, or any part thereof, or any interest therein, without the prior written consent of the Beneficiary, Beneficiary shall have the right at Beneficiary's option to declare any indebtedness or obligations secured thereby, irrespective of the maturity date specified in the Promissory Note, immediately due and payable.

TOGETHER WITH the rents, issues and profits thereof, SUBJECT, HOWEVER, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits, for the purpose of securing payment of the indebtedness evidenced by a promissory note, of even date herewith, executed by Grantor in the sum of NINETEEN THOUSAND FIVE HUNDRED & NO/100 Dollars ($19,500.00), final payment due JULY 28, 1998 and to secure payment of all such further sums as may hereafter be loaned or advanced by the Beneficiary herein to the Grantor herein, or any or either of them, while record owner of present interest, for any purpose, and of any notes, drafts or other instruments representing such further loans, advances or expenditures together with interest on all such sums at the rate therein provided. Provided, however, that the making of such further loans, advances or expenditures shall be optional with the Beneficiary, and provided, further, that is the express intention of the parties to this Deed of Trust that it shall stand as continuing security until paid for all such advances together with interest thereon.

To protect the security of this Deed of Trust, Grantor agrees:

By the execution of this deed of trust and the note secured thereby, there are hereby incorporated and made an integral part hereof, for all purposes as though set forth herein at length, the provisions 1 to 6, inclusive, of Part A and provisions 1 to 9, inclusive, of Part B of Deed of Trust, which was re-recorded January 21, 1975 as Instrument No. 163167, at page 166 of Volume 73, Bonner County, Idaho Mortgage Records shall be and they are hereby incorporated and made an integral part hereof for all purposes as though set forth herein at length.

Request is hereby made that a copy of an Notice of Default and a copy of any Notice of Sale hereunder be mailed to the grantor at his address hereinbefore set forth.

Stephen R. Virnig
STEPHEN R. VIRNIG

Cynthia J. Virnig
CYNTHIA J. VIRNIG

STATE OF IDAHO)
: ss
COUNTY OF BONNER)

On This 26th day of April in the year 1995 before me, a Notary Public in and for said State, personally appeared STEPHEN R. VIRNIG and CYNTHIA J. VIRNIG, known or identified to me to be the person(s) whose name(s) is/are subscribed to the within Instrument, and acknowledged to me that he/she/they executed the same.

Donna R. Brown
Notary Public
Residing at Sandpoint, Idaho
Commission Expires 10/23/95

DONNA R. BROWN NOTARY PUBLIC STATE OF IDAHO

A. E. Keir Nash

P. O. Box 492
Sagle, Idaho. 83860.
(208) 263-0765

Political Science Dept., University of California
Santa Barbara, CA. 93106.
(805) 687-9315

April 3, 1995

Mr. Don McCanlies, Realtor
Coldwell Banker/Resort Realty
202 S. First Avenue
Sandpoint, ID. 83864.

Dear Mr. McCanlies:

At the advice of my Talache Landing property's title insurance company, which recently dealt successfully with a claim arising from efforts to sell a nearby property owned by Dan Deshon and Frances Swanson and listed with your employees (Paul Dukes and spouse Debra McGill), I am writing now -- in case you are unaware of the matter, and because my prior written communications to these employees have never been answered. I write because, in attending the interesting now-ongoing trial of a suit between Swanson and her neighbors, the Bandelins, I learned that the property in question is now in escrow without the question of an easement across my property yet being as clear as it might be.

If your employees are making clear to the buyer that there is no written easement in the property for sale across my property, or alternately if you have found some document of easement that my title insurance company did not find, in its recent inquiries, then of course there is no potential problem.

Briefly, as the enclosed show, **in August 1994 a document was filed in county court records purporting to grant an easement across my and two other Talache Landing lots to Frances Swanson. Attorneys and title company came in. In October 1994 the erroneous easement was acknowledged to be in error and rescinded by the "grantor" and "grantee." In January 1995 a quitclaim was executed in my favor by the "grantor" abjuring any rights in my property and recorded Feb. 13, 1995.**

Is your company intending to ignore these documents of public record; or, has an alternate record of easement been found; or, is the buyer purchasing without expecting to pass across my property; or, still alternately, is he expecting to approach me concerning an easement?

Thank you for attending to this. Perhaps your phoning me would be the least time-consuming for you. I hand deliver this in view of the time.

Sincerely yours,

A. E. Keir Nash
Professor Emeritus on active duty (Constitutional Law & Legal History)

cc: Stewart Title Insurance/Sandpoint Title

Featherston Law Firm

Daniel P. Featherston
Brent C. Featherston
Attorneys at Law

March 31, 1995

Coldwell Banker
Don McCanlies, Broker
202 S. First Avenue
Sandpoint, Idaho 83864

SENT BY FAX TRANSMITTAL TO: (208) 263-6802

Dear Don,

I am writing this to alert you of a situation that may be potentially a problem, and thereby enable you to take such actions as you deem appropriate to avoid the problem.

I understand your company is expecting to close a sale of lots 7 & 8, Block 5, Talache Village, the seller would be Frances Swanson. I represent Glenn & Barbara Bandelin, the owners of lots 2 & 3. As you are aware, there is a rather steep road that comes down the hill to the beach to the old Talache Landing. That road ends at the beach and there is a private drive that travels in a southerly direction along the beach across lots 1-11, inclusive. Lots 9, 10, 11 and some other lots to the south do have a deeded easement to use that driveway; however there is, to my knowledge, no such documented right to use that driveway for lots 1-8. Lots 7 & 8 have never been developed, and therefore, it is the Bandelin's position that the owners of lots 7 & 8, and their access to those lots by use of the private drive where it crosses Bandelin's lots 2 & 3, should be restricted. Bandelins will take whatever action is permitted by law to restrict any use of the private drive to the extent it crosses lots 2 & 3 for access to lots 7 & 8.

There is also a second possible issue. Your company is aware that there is a water system on lot 9, the Stewarts' lot. This system was built and designed to serve three (3) homes: the Stewarts, Frances Swanson, and the Bandelins. Although the Bandelins are not currently using the system, they are a one-third (1/3) owner of the system, and anyone seeking to join onto that system would have to consult with the Bandelins as well as the Stewarts and Frances Swanson. I would hope that there are no representations being made to the prospective buyers concerning either the ease with which they can obtain the right to hook onto this water system and/or use of the private drive.

105 Pine St., Suite 109 • P.O. Box J • Sandpoint, ID 83864 • (208) 263-6866 • Fax (208) 263-0400

Anyone purchasing lots 7 & 8 should realize that, although at one time the friendship between Mrs. Swanson and the Bandelins might have resulted in simple solution to these problems; however, the recent litigation, initiated by Mrs. Swanson against Mr. Bandelin, has forced the Bandelins to realize that, in future matters, they will have to more strictly adhere to their legal rights in dealing with her. In the past, many things were done between Mr. Bandelin and Mrs. Swanson on a handshake. However, it appears those handshake deals will now have to be litigated to determine the rights of the various parties. I say this simply to make you aware that anyone purchasing lots 7 & 8 should, unless they desire to be caught in the cross fire of litigation between Mr. Bandelin and Mrs. Swanson, not rely on the shoreline private drive for access or access to the Stewart, Bandelin, and Swanson's water system.

Sincerely yours,

Daniel P. Featherston

DANIEL P. FEATHERSTON
Attorney at Law

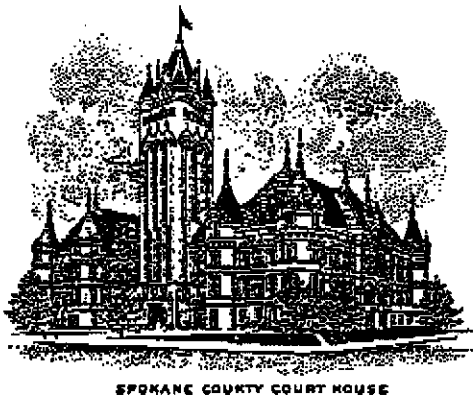
FEATHERSTON LAW FIRM

DPF/d

c: Gary Finney
Glenn Bandelin

RECEIVED
APR 10 '97

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SPOKANE COUNTY COURT HOUSE

SUPERIOR COURT
FOR
SPOKANE COUNTY

DAVID M. HARDY
Superior Court Administrator

Diane G. Robertson, Assistant Court Administrator

1116 W. BROADWAY AVENUE
SPOKANE, WASHINGTON 99260-0350
(509) 456-5790

DATE: 9/18/95

FACSIMILE TRANSMITTAL SHEET

TO: CHARLES HOSACK

ATTENTION:

FAX NO.: (208) 664-4125

FROM: TIM HARKINS

FAX NO.: (509) 456-5714

PAGES TRANSMITTED: 3 **(including this transmittal sheet)**

IF ERROR OCCURS IN TRANSMISSION, PLEASE CONTACT: TIM HARKINS

(509) 325-5466

September 18, 1995

Charles W. Hosack
Attorney at Law
250 Northwest Boulevard
Suite 102
Coeur d'Alene, Idaho 83814

RE: A. E. Keir Nash
Water Application

Dear Mr. Hosack:

I include herein my written response regarding my willingness to participate in this application. I have previously faxed to you the same information and this is merely the hard copy of same.

Very truly yours,

TIMOTHY J. HARKINS

TJH:th
encl-

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MARK MAYS, Ph.D.
PSYCHOLOGY

West 104 Fifth Avenue - Suite 230 East
Spokane, Washington 99204-2445
Telephone (509) 624-4800
Facsimile (509) 624-1216

September 18, 1995

Charles Hosack, Attorney at Law
Law Offices of Lukins and Annis
250 Northwest Blvd
Coeur Dillon, Idaho 83814-2971

Re : Application of Talache Water Rights

Dear Mr. Hosack:

I enclose, and send first by facsimile, my authorization and request to include my property in the application for water rights. I am unable to find on short notice the legal description you have requested, your letter having only been received by me today and due tomorrow. I enclose the legal description and the Tax ID number listed by the Bonner County Treasurer, and hope that will be sufficient. Please notify me by return fax if I should need to modify or dig further in thick files for this information.

Thanks for your help in this.

Sincerely,

Mark Mays

TALACHE SHORESIDE WATER WITHDRAWAL APPLICATION

INDICATION OF USERS' PREFERENCES

IN CONJUNCTION WITH 19 SEPT 95 HEARING

(Please fill out and return promptly to Charles Hosack, Attorney-at-Law
Lukins and Annis, Suite 102, 250 Northwest Blvd.
Coeur d'Alene, ID. 83814-2971.)

SECTION 1 -- TO BE FILLED OUT IF YOU WISH TO CONTINUE TO BE INCLUDED, AS PER FEBRUARY & MARCH 1995 CORRESPONDENCE BETWEEN TIM HARKINS & KEIR NASH, IN THE MARCH 31, 1995 WATER WITHDRAWAL RIGHTS APPLICATION, #96-08857, TO THE IDAHO DEPARTMENT OF WATER RESOURCES

~~I~~We, the undersigned, now own Lot(s)/Parcel(s) TAX 6(?) MINERAL MINE [ID# RP55A01W0 8553 90A] situated wholly or partially in Government Lot 2, Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho. ~~I~~We believe that this property has de facto received water from the waterline withdrawing from Lake Pend Oreille across Lot 1, Block 5, Talache Landing for at least 5 consecutive years, though ~~I~~we have not necessarily owned the lot(s)/parcel(s) for all this time.

This property was / ~~was not~~ [please circle correct answer & cross out incorrect one] sold to ~~m~~us as if it had a valid right so to withdraw water.

~~I~~We prefer, and authorize, Marguerite Bouraad Nash and A. E. Keir Nash ***to continue to include the aforelisted property*** in the application originally submitted March 31, 1995, and numbered 96-08857, to the Idaho Department of Water Resources in order to secure to me/us from that department the right lawfully to withdraw water from Lake Pend Oreille via that waterline to be used for domestic, gardening, and fire-prevention purposes on the aforesaid lot(s)/parcel(s).

Mark Mays Sept 19 1995 x Paula D. Mays 9/19/1995

Name(s) and Date(s)

SECTION 2 -- TO BE FILLED OUT IF YOU WISH NOT TO CONTINUE TO BE INCLUDED IN THE MARCH 31, 1995 WATER WITHDRAWAL RIGHTS APPLICATION, #96-08857, TO THE IDAHO DEPARTMENT OF WATER RESOURCES

I/We, the undersigned, now own Lot(s)/Parcel(s) _____ situated wholly or partially in Government Lot 2, Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho. I/We believe that this property has de facto received water from the waterline withdrawing from Lake Pend Oreille across Lot 1, Block 5, Talache Landing for at least 5 consecutive years, though I/we have not necessarily owned the lot(s)/parcel(s) for all this time.

This property **was / was not** [please circle correct answer & cross out incorrect one] sold to me/us as if it had a valid right so to withdraw water.

I/We prefer that Marguerite Bouraad Nash and A. E. Keir Nash ***delete the aforelisted property*** from the application originally submitted March 31, 1995 to the Idaho Department of Water Resources, and numbered 96-08857, in order to secure to me/us from that department the right lawfully to withdraw water from Lake Pend Oreille via that waterline to be used for domestic, gardening, and fire-prevention purposes on the aforesaid lot(s)/parcel(s).

_____ _____

Name(s) and Date(s)

_____ _____

EXHIBIT A

From a point on the Southerly right of way line of Lakeside Drive as shown on the plat of Talache Village as recorded in Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho, which point is the Northerly most corner of Lot 5, Block 5 of said Talache Village Plat; THENCE Southwesterly along said Southerly right of way line 22.87 feet to the end of a curve on the right of way line of said Lakeside Drive; THENCE North 41°35½' West 50 feet to a point on the Northerly right of way line of said Lakeside Drive; THENCE North 48°24½' East 7.26 feet along said right of way line to the TRUE POINT OF BEGINNING; THENCE continuing along said right of way line North 48°24½' East 60 feet; THENCE North 46°33' West 135.71 feet; THENCE South 48°24½' West 60 feet; THENCE South 46°33' East 135.71 feet to the TRUE POINT OF BEGINNING, all in Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho.

44

TALACHE SHORESIDE WATER WITHDRAWAL APPLICATION

INDICATION OF USERS' PREFERENCES

IN CONJUNCTION WITH 19 SEPT 95 HEARING

(Please fill out and return promptly to Charles Hosack, Attorney-at-Law
Lukins and Annis, Suite 102, 250 Northwest Blvd.
Coeur d'Alene, ID. 83814-2971.)

SECTION 1 -- TO BE FILLED OUT IF YOU WISH TO CONTINUE TO BE INCLUDED, AS PER FEBRUARY & MARCH 1995 CORRESPONDENCE BETWEEN TIM HARKINS & KEIR NASH, IN THE MARCH 31, 1995 WATER WITHDRAWAL RIGHTS APPLICATION, #96-08857, TO THE IDAHO DEPARTMENT OF WATER RESOURCES

I/We, the undersigned, now own Lot(s)/Parcel(s) Tax 379.19 Parcel # RP55N01W085604A situated wholly or partially in Government Lot 2, Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho. I/We believe that this property has de facto received water from the waterline withdrawing from Lake Pend Oreille across Lot 1, Block 5, Talache Landing for at least 5 consecutive years, though I/we have not necessarily owned the lot(s)/parcel(s) for all this time.

This property was / ~~was not~~ [please circle correct answer & cross out incorrect one] sold to me/us as if it had a valid right so to withdraw water.

I/We prefer, and authorize, Marguerite Bouraad Nash and A. E. Keir Nash ***to continue to include the aforelisted property*** in the application originally submitted March 31, 1995, and numbered 96-08857, to the Idaho Department of Water Resources in order to secure to me/us from that department the right lawfully to withdraw water from Lake Pend Oreille via that waterline to be used for domestic, gardening, and fire-prevention purposes on the aforesaid lot(s)/parcel(s).

Name(s) and Date(s)

9-18-95

9-18-95

SECTION 2 -- TO BE FILLED OUT IF YOU WISH NOT TO CONTINUE TO BE INCLUDED IN THE MARCH 31, 1995 WATER WITHDRAWAL RIGHTS APPLICATION, #96-08857, TO THE IDAHO DEPARTMENT OF WATER RESOURCES

I/We, the undersigned, now own Lot(s)/Parcel(s) _____ situated wholly or partially in Government Lot 2, Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho. I/We believe that this property has de facto received water from the waterline withdrawing from Lake Pend Oreille across Lot 1, Block 5, Talache Landing for at least 5 consecutive years, though I/we have not necessarily owned the lot(s)/parcel(s) for all this time.

This property was / was not [please circle correct answer & cross out incorrect one] sold to me/us as if it had a valid right so to withdraw water.

I/We prefer that Marguerite Bouraad Nash and A. E. Keir Nash ***delete the aforelisted property*** from the application originally submitted March 31, 1995 to the Idaho Department of Water Resources, and numbered 96-08857, in order to secure to me/us from that department the right lawfully to withdraw water from Lake Pend Oreille via that waterline to be used for domestic, gardening, and fire-prevention purposes on the aforesaid lot(s)/parcel(s).

_____ _____

Name(s) and Date(s)

_____ _____

45

TALACHE SHORESIDE WATER WITHDRAWAL APPLICATION

INDICATION OF USERS' PREFERENCES

IN CONJUNCTION WITH 19 SEPT 95 HEARING

(Please fill out and return promptly to Charles Hosack, Attorney-at-Law
Lukins and Annis, Suite 102, 250 Northwest Blvd.
Coeur d'Alene, ID. 83814-2971.)

SECTION 1 -- TO BE FILLED OUT IF YOU WISH TO CONTINUE TO BE INCLUDED, AS PER FEBRUARY & MARCH 1995 CORRESPONDENCE BETWEEN TIM HARKINS & KEIR NASH, IN THE MARCH 31, 1995 WATER WITHDRAWAL RIGHTS APPLICATION, #96-08857, TO THE IDAHO DEPARTMENT OF WATER RESOURCES

I/We, the undersigned, now own Lot(s)/Parcel(s) TAX 39, TAX 37 (NOTE 1) TAX 42, TAX 41, TAX 38 (NOTE 2) situated wholly or partially in Government Lot 2, Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho. I/We believe that this property has de facto received water from the waterline withdrawing from Lake Pend Oreille across Lot 1, Block 5, Talache Landing for at least 5 consecutive years, though I/we have not necessarily owned the lot(s)/parcel(s) for all this time.

NOTE 2 — This property **was** / ~~was not~~ [please circle correct answer & cross out incorrect one] sold to me/us as if it had a valid right so to withdraw water. NOTE 1 (BUT WATER APPLICATION WAS SUBMITTED PRIOR TO PURCHASE)

I/We prefer, and authorize, Marguerite Bouraad Nash and A. E. Keir Nash ***to continue to include the aforelisted property*** in the application originally submitted March 31, 1995, and numbered 96-08857, to the Idaho Department of Water Resources in order to secure to me/us from that department the right lawfully to withdraw water from Lake Pend Oreille via that waterline to be used for domestic, gardening, and fire-prevention purposes on the aforesaid lot(s)/parcel(s).

David R. Gay 5 SEPT 95 — Elizabeth Yvonne Gray Sept. 5, 95

Name(s) and Date(s)

_____ _____

.....

SECTION 2 -- TO BE FILLED OUT IF YOU WISH NOT TO CONTINUE TO BE INCLUDED IN THE MARCH 31, 1995 WATER WITHDRAWAL RIGHTS APPLICATION, #96-08857, TO THE IDAHO DEPARTMENT OF WATER RESOURCES

I/We, the undersigned, now own Lot(s)/Parcel(s) _____ situated wholly or partially in Government Lot 2, Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho. I/We believe that this property has de facto received water from the waterline withdrawing from Lake Pend Oreille across Lot 1, Block 5, Talache Landing for at least 5 consecutive years, though I/we have not necessarily owned the lot(s)/parcel(s) for all this time.

This property **was / was not** [please circle correct answer & cross out incorrect one] sold to me/us as if it had a valid right so to withdraw water.

I/We prefer that Marguerite Bouraad Nash and A. E. Keir Nash ***delete the aforelisted property*** from the application originally submitted March 31, 1995 to the Idaho Department of Water Resources, and numbered 96-08857, in order to secure to me/us from that department the right lawfully to withdraw water from Lake Pend Oreille via that waterline to be used for domestic, gardening, and fire-prevention purposes on the aforesaid lot(s)/parcel(s).

_____ _____

Name(s) and Date(s)

_____ _____

RECEIVED
SEP 18 1995
IDWR

September 13, 1995

P.O. Box 4095
Coos Bay, OR 97420

RECEIVED
SEP 25 1995
Department of Water Resources

State of Idaho
Department of Water Resources
Northern Region, Suite No. 210
1910 N.W. Boulevard
Coeur d' Alene, Idaho 83814-2615
Attn: Mr. Robert G. Haynes P.E., Regional Director

Re: Notice of Hearing in the matter of application for permit No. 96-08857 in the name of Arnold Edmund, Keir Nash and Marguerite B.R. Nash.

Dear Mr. Haynes:

My wife and I will not attend the hearing scheduled for September 19, 1995 on the above referenced matter.

Please advise if a transcript or tape recording of the hearing will be available and the cost for a copy.

Yours truly,

Sidney E. Danyow

CONFERENCE/HEARING SCHEDULE

Northern Region

TUESDAY, SEPTEMBER 19, 1995:

STATE OF IDAHO DEPARTMENT OF WATER RESOURCES
1910 NORTHWEST BOULEVARD, SUITE 210, COEUR D ALENE, ID

9:00 A.M. - 96-08857 - NASH, ARNOLD EDMUND KEIR & MARGUERITE B. R.

1:00 P.M. - 91-07127 - MILLS, G. CHETT &/OR KIM &/OR E. KENNETH, JR.

WEDNESDAY, SEPTEMBER 20, 1995:

FEDERAL BUILDING, (SOIL CONSERVATION SERVICE) 2ND FLOOR CONFERENCE ROOM
220 E. FIFTH, MOSCOW, ID

9:00 A.M. - 87-07174 - HICKLIN, WILLIAM J

1:00 P.M. - 84-07284 - BOWMAN, DWIGHT

THURSDAY, SEPTEMBER 21, 1995:

COURTHOUSE, COURTROOM 2, UPSTAIRS
215 S 1ST, SANDPOINT, ID

9:00 A.M. - 96-08802 - OLDRIDGE, NEIL

1:00 P.M. - 96-08824 - WILLIAMS, DONALD L.

Application No. 96-08857

SPECIAL NOTE: _____

PROTEST INFORMATION SHEET

Protestant(s)

	NAME	ADDRESS	PROTEST DATE
1	Dan Deshon	517 S. 1st Ave Sandpoint 83864	5/2/95 $25.00 Rec# N00 8867
2	Frances L. Swanson	P.O. Box 104 Talache Beach, Sagle 83860	5/2/95 $25.00 Rec # N8875
3	Sidney Danyow	P.O. Box 4095 Coos Bay OR 97420	5/5/95
4	Deborah S & Robert S. Cahn	P.O. Bx 47 Phila CA 95466	5/8/95
5	Jack R. & Rachell L. Johnson	P.O. Bx 97 Newman Lake WA 99025	5/8/95
6			
7			
8			
9			
10			

ATTORNEY _____ ADDRESS _____

DATE FILED: 3/31/95 PROTEST DUE DATE: 5/8/95

ISSUES: _____

Applicant

ATTORNEY _____ ADDRESS _____

	DATE
Protest Date Entered on Computer	5/3/95
Acknowledgment Letters Sent	5/2/95 (3, 4 + 5 + 8th)
~~Hearing~~ Date	6/14/95
Hearing Date	9/19/95
_____	_____ (Other Dates)
_____	_____

Other Information: _____

Protest information submitted to computer (following hearing): _____

APR 10 '95

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

RECEIVED
AUG 31 1995
[illegible] REGION
FDWR

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

ARNOLD EDMUND KEIR NASH &
MARGUERITE B.R. NASH
P.O. BOX 492
SAGLE ID 83860

4a. Article Number

48354

4b. Service Type

☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery

8-30-95

5. Signature (Addressee)

6. Signature (Agent)

8. Addressee's Address (Only if requested and fee is paid)

PS Form **3811**, December 1991 ☆U.S. GPO: 1993—352-714 **DOMESTIC RETURN RECEIPT**

Thank you for using Return Receipt Service.

UNITED STATES POSTAL SERVICE

Official Business

PENALTY FOR PRIVATE
USE TO AVOID PAYMENT
OF POSTAGE, $300

U.S. MAIL

U.S. POSTAGE

APR 16 1987

Print your name, address and ZIP Code here

DEPARTMENT OF WATER RESOURCES
1910 NORTHWEST BLVD. SUITE 210
COEUR D'ALENE, IDAHO 83814

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3 and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

RECEIVED
SEP 12 1995
RECEPTION
LDWR

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

ARNOLD EDMUND KEIR NASH &
MARGUERITE B.R. NASH
1033 NORTH ONTARE ROAD
SANTA BARBARA CA 93105

4a. Article Number

48355

4b. Service Type

☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

5. Signature (Addressee)

6. Signature (Agent)

7. Date of Delivery

9-11-95

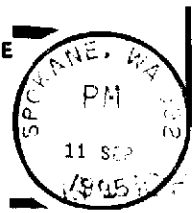
8. Addressee's Address (Only if requested and fee is paid)

PS Form **3811**, December 1991 ☆U.S. GPO: 1993—352-714 **DOMESTIC RETURN RECEIPT**

Thank you for using Return Receipt Service.

UNITED STATES POSTAL SERVICE

Official Business



PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300



APR 10 '87

Print your name, address and ZIP Code here

DEPARTMENT OF WATER RESOURCES
1910 NORTHWEST BLVD. - SUITE 210
COEUR D'ALENE, IDAHO 83814

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:
MS. FRANCES L. SWANSON
P O BOX 104
TALACHE BEACH
SAGLE ID 83860

4a. Article Number
48353

4b. Service Type
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

5. Signature (Addressee)
Donna Rengo

6. Signature (Agent)

7. Date of Delivery
9-5-95

8. Addressee's Address (Only if requested and fee is paid)

PS Form **3811**, December 1991 ☆U.S. GPO: 1993—352-714 **DOMESTIC RETURN RECEIPT**

Thank you for using Return Receipt Service.

UNITED STATES POSTAL SERVICE

Official Business

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

U.S. MAIL

APR 16 [illegible]

Print your name, address and ZIP Code here

DEPARTMENT OF WATER RESOURCES
1910 NORTHWEST BLVD. - SUITE 210
COEUR D'ALENE, IDAHO 83814

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

RECEIVED
SEP 05 1995
NORTHWEST REGION
FOR

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:
MR. SIDNEY DANYOW
P O BOX 4095
COOS BAY OR 97420

4a. Article Number
P 8356

4b. Service Type
☐ Registered ☐ Insured
XX Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery
8-31-95

5. Signature (Addressee)
S. E. Danyow

6. Signature (Agent)

8. Addressee's Address (Only if requested and fee is paid)

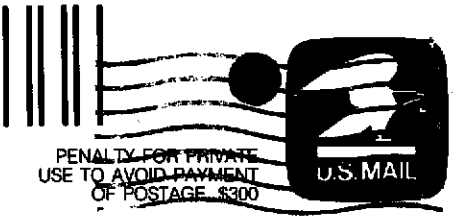
PS Form **3811**, December 1991 *U.S. GPO: 1993—352-714 **DOMESTIC RETURN RECEIPT**

Thank you for using Return Receipt Service.

UNITED STATES POSTAL SERVICE

Official Business





MICROFILMED
APR 12 1997

Print your name, address and ZIP Code here

DEPARTMENT OF WATER RESOURCES
1910 NORTHWEST BLVD. - SUITE 210
COEUR D'ALENE, IDAHO 83814

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 [illegible] or 2 for additional services.
- Complete items 3 [illegible] 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

RECEIVED
SEP 01 1995
NORTH LAKE WA

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

JACK R & RACHELL L JOHNSON
P O BOX 97
NEWMAN LAKE, WA 99025

4a. Article Number
48352

4b. Service Type
☐ Registered ☐ Insured
XX Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery
AUG 31 [illegible]

5. Signature (Addressee)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Agent)

NEWMAN LAKE WA
AUG 31 [illegible]
USPS - 99025

PS Form **3811**, December 1991 ☆U.S. GPO: 1993—352-714 **DOMESTIC RETURN RECEIPT**

Thank you for using Return Receipt Service.

UNITED STATES POSTAL SERVICE

Official Business



PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

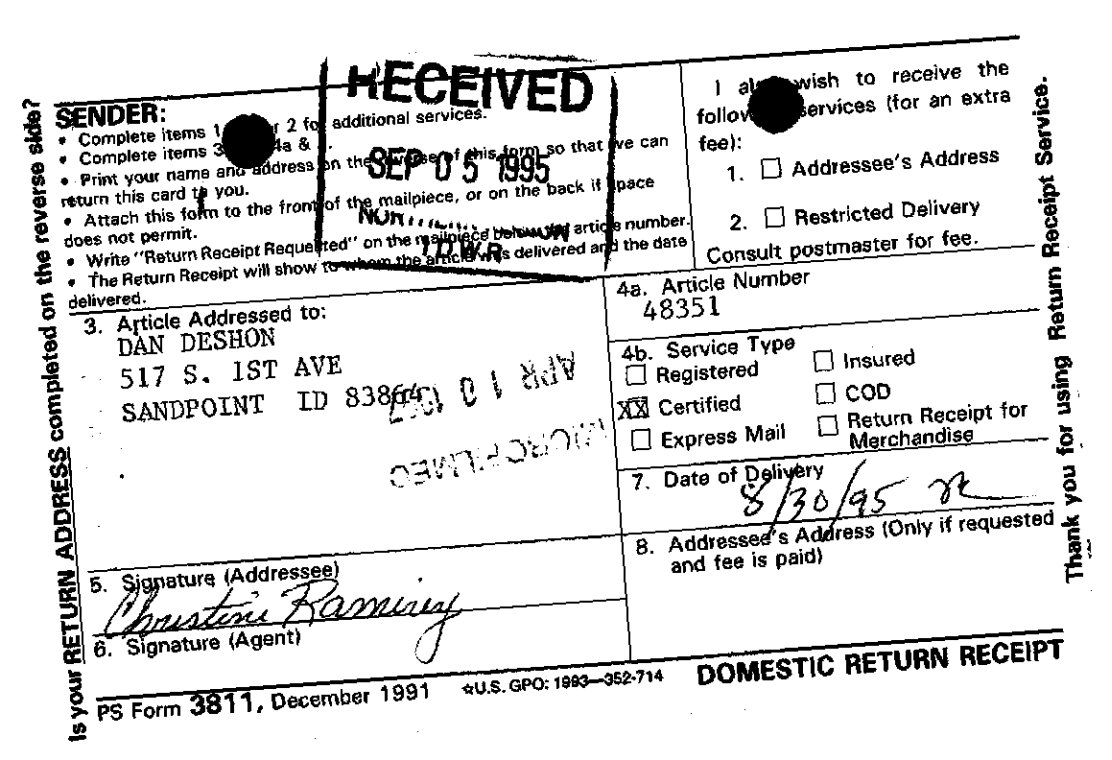


MICROFILMED

APR 10 1997

Print your name, address and ZIP Code here

DEPARTMENT OF WATER RESOURCES
1910 NORTHWEST BLVD. - SUITE 210
COEUR D'ALENE, IDAHO 83814



Is your RETURN ADDRESS completed on the reverse side?

SENDER:
- Complete items 1 [illegible] 2 for additional services.
- Complete items 3 [illegible] 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

RECEIVED
SEP 05 1995
NON-DELIVERY

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:
DAN DESHON
517 S. 1ST AVE
SANDPOINT ID 83864

APR 10 1996
RETURNED UNCLAIMED

4a. Article Number
48351

4b. Service Type
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery
8/30/95

5. Signature (Addressee)
Christine Ramirez

6. Signature (Agent)

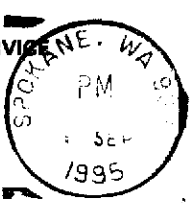
8. Addressee's Address (Only if requested and fee is paid)

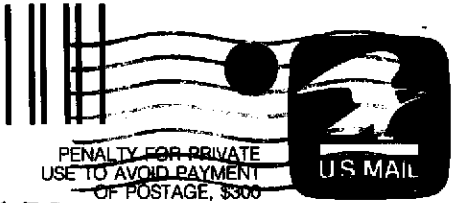
PS Form **3811**, December 1991 ☆U.S. GPO: 1993—352-714 **DOMESTIC RETURN RECEIPT**

Thank you for using Return Receipt Service.

UNITED STATES POSTAL SERVICE

Official Business





MICROFILMED

APR 10 1997

Print your name, address and ZIP Code here

DEPARTMENT OF WATER RESOURCES
1910 NORTHWEST BLVD. - SUITE 210
COEUR D'ALENE, IDAHO 83814

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 96-08857 IN THE NAME OF ARNOLD EDMUND KEIR NASH AND MARGUERITE B. R. NASH	))))	**NOTICE OF HEARING**

On March 31, 1995, ARNOLD EDMUND KEIR NASH AND MARGUERITE B. R. NASH (applicants) filed with the Department of Water Resources (department), an application for permit No. 96-08857. The application was protested by DAN DESHON, FRANCES L. SWANSON, SIDNEY DANYOW, DEBORAH S. & ROBERT S. CAHN, AND JACK R. & RACHELL L. JOHNSON. The conference held by the department on June 14, 1995, did not resolve the matter of protest.

The department has scheduled the matter for hearing on Tuesday, September 19, 1995, at 9:00 A.M. at 1910 NORTHWEST BLVD., SUITE 210, COEUR D ALENE, IDAHO, 83814. The hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, the adopted Rules of Procedure of the department and Water Appropriation Rules 40 and 45. A copy of the rules may be obtained from the department upon request. The presiding officer at the hearing will be Norman C. Young.

If you plan to offer exhibits for the record, note that IDAPA Rule of Procedure 37.01.01606 requires that you provide a copy of exhibits to each part and to the presiding officer.

The hearing will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. if you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within ten (10) days prior to the hearing.

All parties to the matter will have the opportunity to respond and present information and argument on all issues involved.

Dated this 29th day of August, 1995.

Robert L. Haynes

Regional Supervisor

RECEIVED

SEP 1 6 1995

CONFERENCE

The purpose of a prehearing conference is to provide the opportunity for the parties and the department to familiarize themselves with a contested matter and to attempt to resolve the matter. At the conference, the department may also formulate and simplify the issues, identify documents to avoid unnecessary proof, exchange proposed exhibits or prepared testimony, limit witnesses, discuss settlement or make settlement offers, schedule hearings, establish procedure at hearing and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement.

HEARING

The department will tape record the hearing. Copies of a hearing are available upon request and the payment of the cost of reproducing the tape.

The hearing likely will be conducted by a hearing officer appointed by the Director rather than by the Director himself. If so, the hearing officer will prepare a recommended order for the Director's consideration. Parties can file exceptions to a recommended order, briefs in support of the exceptions or may request oral argument. Parties may seek judicial review of any final order issued by the director.

Parties may by written stipulation waive the right to a recommended order, particularly when a shortened decision process is desirable or necessary. Such a waiver does not eliminate any rights of the parties in connection with the final order and judicial review of the order.

EXHIBITS

A party who plans to offer an exhibit as part of the hearing record must provide a copy of the proposed exhibit to the parties and to the hearing officer.

AMERICANS WITH DISABILITIES ACT

Any hearing scheduled will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within ten (120) days prior to the hearing.

I hereby certify that on the 29th day of August, 1995, I mailed a true and correct copy of the foregoing document, postage prepaid, to the applicant(s) and protestant(s) listed below:

Dianne L. Ball

Dianne L. Ball, Senior Secretary

Certified Mail

- MR. DAN DESHON
- MS. FRANCES L. SWANSON
- MR. SIDNEY DANYOW
- DEBORAH S. & ROBERT S. CAHN
- JACK R. & RACHELL L. JOHNSON
- ARNOLD EDMUND KEIR NASH & MARGUERITE B. R. NASH

PUBLIC HEARING

File: 96-08857 - NASH

Date: JUNE 14, 1995

Time: 9:00 A.M.

Place: 1910 NORTHWEST BOULEVARD, SUITE 210, CONFERENCE ROOM
COEUR D ALENE, ID 83814 (208) 769-1450

ROSTER OF ATTENDANCE

NAME	ADDRESS
EDWARD TED BENNETT	P.O. BOX 47, PHILO, CA 95466
Deborah S. Cahn	POB. 47, Philo, CA. 95466
Robt PRIVETTE	1040 TELACHE Rd - 83860
DAVID GAY	P.O. Box 809, SPIRIT LAKE, ID 83869
Elizabeth Gay	P.O. Box 809 " " "
Frances L. Swanson	Talache Beach, P.O. Box 104, Lake, Ida 83860
SIDNEY E. & LILYAN E. DANYOW	P.O. Box 4095 Coos Bay, OR 97420
Terrence M. Carter	1805 N. Boyer Ave. Sandpoint, ID 83864
Chuck Hosack	250 N 6th Blvd Suite 102 CDA
Marguerite Nash	P.O. Box 492 Sagle, ID
& Kevin Nash	P.O. Box 492, Sagle, ID.

MICROFILMED

APR 10 1997

June 13, 1995

Sidney E. Danyow
P O Box 4095
Coos Bay, OR 97420

Re: Application for Permit #96-08857 - NASH

Dear Mr. Danyow:

This letter is in response to the question posed in your letter of June 10, 1995. The answer to your question is that the approval of the application filed by the Nash's would in no way prejudice your ability to successfully acquire a permit to appropriate public water for your property.

The items cited in my letter to you acknowledging your protest are ones which the Director of the Department of Water Resources must consider for each application, whether or not that application is protested. If you file an application to appropriate public water and the questions posed are satisfactorily addressed, your application would be approved.

If you have any question, please feel free to contact me.

Sincerely,

Robert G. Haynes, P. E.
Regional Manager

RGH:db

RECEIVED
JUN 13 1995
IDWR

June 10, 1995

P.O. Box 4095
Coos Bay, OR 97420

State of Idaho
Department of Water Resources
Northern Region, Suite No. 210
1910 N.W. Boulevard
Coeur d' Alene, Idaho 83814-2615
Attn: Mr. Robert G. Haynes P.E., Regional Director

Re: Application for Permit #96-08857 by
Keir Nash and Marguerite B.R. Nash, the Applicants.

Ref: Telephone discussion with Mr. R.G. Haynes on June 09, 1995.

Dear Mr. Haynes:

As indicated previously, my wife and I own tax parcel #3 which is centrally located on the map included with the referenced application.

The question I posed in our referenced telephone discussion was as follows: If the water right is granted to Mr. Nash and applicant has no intention of serving our parcel, which he tells me is so, will said granting to applicant preclude our being able to obtain a right to use of public water in the future presuming that we meet all other requirements existing at the time of our application?

Your answer to this question in our referenced telephone discussion indicated that we, and I presume our successors in interest, would not be blocked by approval of the referenced application.

Your verification of my understanding in this regard by letter will be appreciated.

Yours truly,

Sidney E. Danyow

*Edward F. Wroe
Charles W. Hosack
R. Wayne Sweney
Sidney E. Smith
*Michael M. Megaard
Edward W. Kok
*Mischelle R. Fulgham
Dawn B. Allison

Of Counsel
James M. English

*Admitted in Idaho and Washington

LAW OFFICES

LUKINS & ANNIS

A PROFESSIONAL SERVICE CORPORATION

250 Northwest Boulevard, Suite 102, Coeur d'Alene, Idaho 83814-2971
Phone (208) 667-0517 • FAX (208) 664-4125

Spokane Office
1600 Washington Trust Financial Center
717 West Sprague Avenue
Spokane, Washington 99204-0466
Phone (509) 455-9555

Moses Lake Office
1000 West Ivy Street
Moses Lake, Washington 98837
Phone (509) 765-4199

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JUN 12 1995
IDWR

June 9, 1995

State of Idaho
DEPARTMENT OF WATER RESOURCES
Northern Region, Suite No. 210
1910 Northwest Boulevard
Coeur d'Alene, ID 83814-2615

ATTN: ROBERT G. HAYNES
REGIONAL MANAGER

Re: Application for Permit No. 96-08857
Arnold Edmund Keir Nash and Marguerite B. R. Nash, Applicants

Dear Mr. Haynes:

This office is writing you on behalf of Mr. and Mrs. Nash, Applicants for Permit No. 96-08857 as referenced above, in light of the enclosed Minutes of a meeting (to which the Nashes received no timely invitation and could not attend, yet are not listed as "not present"; See, the first paragraph of page two's inaccurate sentences: "A record exists of what the defunct corporation owns . . ." and, "Easements across properties do exist").

The Nashes wish either to delay the hearing scheduled for June 14, 1995, at 9:00 a.m., at your offices in Coeur d'Alene, or to modify their Application to include only their own properties, until confirmation by the Nashes that any users of the system in question are making any use of the applicants' parcel identified as Block 5, Lot 1, less Tax No. 1, on a permissive use basis only.

Very truly yours,

CHARLES W. HOSACK

CWH:bd
Enclosure
cc: Mr. and Mrs. Keir Nash

L0609bdd.cwh-060995

MICROFILMED
AUG 16 1995

Meeting Notes
Saturday, May 27, 1995

Owners Present: Jack Johnson, Bob Privette, Matt Sanger, Mark Mays, Frances Swanson, Will Nash, Elizabeth and David Gaye, Dave and Melanie Kite, Daniel Soss.

Not Present: Debra Cahn Bennett

Daniel Soss made a motion for those present to discuss forming a new corporation for the water system. Kite seconded.

Points of discussion:

Reforming the old corporation. After 10, years, the old corporation can be requested to be considered defunct by the state. Talache has received a certificate. The old corporation can not be "resurrected". A new one should be formed.

State water resources requires ownership of the pipes, etc., or easements, for a permit to be granted. A corporation can own these.

Will mentioned that the Nashes felt there were problems; new users connecting to the system, Matt's proposal including new officers, reforming Talache water users, no bylaws for old corp.

The new corporation would own the water system. The corporation would shield individuals from personal liability.

Bob Privette read, and provided copies of , the State of Idaho statutes regarding dissolution of corporations.

At this point, a vote was taken to form a new corporation. The vote was unanimous.

More information regarding state requirements for incorporation.:

The non-profit incorporation act states what is needed to be a corporation.

Two people are needed: an agent of the corporation and an original incorporator. Original incorporator only calls the organizational meeting. Once the application is filed, then an election can be held.

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APR 10 1997

30-3-139: Duties of the trustees of the old corporation in relation to the new corporation. Jack Johnson was the only former trustee present. The other trustees are aware of the situation. Trustees are required to settle the affairs of the old corporation, including transferring ownership of assets of the old (defunct) corporation. A record of what the defunct corporation owns and who paid for it does exist. Easements across properties do exist.

A vote was held on the formation of a new Talache water users corporation. The vote was unanimous. Forming a new corporation allows the property owners of Talache the ability to go further, as in designing by-laws, holding elections, granting memberships, etc.

A motion was made and a vote taken regarding those present to share the costs incurred in forming a new corporation. The vote was unanimous.

Having meetings by mail was discussed

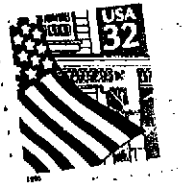
A study group was formed to research further information, and suggestions for by-laws. Members of this group are Jack Johnson, Bob Privette and Matt Sanger. They will bring the information to the next meeting.

Jack agreed to be the incorporator, but will not file until the next meeting.

The next meeting was scheduled for 1pm, Saturday June 10, at Jack Johnson's house at Talache. The vote was unanimous.

INCORPORATED
APR 18 1997

Kite
4579 SW Coast Ave
Lincoln City OR 97367



Mr Keir Nash
1033 N. Ontare Rd
Santa Barbara CA 93105

ESSAGE CONFIRMATION

TRANSMISSION

MAY-02-'95 TUE 08:25

TERM ID: 208 769 1454

TEL NO.: 208 769 1454

P-9999

NO.	DATE	ST. TIME	TOTAL TIME	ABBR/SBD	ID	DEPT CODE	#PGS	
727	05-02	08:21	00°03'56		5032692381		OK- 6	NG- 0

MICROFILMED
MAR 2 6 1997

IMPORTANT MESSAGE

FOR

DATE TIME A.M. P.M.

M

OF

PHONE
AREA CODE NUMBER EXTENSION

TELEPHONED		PLEASE CALL	
CAME TO SEE YOU		WILL CALL AGAIN	
WANTS TO SEE YOU		RUSH	
RETURNED YOUR CALL		SPECIAL ATTENTION	

MESSAGE 96-08857
Sidney Panyol
503-269-2389

MICROFILMED
MAR 26 1997

SIGNED

LITHO IN U.S.A.

LET'S GET BACK TO BASICS™

State of Idaho
DEPARTMENT OF WATER RESOURCES
NORTHERN REGION, Suite No. 210 • 1910 Northwest Blvd. • Coeur d'Alene, Idaho 83814-2615
(208) 769-1450 [redacted] Fax (208) 769-1454

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

TRANSMITTAL COVER SHEET

OMNIFAX G66i
Phone No.: (208) 769-1454

TO: Sidney Danyol
(503) 269 2381

FROM: Al Beardslee

DOCUMENT DESCRIPTION: Water Right Application 96-8857 for NASH – copy per your request

TOTAL PAGES SENT: 5 + 1 COVER SHEET

CONTACT: Al Beardslee / Dianne Ball
(Name of sender)

Charges: One (1) free copy per request, cover sheet not counted. Two (2) or more copies per request are $0.25 per page with a $0.50 minimum.

Please consider this document as a billing statement. The charge for your FAX copies is $ 1.25 . Please remit to the above address.

Form 202
10/92

Ident. No. 96-08857

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of applicant ARNOLD EDMUND KEIR & MARGUERITE B.R. NASH Phone 208-263-0765

   Post office address P.O. BOX 492, SAGLE, ID. 83860

2. Source of water supply LAKE PEND OREILLE which is a tributary of PEND OREILLE RIVER

3. Location of point of diversion is NW ¼ of SW ¼ of SW ¼, Govt. Lot 2

   Sec. 8 Township 55 NORTH Range 1 WEST B.M. BONNER County; additional

   points of diversion if any: _____

4. Water will be used for the following purposes:

   Amount .12 (cfs or acre-feet per annum) for DOMESTIC purposes from JAN. 1 to DEC. 31 (both dates inclusive)

   Amount .12 (cfs or acre-feet per annum) for IRRIGATION purposes from MAR. 15 to NOV. 15 (both dates inclusive)

   Amount _____ (cfs or acre-feet per annum) for _____ purposes from _____ to _____ (both dates inclusive)

   Amount _____ (cfs or acre-feet per annum) for _____ purposes from _____ to _____ (both dates inclusive)

5. Total quantity to be appropriated is (a) .12 cubic feet per second and/or (b) _____ acre feet per annum

6. Proposed diverting works:

   a. Description of ditches, flumes, pumps, headgates, etc. 45 GPM SOLIDE 5 HP SINGLE PHASE SUBMERSIBLE PUMP 1½" 200ft polypipe underlake bottom & seawall on LOT 1, BLOCK 5 WITH 7 OUTLETS: ① BLOCK 5, LOT 1 LESS TAX 1; ② TAX 25/30; ③ TAX 8; ④ TAX 11; ⑤ TAX 39/TAX 37; ⑥ TAX 38; ⑦ TAX 65; chlorinator pump & 2 pressure tanks + 4" main from Lot 1 to PRESSURE TANK

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

   reservoir capacity _____ acre-feet; period of year when water will be diverted to storage:

   _____ to _____ inclusive.

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

   d. Is ground water with a temperature of greater than 85°F being sought? No

   e. If well is already drilled, when? _____; Drilling firm _____;

   Well was drilled for *(well owner)* _____

7. Time required for the completion of the works and application of the water to be proposed beneficial use is

   1 years *(minimum 1 year)*.

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

a. Hydropower; show total feet of head and proposed capacity in KW. _____

b. Stockwatering; list number and kind of livestock. _____

c. Municipal; show name of municipality. _____

d. Domestic; show number of households. 7

e. Other; describe fully. _____

9. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of the use (*example: D for Domestic*) in the corresponding place of use below. See instructions for standard symbols.

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
55N	1W	8							D (Govt Lot 2)			D							
									D			4							4
		*																	

Total number of acres to be irrigated ~~4~~ 4

10. Describe any other water rights used for the same purposes as described above. NONE

11. a. Who owns the property at the point of diversion? (point of diversion) APPLICANTS A.J.K. NASH & FRANCELIA B.R. NASH

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

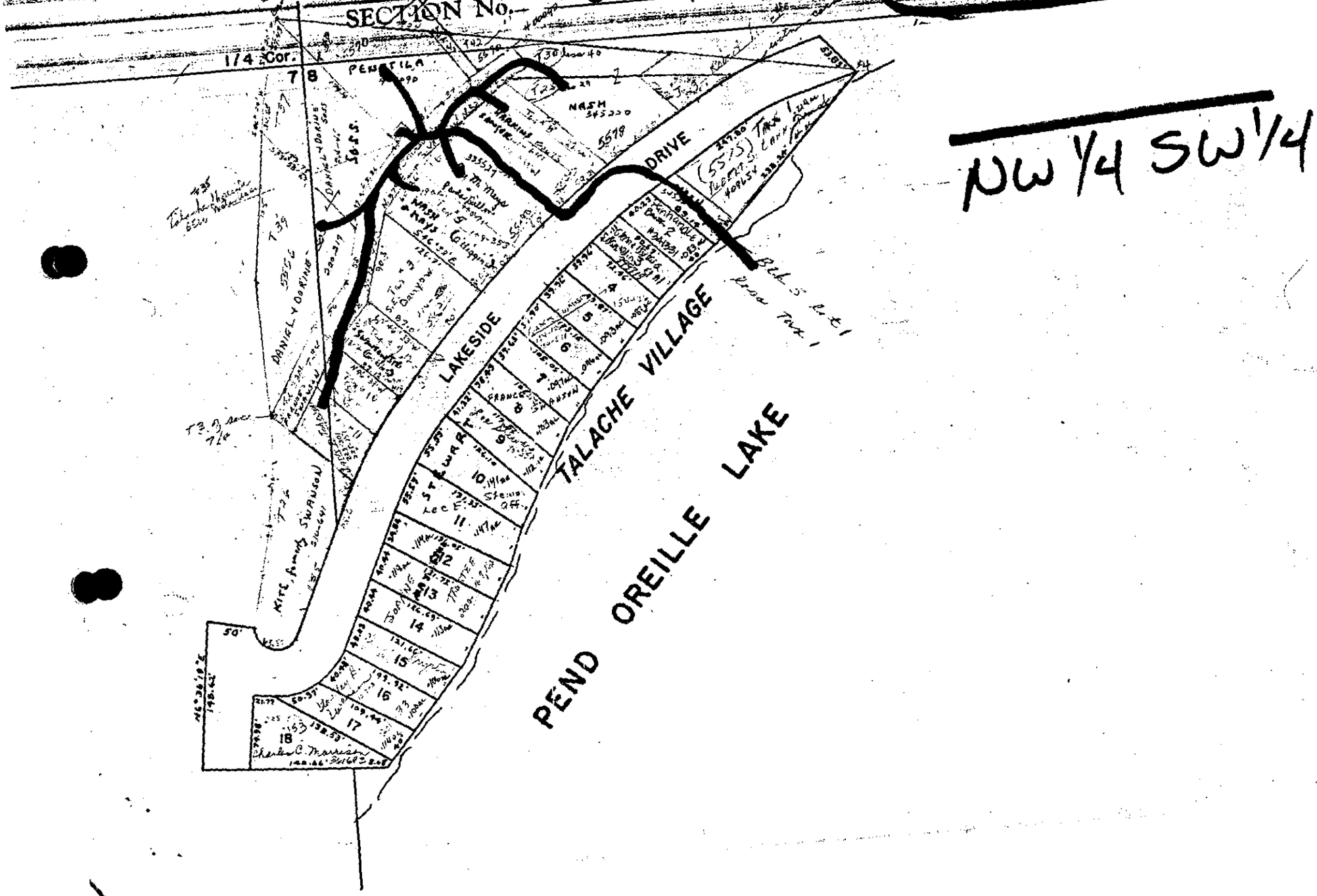
c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing. _____

12. Remarks: _____

TOWNSHIP No. 55 NORTH, RANGE No. 1 West, BOISE MERIDIAN, ID

SECTION No. 8, SUBDIVISION: Gov't Lot 2

NW 1/4 SW 1/4



13. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.

please see attached map

Scale: 2 inches equal 1 mile.

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

(Applicant)

Received by KB Date 3/31/95 Time 4:00 Preliminary check by KB

Fee $ 50.00 Receipted by KB # N-8749 Date 3/31/95

Publication prepared by db Date 4/12/95 Published in Bonner County Daily Bee 4/27/95

Publication approved _____ Date _____

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. _____, and said application is hereby _____.

1. Approval of said application is subject to the following limitations and conditions:

   a. SUBJECT TO ALL PRIOR WATER RIGHTS.

   b. Proof of construction of works and application of water to beneficial use shall be submitted on or before _____, 19____.

   c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.

   d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.

   e. Other:

A. B. 7YI ICN

A. E. Keir Nash 1033 North Ontare Road Santa Barbara, CA. 93105. (805) 687-9315

16 May 95

RECEIVED
MAY 22 1995
NORTHERN REGION
IDWR

Jack and Rachell Johnson
P. O. Box 97
Newman Lake, WA. 99025.

Dear Jack and Rachell:

Jack, you said in our 15 May phone chat you wanted me to put matters and bottom line as plainly as possible without legalese. If you will let me later refer to the legalistic qualifications of previous letters as more precisely what I mean here, I'll try right now. To begin, *it's not a problem* of "A. E. Keir and Marguerite B. Nash ... control[ling] ... the water rights" as if all 3 types of rights needed already existed. [Your 3 May protest to Director, Idaho Dept. of Water, para. 1.]

I. GETTING & DISTRIBUTING 2 OF 3 TYPES OF WATER RIGHTS

There is a problem first of: **(a) obtaining 2 types of rights** which the defunct Talache Shoreside Water Users Assoc never bothered to get, and which is why reviving it, even were such possible, wouldn't be enough;

(b) distributing these first 2 types of rights to watersystem users;

(c) attaching those rights securely to the lots and parcels whose owners, as you say, "have put money into the water system for many years;"

(d) setting up a reasonable management structure that protects these lots, parcels, and owners in water-flow, in property marketability and in quiet enjoyment.

It is a problem, second, of considering the claims of persons who never hooked up in 1980-82 and did not "put money into the system for many years," and seeing what, *given water quality regulations new since 1980-82,* can reasonably be done.

Re (a) and (b). Needed = 3 types of rights, not 1. Let's analogize the water-rights situation to driving lawfully a licensed heavy trailer-truck on certain roads regardless whether the truck belongs either to a truck-leasing club or to you personally. In either case you need for starters:

(1) your own valid driver's-license endorsement for driving heavy trucks [= **property-owner's rights type #1 to withdraw 'x' amount of water** from Lake Pend Oreille, without saying how -- which comes from Idaho Water Resources Dept via shorefront owner's application on your behalf];

(2) a valid license for the truck on particular roads in, e.g., Washington and Quebec [= **property-owner's rights type #2 to encroach via watersystem construction on/in/under Lake Pend Oreille,** saying how -- which comes via separate permits from Idaho Lands and U.S. Corps of Engineers].

This is the process we are engaged in now -- the equivalent of licensing first you (and me) and then the truck. As the Water Resources Dept permit application [for right #1] describes the lots/parcels where de facto water has been distributed, once the permit is granted, **(b) distributing rights type #1 to you and other users is automatic.** Had there not been protests, Margo and I would have already started to obtain rights type #2 for all of us from Lands Dept & Engineers Corps. However, this is more expensive. Until the Water Resources permit is straightened out, perhaps the truck has to go on driving on certain roads illegally. These 2 steps should have been easy and the actual water system well on the way to being legal & you with these rights.

II. DETERMINING COSTS AND COST-DISTRIBUTION OF ADDITIONAL HOOK-UPS

This 2nd part of the problem is intrinsically somewhat more difficult. This is partly, but not solely, because of carelessness among some of the original purchasers into the 1980 corporation. These were they who made little or no effort to make sure it functioned lawfully, who never obtained their membership certificates as

MAR 2 6 1997

provided for in the incorporation articles, who for ten years did nothing about the corporation's 1982 forfeiture of the right to do business. One result was passage in the 1990s, by warranty deeds, of three properties to bona fide purchasers (BFPs) without notice. *This was particularly strange with respect to two of these properties inasmuch as the selling real estate agent was none other than the designer and construction overseer of the house on one property and also the designer of the 2 buildings containing major parts of the water system -- one of which buildings is located on the second property.*

But let me proceed on an optimistic note. **At most expensive, the initial regulation-driven costs of additional hook-ups** [if the system is not split] **are unlikely much to exceed $100,000** [or about $10,000, if equally shared, per cabin/property]. And these costs would probably be largely recouped on sale of a property. So it's only a temporary outlay. **The annual upkeep [monitoring] costs are very unlikely to exceed $15000** including paying a monitor, or $1500 per property per year.

The costs might be much less, which is why I have asked Beardslee of Dept Water Resources to let us know how many hookups his department would permit on the system now with its reduced [vs. 1980] pump-capacity and main. Here you should consider your reply to last summer's user preference survey wherein you stated: "I believe Swanson to be vested in the water system. I don't believe Privette is." Even if one or both propositions were true, you omitted 2 non-exercised memberships in the defunct corporation with as good or better arguments for "vesting" as Swanson -- Cahn's 2 1980 purchases from Andrews. **The bottom line is, you can't talk convincingly about "vesting" 1 claimed membership without also talking about "vesting" 3, perhaps 4.** This is why I think one needs clearly to work out terms of adding system hookups, and foreseeable costs, *prior to voting on Articles of Incorporation. If you wish to go another way such as trying to revive a defunct corporation or produce some new clone, that's your choice. Just be prepared to invest substantial $ in it now and recover capital investment when you sell.*

III. **Re (c).** ATTACHING USERS' RIGHTS SECURELY TO LOTS, & LEGAL STATUS OF DIFFERENT PROPERTIES. Because untangling the present tangle may delay things, it seems important now to attach these prospective government-granted rights we are trying to get to each property -- so people rest more easily in the meantime. Also it seems clear that rights and the individual properties should be permanently tied, regardless of what management structure we develop and how well or ill it functions.

Now in come rights type #3 -- rights which don't come from the government, but which rather arise between property owners, pertain to water uses on and through land, and so make usable the government-granted rights #1 & #2. This is where the 1980 Articles were about at their most defective. Other than deeding the upper pressure-tank house 15' x 20' parcel to the defunct corporation, there were no titles, easements, covenants, or equitable servitudes. Nothing else went straight and plain to that corporation. Nothing else was clearly put under corporation ownership. As far as anything written goes, you can't tell whether Andrews thought the corporation members would collectively own the equipment or whether he thought membership was more like in an auto club, a country club, or the Elks. As I noted in an earlier letter, attorney Featherston thinks that the system never left Andrews' personal ownership and that he later abandoned it. Messy.

All one has now to work with is Idaho statutory and case law relevant to 1980-1995 de facto behavior. Without getting legalistic (though I'll be happy to discuss statutes and cases if you care to phone), I think one can safely say the following.[1]

---

[1]Note that though Nashes now own 2 properties -- beach and uphill -- these are separate lots. The "interests" of one aren't necessarily the same as the other's. Nor need 1 party own both. Would you like to buy either?

1. **None of the land involved can be said to have been adversely possessed by the system users. This is obvious from property tax payments, deeds, and Idaho Code 5-208/210. However,** arguments can be made about equipment ownership in several different directions. This needs straightening out before more properties are sold to bona fide purchasers without notice.

2. **The owners of four uphill cabins/houses and the parcels on which they stand [Johnsons, Sosses, Nashes, Gays] have the strongest legal claims to an easement/covenant/equitable servitude** (as appropriate) **on the 3 private lots across which the de facto system hauls water from the lake [Nash downhill, Fouts, Mays].** Only these 4 dwellings were built in clear contemplation of the water system, and started or became dependent on it. Only these have anything approaching privity in terms of title-chain. So there is a strong argument for irrevocable license [or easement by estoppel, which amounts to the same thing]. Among these 4 there is an additional distinction. 2 sets of owners [Gays and Nashes] were Bona Fide Purchasers [BFPs] without notice of system unlawfulness. As such they have potentially some breach of covenant claims against sellers and title insurance issues, not open to Johnsons and Sosses.

3. **Other dwellings uphill,** lacking title-chain privity, built well before and not at all in contemplation of the shoreside water system, and having alternate water system membership, are in somewhat different legal positions. At least one did not pay $ for shoreside watersystem membership [another problem with corporation revival], but permitted installation of the main on its land. The claims of at least one thus rest chiefly on this and on system upkeep and capital replacement $ payments.

4. Given these differences and that uncertainties as to additional hook-up costs and attitudes toward them of current users aren't likely to clear up and reach complete consensus by tomorrow, it seems sensible for us to proceed now by working out 1-on-1 easement/servitude/covenant agreements between willing owners -- or at least to see if it is possible.

Penttila's successors and Nashes are going to run some possibilities past their attorneys and title insurance companies in the next few weeks. It seems best to begin here because the aforementioned breach of covenant and title insurance issues make solid, careful drafting most imperative. If we find this a feasible approach, would you be interested in a similar guarantee as to your rights type #3, while #1 and #2 get worked out?

IV. **Re (d): if we could get these security guarantees to all users, then management structure [incorporation] could follow with everyone more at ease.**

Margo and I look forward to seeing you at the conference sometime between June 10 and June 15, assuming the Department of Water Resources agrees to schedule one. If I don't hear from you to the contrary, I'll assume your protest is withdrawn.

Sincerely yours,

A. E. Keir Nash

CC: A. BEARDSLEE, IDAHO DEPT. WATER RESOURCES

A. E. Keir Nash
1033 North Ontare Road Santa Barbara, CA. 93105.
(805) 687-9315
14 May 95

RECEIVED
MAY 17 1995
IDWR

Mr. Sidney E. Danyow
P. O. Box 4095
Coos Bay, OR. 97420.

Dear Mr. Danyow:

It was good to speak with you. Let me put in writing the chief points we discussed, as I understand them, of the present water situation of your Lot Tax 3 (what splendid trees it has!) on the 2nd tier above Talache Landing. Correct me if I'm wrong. Otherwise I'll assume I've got matters straight.

1. Your lot was, as a condition of closing escrow when you bought in the "good Talache title chain" [Gabel and Gabel], connected in the early 1960s to the old Talache Water Association system coming down from the mountain. But you never built there and used that system, and never obtained membership in that system. *The last I have been able to trace of Gabel and Gabel is a 1968 lis pendens protesting a tax delinquency judgment and pursuant award of other Talache property to a third party [including land later, beginning 30 Sept 74, ~~was~~ sold off as Wert-Talache-Land-Company (seemingly not-so-good title) parcels via Swanson/Bandelin and others to Bona Fide Purchasers without notice].* Gabel and Gabel never pursued the lis pendens, and disappeared from Talache land dealings over 25 years ago. Therefore, I doubt you have any enforceable hook-up to that system because [I believe] it was later [re]constituted as a corporation with 25 memberships [of which probably not more than half are actually in use]. There is a map of it, drawn circa 1980, on file with Dept of Water Resources or DEQ in Coeur d'Alene. I think that system's watermaster Cal Kelley [208-263-8168] has a copy that I saw some weeks ago. My recollection, which may be wrong, is that the map does not show a hookup to your lot. To find out your status, you should probably phone Leonard Haugse [208-263-3777] because I was told he is president or chair of the board of directors of that system.

2. You have never had any connection, physical or financial, with the other system built 1979-80 and coming up from the Lake across my Block 5, Lot 1 less Tax 1 shorefront property. It is this system's application that gave rise to your protest (more of an information request). It is not, let me emphasize, an exclusive application. Any upper tier Talache landowner could, by securing consent of any Block 5, Talache shorefront landowner to apply for the appropriate rights, and the consents of DWR, Dept Lands, and Corps of Engineers, build his own system up to his lot. It's just expensive to do so *solo.*

3. If you find you have no enforceable access to the old down-from-the-mountain Talache Water Association system and find your lot is unable so to obtain water, you might be interested [*if the up-from-the-Lake system winds up split into 2]* in joining in the construction and use of the new system.

4. I emphasize *"if"* just above advisedly since I have no authority to offer a membership in a still unbuilt [and perhaps never to be built] system. I am making no offer of course.

5. I urge you to talk directly and soon with Mr. Allen Beardslee of DWR [208-769-1450, whom I'm ccing]. He should be able to help you. If I do not hear from you within the next 10 days, I'll assume all is settled as you wish with this application and your old TWA down-from-the-mountain water supply is OK, and you would not be interested in pursuing the possibility mentioned under **#3 above,** *if* it ever materializes.

Sincerely yours,

A. E. Keir Nash

cc A. Beardslee, DWR Idaho

Allen Beardsley
F V F
Keir N

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MAY 17 1995
NORTHERN REGION
IDWR

A. E. Keir Nash
1033 North Ontare Road
Santa Barbara, CA. 93105.
(805) 687-9315

13 May 95

Deborah Cahn (and Robert Cahn)
P. O. Box 47
Philo, CA. 95466.

Dear Deborah:

Please find enclosed documents that will I think clarify the consensual direction in which my wife and I are trying to get people to go, while protecting everyone's legitimate rights. You'll probably find it most helpful to read my 5 May 95 memo first; then the others in chronological order.

We'll be happy to see you at UCSB on May 20; perhaps we can also get to some conclusion about repairing the seawall then, as Dept of Lands has drawn a little sketch of what we should do and been quite helpful.

In the meantime, a word or two about the 3 specific bases of your protest in your letter to the Dept of Water Resources.

Re 1) [Nash can't establish his water right without trespassing on Cahn land.] Not so, because [besides that it isn't just my right; it's about other de facto users too]:

a. The system applied for is already built;

b. I think there is already a prescriptive "drive through" easement for the following Block 5 lots across Tax 1 of Lot 1 -- 11, 10, 5, 4, 3, 2, and Lot 1 less Tax 1;

c. There's the steps directly from the county road [for pedestrian access] to the chlorinator house.

Re 2). [Nash may not be filing his application in good faith.] That's not a nice thing to say. I think my faith is remarkable given all the circumstances. The permit is so far just for all de facto users because they are the only ones currently breaking state law [most of them innocently, having been bona fide purchasers without notice of the problem]. No additional actual user has been named. Propose a better procedure and we'll be delighted.

Re 3). [Whether Nash and current water users' group have enough $ resources.] How about a grant from the Cahn Foundation?

I wish you would get your attorney to go over the logic of "Attachment F" to my June 8, 1994 letter to Everett H -- (as long as you mention "Attachment E"). If someone could show me "F" is wrong, that might make it a lot easier to deal with all the different current users and claimants. Have him phone me and I'd be happy to be enlightened.

Sincerely,

A. E. Keir Nash
Professor Emeritus, UC Santa Barbara

MAY 2 3 1995

Frances L. Swanson
P. O. Box 104 - Talache Beach
Eagle, Idaho 83860

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IDWR

May 25, 1995

Dear Mr. Haynes: -

Enclosed is a copy of one of Keir Nash's many letters - luckily this is only 2 pages - most of them are 6 pages or more and all unwanted. I send this only so you can know why you have received so many protests to Nash's request for water rights on our already established system (although defunct now) we are trying to re-organize and do have a meeting this Saturday, the 27th - hopefully we can re-incorporate and then apply for our rights. As it now stands we have paid for all pipes, etc. and personally I have deeded the property for

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MAY 25 1995

-2- both pump houses - the upper one together with Lloyd Andrews (copy of letter enclosed) I realize most of this is not of your concern & I just want you to know the reason for the many protests.

Before the Nash's moved here we had 90% tranquillity and 10% frustration that goes with neighborhoods - now it is just the opposite - he wants to run everyone's business. The enclosed Nash letter will give you an idea of what we are going thru.

Thank you for your consideration in our behalf.

Sincerely,

Frances L. Swanson

P.S. Many thanks for the Swanson/Kerns approval.

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Appendix --- 5 May 95

TURNING SEVERAL 2-PARTY TALACHE CONFLICTS INTO MULTI-PARTY TALACHE CONSENSUS

Mr. Soss' note, with whose sentiments I entirely agree if he will include a 3rd longtime Talache family (Bandelins), prompts me to see if those sentiments can yield specific courses of action. Suppose we look at 6 Talache problems, together more readily solvable than separately. *Key is Dr. Mays' new concern for Ms. Swanson's property rights as well as where the Swanson-Bandelin trial* over the shoreside Lot 6 Armon sewage system has gotten to. *Key also is that Lot 6 is* overutilized from a health official's point-of-view, but *underutilized (at least by $60,000) from an economist's point-of-view.*

The 6 problems are:

1. **How to enable Ms. Swanson & "related" property-owners of Shoreline Lots 7, 8 (Deshon) and hairpin-bend parcel (Kites) to proceed** while satisfying legitimate Bandelin concerns.
2. **How to improve various sewage/drainfield layouts relative to Lake Pend Oreille** so to alleviate Panhandle Health concerns.
3. **How to bring both Privette and Swanson (Kites) into the current Lot 1 less Tax 1 water system while:** (a) legalizing it on a readily defensible basis; and (b) providing adequate mutual guarantees for property owners currently on the system that protect both dominant estates in their water flow and servient estates in their quiet enjoyment; but (c) without incurring ruinous costs because of Idaho's adoption of federal water-purifying/monitoring regulations between 1980 and 1995.
4. **How to restore some confidence as to the governance of that water system.**
5. [Less important in itself, but crucial to solving problems] how to get Mays/Dillon and Nashes to agree on uses/non-uses of the O'Higgins parcel given Idaho's non-exclusive use requirement of tenants-in-common--*short of a partition by sale, whose cost would almost require the winner to develop it.*
6. **How to expedite sale of Talache properties that current owners now or soon may plan to sell.**

I refer hereafter to realizing desirable goals as Sossian solutions [he has best captured the right spirit] and to Featherstonian means [my generalizing from his Solomonic "cut the baby in 2" idea for the future is just my derivative idea] and to $-freeing means [another means available]. I try to lower transaction [imperfect communication] costs. These have become high due to misperceptions and unilateral refusals to discuss.

A. Problems #1 and #2 are intertwined in the Swanson-Bandelin suit. *From a practical standpoint,* Panhandle Health officials would prefer to see the sewage from the 3 houses on the Armon system [Stewarts, Swanson, Bandelin] further from the Lake. But having okayed it in the 1970s and unable to find leakage, they have no power to order their preferences. Swanson has found places uphill for 3 of the 4 houses involved if Lots 7&8 are sold and a new house built on Lot 6 [1 drainfield to hairpin bend; 2 to Gibbs]. Bandelins have no place to go even were they willing to see the system closed down.

From a doctrinal standpoint, Hofmeister's "the system is a Swanson revocable license system" argument lacks a chief rationale propelling courts who buy the argument. That minority rationale is that it's unfair to saddle permanently with an easement propertyowner A who may have let property owner B do something on his land which turns out to have unforeseen debilitative consequences for property owner A's use of his land, just because B has invested $. Here, however, there has been joint investment, and/or taxpaying, and/or upkeep from the start by A, B, and C. *Second, because of the dates of various lots' subdividing, chain of title complications, and Idaho caselaw, Hofmeister's earlier [Sept 1994] arguments underpinning a 7&8 driveway easement aren't strong.* The easements need to come *ex gratia,* not *ex necessitate legis,* from the Lot 1, 2, 3 owners. I think they could well be.

From a human standpoint, this case between once-close octogenerians shouldn't have gotten to court at all. Grinding on for 4 days through various financial transactions is mainly helping attorneys' billings. If Bandelins have somewhat the better of the merits so far on the substance of the issue, Swanson's defense on cross-examination has been vigorous. This case needs to come out of court before appeal.

Suggested Sossian solution I via $-freeing means: (1) 40' Lot #6 is currently "fallow," but if sold together in whole or in part with Lots #7 & #8 [(@ $1500/front foot] would yield in total up to $180000, rather than $120000. (2) If Swanson would concede sub silentio that Stewarts and Bandelins have 1/3rd interests in #6, each party would gain $20,000 on sale -- or the two abutting property-owners, Stewart on one end and Swanson on the other, could separately elect [by "sliding" the total #6,#7,#8 footage for sale] instead to retain all or part of 13.3' each as "buffer." (3) Realizing such a prospect would require Bandelins to give a driveway easement to the new owner of #7,#8 (and part of #6). (4) For remaining prerequisites (Kite watersystem access and Bandelin sewage disposal site) see Sossian solutions II and III below.

B. Problem #3 presents an insoluble problem unless the water system is split into 2 (which is easy to do). Andrews (in selling 2 memberships to Cahns) gave/sold too many memberships in the dead corporation [10]. Privette wants "in" understandably. But de facto Soss has had 2 service lines in use these past 5 years [his original + what he bought from Privette]. He is now, I think, selling for "1 1/2 houses worth" [house + guesthouse or trailer]. Then there's the Lot 1 less Tax 1 chlorinator house outlet. Given system-downsizing in 1987 and 1991, it is impossible both to recognize, out of grace, all the defunct memberships & de facto uses and be on a sound legal basis. Putting 9, 10, or 11 hook-ups is much too close to the 25 user/60 day rule.

Sossian solution II via Featherston/Solomon division. Since $ infusion is necessary anyhow to bring the system's power back up to handling additional hook-ups [pipe friction, and head -- see Feb. 17 and Apr. 12 letters], **why not spend those dollars in a fashion that solves the 25/60 rule? I.e., split the system -- keeping the present one at its reduced power and flow; and put a 2nd system in [coming up either right below Kites from Privette's #15 beachlot [and so reducing pipe length] or from #7/#8?** On this system would go Kites, a new Privette #15 outlet [with easement], #7/#8 house, Johnsons, and Mays and/or Soss [=6 or max of 7 hookups]. By splitting and adding to the new, one would then on the old have 5 of the lots using the current system these past 5 years, and one could add a Privette hook-up for his triangle parcel + Cahns [=max of 8]. Each system would be clear of $100,000 purification requirements and monitoring.

C. Finding a place for Bandelins' sewage drainfield and an O'Higgins tenants-in-common solution [#5] need to, and can readily, go hand in hand. Please examine the attached map [used in negotiating with Panhandle the recently installed drainfield in Nash front garden]. There is only 1 available location on the upper tier [other than Danyow's lot which isn't available and is the only place where still another upper tier house would make good-planning sense] where Bandelin sewage can have a drainfield. Note how much further from the Lake the O'Higgins [Mays/Nash] property is in its upper half than Swanson hairpin [Kites] or Gibbs [Swanson/Stewart]. Dr. Mays wants to use part of this property abutting his cabin's lot. Easy.

Sossian solution III: Why not just have Nashes and Mayses sign an agreement that informally allocates use/non-use [so avoiding partition by sale] with the following provisions: [1] Mayses so to use that portion as long as they choose -- they can later use it or somewhere nearby on what would be tacitly "the Mays' half" for a drainfield if needed; [2] (if Panhandle Health okays this, as I think they would since they will agree to any reasonable improvement in respect to an existing subpar situation), one drainfield [technically new construction standards] in the southwest highest lawful portions of the O'Higgins "informally Nashes half" for Lot 1 less Tax 1 and one right below in the same half for Bandelin drainfield. Given new Infiltrator drainfield techniques, the area needed is 40% reduced. Both should fit comfortably, and the pipes' coming up together from Bandelins in one trench would halve digging costs. Careful cutting of trees and bushes, would leave aesthetically attractive flora and leave the O'Higgins lot unbuilt-on more or less in perpetuity.

D. Problem 4 would probably become self-righting if we could all agree on such a consensual approach to Talache matters. There remains only putting in writing appropriate reciprocal shoreline driveway easements, equitable servitudes, covenants, whatever for all the beachfront lots and similarly for the water system(s) -- which, once done, should solve the rest of #4. Then #6 is solved too.

---A. E. K. Nash

RHD 2 6 May

Composite Map of Old Platting Survey and of Draft of 1994-95 Kiebert Survey

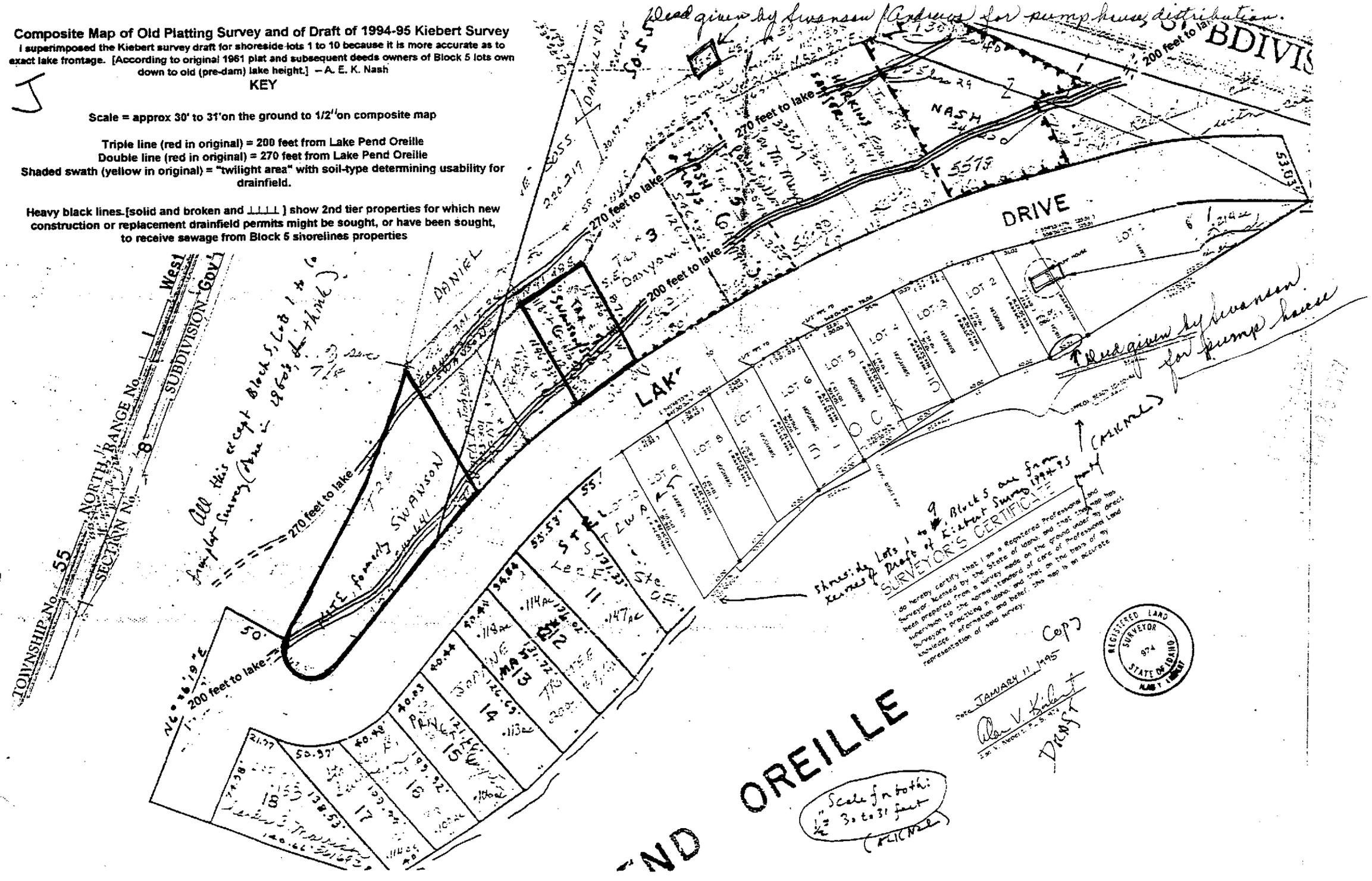
I superimposed the Kiebert survey draft for shoreside lots 1 to 10 because it is more accurate as to exact lake frontage. [According to original 1961 plat and subsequent deeds owners of Block 5 lots own down to old (pre-dam) lake height.] – A. E. K. Nash

KEY

Scale = approx 30' to 31'on the ground to 1/2"on composite map

Triple line (red in original) = 200 feet from Lake Pend Oreille
Double line (red in original) = 270 feet from Lake Pend Oreille
Shaded swath (yellow in original) = "twilight area" with soil-type determining usability for drainfield.

Heavy black lines [solid and broken and ⊥⊥⊥⊥] show 2nd tier properties for which new construction or replacement drainfield permits might be sought, or have been sought, to receive sewage from Block 5 shorelines properties



Lloyd J. Andrews

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MAY 30 1995
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(1)

Date: 5/12/95

Dear Frances:

After your call asking me for my recollection of the Galache water system, I have been giving the issue considerable thought.

You will recall the old surface water system became polluted and the water was a risk to use. I was going to drill a well but was advised the drilled wells had a problem with arsenic. With this in mind I suggested we put in a comunity system for the lots down near the lake to serve 9 or 10 homes, which we did.

I arranged for the system to be designed and installed drawing water from the lake. The engineer designed a system where the lake draw pump would be by the shore line and a distribution pump and house would be up back of

E. 10110 Greenbluff Rd. • Mead, WA 99021 • (509) 238-6201 • Fax (509) 238-41(

Lloyd J. Andrews **Date:**

our lake home.

The association people reimbursed me for their share of the costs and ownership for the pumps, pump houses, pipes, installation and engineering about $1,700 per user.

The system was installed for the benefit of the users. Frankly, I don't understand the dispute. The system was installed to take care of the water needs for the original 9 or 10 lots. There is an unlimited supply of water from the lake. If repairs are necessary why not take up a collection and repair the system through the water association.

Best regards,

Lloyd

E. 10110 Greenbluff Rd. • Mead, WA 99021 • (509) 238-6201 • Fax (509) 238-41(

Trinchera Water System

Date	Item	Cost
10/3/79	Ostrom preliminary design	82.50
10/26/79	" " "	176.50
11/13/79	Welch System Engineering	401.87
11/19/79	Wholesale purchase of pump, pipe and some materials	3441.42
12/5/79	Ostrom B/S plans	259.50
12/10/79	Welch System modification	142.05
12/27/79	Ostrom modifications	62.53
1/15/80	Dan Bachman electrical	584.89
2/16/80	Terry Borden Misc Materials	131.65
2/20/80	Dave Bellamy Install System and Additional Materials	6141.40
2/20/80	Dave Johnson Buildings	3712.42
3/3/80	Welch System Check & Start up	148.80
4/1/80	Interest on money used for project	420.00
1980	Gary Finney Attorney to set up Water Users Corporation	500.00
		16,205.5
	Andrews value for storage side of pump house credit	-1500.0
		$14,705.5

14,705.5 ÷ by 9 users = $1633.95 per share

2 shares for lots of Frances - Jack - LJA 3267.90

11/24/76 Survey David Welch $ 1475.00

9/28/78 Note & interest payment
to Talache land and
E C West — principal 1500.00
interest 380.00

Just Indian 12/79 thru 4/80 Two lots water at 1633.95 each cost no interest 3267.90

~~7/198 Clear lots Jeff dozing 800.~~

1/27/81 Gary Tenney to clear
title with Privetto 202-

1/27/81 Alan Kiebert to
re survey for corrections 838-

$7662.90

Please note:

This system is now presently still being used by Nash and several others - one of the originals and several we have sold properties to

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MAY 26 1995

State of Idaho

Department of State.

CERTIFICATE OF INCORPORATION
OF

TALACHE SHORESIDE WATER USERS ASSOC., INC.

I, PETE T. CENARRUSA, Secretary of State of the State of Idaho, hereby certify that duplicate originals of Articles of Incorporation for the incorporation of *TALACHE SHORESIDE WATER USERS ASSOC., INC.*, duly signed pursuant to the provisions of the Idaho Nonprofit Corporation Act, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I issue this Certificate of Incorporation and attach hereto a duplicate original of the Articles of Incorporation.

Dated *October 17*, 19 *80*.

GREAT SEAL OF THE STATE OF IDAHO — ESTO PERPETUA

Pete T. Cenarrusa
SECRETARY OF STATE

Corporation Clerk

CINP 779

ARTICLES OF INCORPORATION

OF

TALACHE SHORESIDE WATER USERS ASSOC., INC.

OCT 17 8 25 AM '80
SECRETARY OF STATE

KNOW ALL MEN BY THESE PRESENTS:

That I, the undersigned, have this day voluntarily associated myself and do hereby and by these Articles of Incorporation unite and associate myself for the purpose of forming a non-profit corporation pursuant to the Idaho Nonprofit Corporation Act, Idaho Code §30-301 and following, for the maintaining, operation and distribution of water for the property lying within Bonner County, Idaho, in the area known as Talache, Idaho.

ARTICLE I

The name of this corporation shall be TALACHE SHORESIDE WATER USERS ASSOC., INC.

ARTICLE II

The objects and purposes for which this corporation is organized are as follows:

(1) To own, operate, provide, care for, and maintain a water distribution system in such a manner as to protect the health of the association members in accordance with state and Federal laws and regulations, for the maximum social and residential use of the members and their guests; and generally to further those purposes for the members, and to do and perform any and all acts or make such contracts that may become necessary or convenient for the full and perfect enjoyment and the carrying out of the purposes aforesaid; and in that behalf, to purchase, sell, own, use, lease or improve personal property and real

estate which may be acquired or deemed necessary or convenient for the purpose of carrying out any of the objects of the corporation.

(2) To borrow money and mortgage or hypothecate any of the property of the corporation as a security for the payment thereof, with power to receive gifts or bequests on behalf of the purposes of said corporation, and to loan and extend credit in the furtherance of said purposes.

ARTICLE III

The initial registered agent and his location are Mr. Terence Nordeen, P.O. Box 682, Sandpoint, Idaho 83864. Talache as Secretary

ARTICLE IV

The number of directors who shall manage and conduct the affairs of this corporation shall not exceed seven (7), but shall be in the number as provided by the By-laws. The directors shall be elected by the members at the organization meeting for a term of one (1) year. The directors, by the By-laws, may increase the term of the directors.

ARTICLE V

The duration of this corporation shall be perpetual. It is not organized for pecuniary profit and has no capital stock.

ARTICLE VI

A certificate of membership shall be issued to each member based upon such requirements as shall be set forth in the By-laws as established by the Board of Directors and no transfer of membership shall be valid or recognized by this corporation unless such transfer be in the manner provided therein.

ARTICLE VII

The initial incorporator and Board of Director is as follows:

Lloyd J. Andrews, P.O. Box 1866, Bellevue, Washington 98009

Whose numbers may from time to time be changed in accordance with the duly adopted By-laws of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hands and seal this 14TH day of October, 1980.

Lloyd Andrews
LLOYD J. ANDREWS

STATE OF ~~WASHINGTON~~ Idaho)
) ss.
County of ~~King~~ Bonner)

On this 14TH day of October, in the year of 1980, before me, the undersigned Notary Public, personally appeared LLOYD J. ANDREWS, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same.

Gary A. Finney
Notary Public - State of ~~Washington~~ Idaho
Residing at Sandpoint

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IDWR

May 23, 1995

P.O. Box 4095
Coos Bay, OR 97420

State of Idaho
Department of Water Resources
Northern Region, Suite No. 210
1910 N.W. Boulevard
Coeur d' Alene, Idaho 83814-2615
Attn: Mr. Robert G. Haynes P.E., Regional Director

Re: Application for Permit #96-08857 by
Keir Nash and Marguerite B.R. Nash, the Applicants.

Ref: a.) My letter to your department dated May 03, 1995.
b.) Your letter to me dated May 05, 1995.
c.) Letter to me from Mr. Nash dated May 14, 1995, copy to Mr. Beardslee.
d.) Letter to me and others from Mr. Beardslee dated May 16, 1995.

Dear Mr. Haynes:

My wife and I own tax parcel #3 which is centrally located on the map included with the referenced application.

Under item #9 entitled "Description of place of use" in the referenced application the applicant proposes to irrigate a total of 4 (four) acres. Further, that the water will also be for domestic use. Our parcel is located within that 4 (four) acres.

Conversation with Mr. Nash on May 08, 1995 and in his letter to me, reference c.), indicates that he does not intend to provide water for irrigation or domestic use to our parcel.

We are concerned because the referenced application includes our parcel in the area to be served, inferring that it will be served, when in fact that is not applicant's intent.

We are also concerned that inclusion of our parcel in the referenced application may preclude our being able to obtain a right to use of public waters in the future if we or our successors in interest elect to do so.

We object to our property being used without our consent as part of the justification for an application for water which will not be made available to our parcel.

Yours truly,

Sidney E. Danyow

cc: A.E. Keir Nash

CONFERENCE/HEARING SCHEDULE

Northern Region

1910 NORTHWEST BOULEVARD, SUITE 210, CONFERENCE ROOM,
COEUR D ALENE, ID 83814 (208) 769-1450

WEDNESDAY, JUNE 14, 1995

9:00 A.M. - 96-08857 - ARNOLD EDMUND KIER NASH & MARGUERITE B. R. NASH

SWANSON SOLD TO KITES

FEB. HARKINS WASHINGTON DE-FACTO SECR.

#1. letter to water users

#2. TRIVET - Put on line to Kier.

#3

MAR 26 1957

May 23, 1995

P.O. Box 4095
Coos Bay, OR 97420

State of Idaho
Department of Water Resources
Northern Region, Suite No. 210
1910 N.W. Boulevard
Coeur d' Alene, Idaho 83814-2615
Attn: Mr. Robert G. Haynes P.E., Regional Director

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[illegible]
MAR 2 6 1997

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Yours truly,

Sidney E. Danyow

cc: A.E. Keir Nash

MAR 2 6 1997

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DEPARTMENT OF POLITICAL SCIENCE

SANTA BARBARA, CALIFORNIA 93106

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9 May 95

Allen G. Beardslee, Sr. Water Resource Agent
Dept of Water Resources, State of Idaho
Suite 210, 1910 Northwest Blvd.
Coeur d'Alene, ID. 83814-2615.

Dear Mr. Beardslee:

Thank you for your phone call of yesterday. In response to your request, I am providing a dossier of documents pertaining to:

(1) the origins and demise of the Talache Shoreside Water Users Assoc., Inc.corporation (including a written warning of demise given by a non-hooked-up claimant);

(2) negotiations, among users of a system tapping into Lake Pend Oreille from my property, as to how best to legalize the system, including the June/July 1994 user survey of preferences re how best to deal with non-user claims on a dead corporation;

(3) certain incidental matters which explain delay until 1995 in further pursuing legalization;

(4) 1995 documents written and received in conjunction with legalizing.

I am also glad to know that it would be possible to split the Talache Landing system so to include both properties with hook-ups de facto in use for many years and properties of certain persons, who have never used functioning hook-ups but who believe they have residual claims against the defunct Idaho corporation, Talache Shoreside Water Users Assoc., Inc. Originally incorporated 17 October 1980 by Lloyd Andrews, this corporation [as the attached Idaho Dept of State Certificate dated 5 Nov 1993 states] "forfeited its right to do business in Idaho on November 30, 1982."

As P. Cenerrusa, Idaho Sec. of State, further states therein: **"I further certify that the corporation was dissolved by operation of law on March 1, 1982, pursuant to Section 30-1-138, Idaho Code."** All the protests I have so far received [with one exception which turns out to be more of a request for information] relate to claims about rights unexercised during this corporation's short unhappy lifetime, aborted 13 years ago. Note also provision 30-3-34 in the Idaho Non-Profit Corporations Act. **"(3) No person who is not an incorporator shall become a member of a cooperative corporation unless such person shall agree to use services furnished by the corporation <u>when</u> such service shall be available through its facilities." <u>"When"</u> was 1980.**

As your examination of the enclosed dossier of documents will disclose, despite having no apparent legal duty to these persons, the current users of the current system in the user survey of June/July 1994 indicated an intention to try to honor these claims -- provided that these persons pay a fair share of any costs created by change in system capacity and particularly increasingly expensive environmental regulations adopted by Idaho between 1980 and now. Please note that the system now in use is very little the same system as that installed in 1980. The system now in use has:

different [smaller] pump in Lake Pend Oreille,
different [smaller] main pipe in and from Lake Pend Oreille to the chlorinator house on my property Block 5, Lot 1 less Tax 1,
different chlorinator pump,
different chlorine/water concentrate mixer,
different piping from the mixer to the main,
different pressurizing tank,

different valves at the top, and in some cases different service-line pipes.

The present application, with corrections/additions you and I worked out yesterday, hence pertains to the system that has been de facto in use; the application map now describes precisely those lots that have been receiving water for at least 5 years and the routing of the main from the Lake. The point is to legalize the usage. *Mixing actual users and claimants on a dead corporation, none of them drawing from the Lake via this system, at this stage would seem rather like a traffic cop telling a too speedy car driver, when passengers object to the speed of the ride, we can't slow you down until you take on board this hitchhiker . The point is to stop the violation -- not to put us in the awkward position of The Flying Dutchman.* Then we can, and will, discuss who else should come aboard. But my wife and I have no power, on our own, to add non-users inasmuch as we have been instructed along certain lines by users.

As you will see [see particularly survey results, 8 July 94; letter Harkins to Nash 13 July 94; letter Nash to Harkins 17 Feb 95; letter Harkins to Nash 16 Mar 95] there was a clear okay from system users and informal "management" to go-ahead in the order so far followed [1st, (Nash and Nash) to legalize the existing system and hook-ups as they have been functioning for at least the past 5 years; 2nd, (the group as a whole) to consider defunct-corporation rights claimants and try to work something out with them].

However, I doubt that you will get some of the users to take the question of system legality too seriously unless you do as you indicated you planned -- write to all users individually [mentioning $100 per day]. [Names and addresses enclosed.] *It is important also for you to go through the sections of my letters of 17 Feb 95 and 12 April 95 where I assess the power constraints on N of hook-ups and analyze relevant environmental regulations and system size constraints, then inform the other users, myself, and claimants of significant errors you see (if any) that would change the N of houses you would allow on the system and the ease or difficulty of meeting relevant post-1980 environmental regulations I therein try to assess.*

If you think preferable some other method or order of business [e.g., as we discussed, legalizing the water rights withdrawals on an individual hook-up/property basis one at a time], that's fine with my spouse and myself. But we really would like to get our water withdrawal four-square with Idaho and federal law. So too would at least one other user family [like ourselves bona fide purchasers without notice of the system's status and newish to the system]. If other people are too tired from weekday work when they recreate of a weekend in North Idaho to bother about legal matters, perhaps that's their affair. But my wife and I do not agree with this viewpoint. We await your counsel.

May I request that you or Robert Haynes schedule a conference or hearing sometime between June 10 and June 15? That is about the only time my spouse is clear from teaching at the University of California, and this other couple will be available then also. I will be very surprised if all the protests are withdrawn before then -- because they seem grounded in a misunderstanding of Idaho corporate law. We shall of course attempt to reach a resolution -- along the lines suggested in my memo dated 5 May 1995, or along any other better lines anyone cares to suggest.

Sincerely yours,

A. E. Keir Nash

Professor Emeritus on active service

P.S. I am, by sending copies of this letter to all users and to all "protestants," to use Mr. Haynes' phrase [even though some may be catholics, and others presbyopic], **notifying them so they can, as relevant and as they please, change their instructions to me, if they wish, or advise other courses of action, or inaction. We shall do our best.**

State of Idaho

Department of State

CERTIFICATE

TALACHE SHORESIDE WATER USERS ASSOC., INC.

I, PETE T. CENARRUSA, Secretary of State of the State of Idaho, hereby certify that I am the custodian of the corporation records of this State.

I FURTHER CERTIFY That the records of this office show that the above-named corporation was incorporated under the laws of the State of Idaho and was issued a certificate of incorporation in Idaho on October 17, 1980.

I FURTHER CERTIFY That the corporation forfeited its right to do business in Idaho on November 30, 1982 for failure to file the required annual report and pay its annual franchise tax for the fiscal year ending June 30, 1983 and that said corporation is not now and has not been authorized to transact business as a subsisting corporation in the State of Idaho since the forfeiture date.

I FURTHER CERTIFY That the corporation was dissolved by operation of law on March 1, 1993, pursuant to Section 30-1-138, Idaho Code.

Dated: November 5, 1993

GREAT SEAL OF THE STATE OF IDAHO ☆ ESTO PERPETUA

Pete T. Cenarrusa

SECRETARY OF STATE

By _____

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IDAHO NONPROFIT CORPORATION ACT

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(3) This section does not prescribe the only means, or necessarily the required means of serving a corporation.

30-3-34. Admission of members. (1) The articles or bylaws may establish criteria or procedures for admission of members.

(2) No person shall be admitted as a member without his or her consent.

(3) No person who is not an incorporator shall become a member of a cooperative corporation unless such person shall agree to use services furnished by the corporation when such service shall be available through its facilities.

30-3-35. Consideration. Except as provided in its articles or bylaws, a corporation may admit members for no consideration or for such consideration as is determined by the board.

30-3-36. No requirement of members. A corporation, except a cooperative corporation, is not required to have members.

30-3-37. Differences in rights and obligations of members. All members shall have the same rights and obligations with respect to voting, dissolution, redemption and transfer, unless the articles or bylaws establish classes of membership with different rights or obligations or divide voting rights by voting districts. All members shall have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the articles or bylaws.

30-3-38. Transfers. Where transfer rights have been provided, no restriction on them shall be binding with respect to a member holding a membership issued prior to the adoption of the restriction unless the restriction is approved by the members and the affected member.

30-3-39. Member's liability to third parties. A member of a corporation is not, as such, personally liable for the acts, debts, liabilities or obligations of the corporation.

30-3-40. Member's liability for dues, assessments and fees. A member may become liable to the corporation for dues, assessments or fees: provided however, that an article or bylaw provision or a resolution adopted by the board authorizing or imposing dues, assessments or fees does not, of itself, create liability.

30-3-41. Resignation. (1) A member may resign at any time.

(2) The resignation of a member does not relieve the member from any obligations the member may have to the corporation as a result of obligations incurred or commitments made prior to resignation.

30-3-42. Termination, expulsion and suspension. (1) No member, except a member of a religious corporation, may be expelled or suspended, and no membership or memberships in such corporations may be terminated or suspended except pursuant to a procedure that is fair and reasonable and is carried out in good faith.

(2) A procedure is fair and reasonable when either:

(a) The articles or bylaws set forth a procedure that provides:

(i) Not less than fifteen (15) days' prior written notice of the expulsion, suspension or termination and the reasons therefor; and

(ii) An opportunity for the member to be heard, orally or in writing, not less than five (5) days before the effective date of the expulsion, suspension or termination by a person or persons authorized to decide that the proposed expulsion, termination or suspension not take place; or

(b) It is fair and reasonable taking into consideration all of the relevant facts and circumstances.

(3) Any written notice given by mail must be given by first class or certified mail sent to the last address of the member shown on the corporation's records.

(4) Any proceeding challenging an expulsion, suspension or termination, including a proceeding in which defective notice is alleged, must be commenced within one (1) year after the effective date of the expulsion, suspension or termination.

(5) A member who has been expelled or suspended may be liable to the corporation for dues, assessments or fees as a result of obligations incurred or commitments made prior to expulsion or suspension.

30-3-43. Purchase of memberships. A corporation may purchase the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions set forth in or authorized by its articles or bylaws. No payment shall be made in violation of section 30-3-108, Idaho Code.

30-3-44. Derivative suits. (1) A proceeding may be brought in the right of a domestic or foreign corporation to procure a judgment in its favor by:

(a) Any member or members having five percent (5%) or more of the voting power or by fifty (50) members, whichever is less; or

(b) Any director.

(2) In any such proceeding, each complainant shall be a member or director at the time of bringing the proceeding.

(3) A complaint in a proceeding brought in the right of a corporation must be verified and alleged with particularity the demand made, if any, to obtain action by the directors and either why the complainants could not obtain the action or why they did not make the demand. If a demand for action was made and the corporation's investigation of the demand is in progress when the proceeding is filed, the court may stay the suit until the investigation is completed.

(4) On termination of the proceeding the court may require the complainants to pay any defendant's reasonable expenses, including attorney's fees, incurred in defending the suit if it finds that the proceeding was commenced frivolously or in bad faith.

(5) If the proceeding on behalf of the corporation results in the corporation taking some action requested by the complainants or otherwise was successful, in whole or in part, or if anything was received by the complainants as the result of a judgment, compromise or settlement of an action or claim, the court may award the complainants reasonable expenses, including attorney's fees.

30-3-45. Delegates. (1) A corporation may provide in its articles or bylaws for delegates having some or all of the authority of members.

(2) The articles or bylaws may set forth provisions relating to:

(a) The characteristics, qualifications, rights, limitations and obligations of delegates including their selection and removal;

(b) Calling, noticing, holding and conducting meetings of delegates; and

(c) Carrying on corporate activities during and between meetings of delegates.

30-3-46. Annual and regular meetings. (1) A corporation with members shall hold a membership meeting annually at a time stated in or fixed in accordance with the bylaws.

(2) A corporation with members may hold regular membership meetings at the times stated in or fixed in accordance with the bylaws.

(3) Annual and regular membership meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual and regular meetings shall be held at the corporation's principal office.

(4) At the annual meeting:

(a) The president and chief financial officer shall report on the activities and financial condition of the corporation; and

(b) The members shall consider and act upon such other matters as may be raised consistent with the notice requirements of section 30-3-50, Idaho Code.

(5) At regular meetings the members shall consider and act upon such matters as may be raised consistent with the notice requirements of sections [section] 30-3-50, Idaho Code.

(6) The failure to hold an annual or regular meeting at a time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

Addresses of Owners of Record of Houses Currently [and also for at least the past 5 years, though not necessarily under the same owners]
Hooked up to the Talache Lot 1 Less Tax 1, Block 5 System

David and Elizabeth Gay
P. O. Box 809
Spirit Lake, ID. 83869
North Idaho Phones (if known) = 623-6302; 623-5902

A. E. Keir Nash and Marguerite B-R. Nash
1033 N. Ontare Road, Santa Barbara, CA. 93105.
also, P.O. Box 492, Sagle, ID. 83860.
263-0765

Daniel and Dee Soss
5325 Walker Way
Sagle, ID. 83860
265-6750; 263-8136

Jack and Rachell Johnson
P. O. Box 97
Newman Lake, WA. 99025

Mark and Paula Mays
E. 3306 Donora Court
Spokane, WA. 99223.

Bob and Barbara Fouts
320 Santa Helena
Solana Beach, CA. 99025.*

*The following persons seem to have an undisclosed interest [not on the public record] in the Fouts cabin, but I'm not sure exactly what:
Matt Sanger, 2503 East 38th, Spokane, WA. 99223.
Timothy J. Harkins, West 1304 College, Spokane, WA. 999201-2013.

RECEIVED
MAY 15 1995
NORTHERN REGION
IDWR

1033 N. Ontare Road
Santa Barbara, CA. 93105.

IDWR
NORTHERN REGION
MAY 15 1995
RECEIVED

10 May 95

Allen G. Beardslee, Sr. Water Resource Agent
Dept of Water Resources, State of Idaho
Suite 210, 1910 Northwest Blvd.
Coeur d'Alene, ID. 83814-2615.

Dear Mr. Beardslee:

Would you please write, as you said you would, to the "protestants" and users to explain that it was at your instructions, not my initiative, that the Answer to 11b on the original application was filled out as it was, and that I thought the contrary [that it should include all property owners at the points of distribution] but deferred to you. This is creating any amount of trouble. As evidence, I attach a xerox of my little note to the Spokane attorneys on the water system when reporting to them last month.

Please find enclosed my letter of yesterday with the date typo correct, and discard the one with the typo. I have spoken with two of the "protestants" [Danyow and Cahn], and don't see any insurmountable problems. Deborah Cahn will be visiting UC Santa Barbara on May 20 and we will chat more then.

In addition to enclosing Mr. Privette's "warning" referred to, and in consequence of our conversation of this morning, I enclose: (1) the original incorporation Articles and (2) the only document of public record giving any real property to the defunct corporation (the land of the upper pressure-tank house, just above the upper road, carved from the lefthand lower corner of Penttila/now-Gay property). **This is it for public records about the corporation's ownership and there are no written easements. Bluntly, certain persons were negligent as to their duties and rights. The effect has been to create a potential legal morasse of bona fide purchasers in good faith and title insurance companies, on the one side, and anxious claimants on the other. I hope that we don't inadvertently have a bigger mess than ever. I strongly urge that, if [after reading the dossier, especially IIIA and IIIB and IV] it is not obvious to you or Mr. Haynes why I am taking the positions I do and suggesting still the approach originally worked out with you, you promptly ask your department's legal counsel why this is necessary under Idaho property and tort law to protect my rights. It will be obvious to any practising attorney in Idaho.** I can only guarantee others' rights if you do not inadvertently (because you are not thinking in property and tort law terms) undermine mine.

Mr. Johnson, if he thinks about it, wouldn't really wish to go back to the old Articles of Incorporation, or their equivalent -- as they would leave me (vice Andrews) as sole director, and almost all of the watersystem in a "who owns what?" limbo. There needs to be far greater specification as to purposes and terms and modus operandi of any new corporation. This may take considerable time to achieve, as people are pulling at cross-purposes.

Many thanks. -- A. E. Keir Nash, Professor [Constitutional Law and Legal History]

cc: Robert Haynes

MICROFILMED
MAR 2 6 1997

a. Hydropower; show total fe[redacted] head and proposed capacity in KW. [redacted]

b. Stockwatering; list number and kind of livestock. _____

c. Municipal; show name of municipality. _____

d. Domestic; show number of households. 7

e. Other; describe fully. _____

9. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of the use (*example: D for Domestic*) in the corresponding place of use below. See instructions for standard symbols.

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
55N	1W	8							D (Govt Lot 2)										
									4										4

Total number of acres to be irrigated ~~4~~ 4

10. Describe any other water rights used for the same purposes as described above. none

11. a. Who owns the property at the point of diversion? State of Idaho — APPLICANTS A.S.K. NASH & FRANCES M.B.R. NASH

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

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing. — Note to Tim & Mark

12. Remarks: The answer to #6 puzzles me. I thought we should list owners of each lot. The official said just the point of diversion lot, so I did what he said.

RECEIVED
MAR 2 6 1992

UNIVERSITY OF CALIFORNIA, SANTA BARBARA

BERKELEY • DAVIS • IRVINE • LOS ANGELES • RIVERSIDE • SAN DIEGO • SAN FRANCISCO

SANTA BARBARA • SANTA CRUZ

DEPARTMENT OF POLITICAL SCIENCE

SANTA BARBARA, CALIFORNIA 93106

9 May 95

Allen G. Beardslee, Sr. Water Resource Agent
Dept of Water Resources, State of Idaho
Suite 210, 1910 Northwest Blvd.
Coeur d'Alene, ID. 83814-2615.

Dear Mr. Beardslee:

Thank you for your phone call of yesterday. In response to your request, I am providing a dossier of documents pertaining to:

(1) the origins and demise of the Talache Shoreside Water Users Assoc., Inc.corporation (including a written warning of demise given by a non-hooked-up claimant);

(2) negotiations, among users of a system tapping into Lake Pend Oreille from my property, as to how best to legalize the system, including the June/July 1994 user survey of preferences re how best to deal with non-user claims on a dead corporation;

(3) certain incidental matters which explain delay until 1995 in further pursuing legalization;

(4) 1995 documents written and received in conjunction with legalizing.

I am also glad to know that it would be possible to split the Talache Landing system so to include both properties with hook-ups de facto in use for many years and properties of certain persons, who have never used functioning hook-ups but who believe they have residual claims against the defunct Idaho corporation, Talache Shoreside Water Users Assoc., Inc. Originally incorporated 17 October 1980 by Lloyd Andrews, this corporation [as the attached Idaho Dept of State Certificate dated 5 Nov 1993 states] "forfeited its right to do business in Idaho on November 30, 1982."

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Professor Emeritus on active service

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STANGER, MATT
LAW OFFICES
SPOKANE-WASHINGTON
509-838-2700

Robert Privette
1040 TALACHE ROAD
SAGLE - IDAHO
83860

DEAR MATT.

THANK-YOU FOR STOPPING BY LAST WEEK-END. I ENJOYED THE CONVERSATION.

TO-DAY, I CALLED IDAHO SECRETARY OF STATE REGUARDING STATUS OF TALACHE SHORESIDE WATER USERS CORPERATION. THE CORPERATION'S CHARTER IS INACTIVE BUT NOT REVOKED FOR ANOTER THREE MONTHS. THERE IS A 36^{00} DOLLAR RE-INSTATEMENT FEE.

ALSO, I CALLED IDAHO DEPT. OF WATER RESOURSES, CD'A. NO PERMITS EVER ISSUED NOR APPLIED FOR. REGUARDING ASSOCIATION NOR LLOYD ANDREWS. I AM TO RECIVE APPLICATIONS ETC. BY MAIL TO MY ADDRESS FROM BOTH STATE AGENCOYS AND UPON RECIPT WILL FOREWARD TO YOU OR TIM HARKINS. PLEASE ADVISE.

I INTEND TO CORRASPOND WITH MRS MARGERY CAHN, SANTA ROSA, CALIFORNIA REGUARDING WATER SYESTEM AS SHE SHOULD HAVE MEMBERSHIP.

THE GENERAL HISTORY OF SYESTEM IS SUCH. LLOYD ANDREWS, FRANCIS SWANSON AND MY SELF COMBINED PROPERTIES UNDER LLoyds DIRECTION. Lloyd RETAINED

THREE PARCELS, FRANCIS RETAINED ONE PARCEL AND I RETAINED TWO PARCELS. LLOYD PAID FOR A RE-SURVEY OF AREA AND FOR WATER SYESTEM. I CLEARED THE PROPERTY, BULLDOZED THE BUILDING SITES AND DRIVEWAYS, DID LLOYDS LANDSCAPEING AND DID THE CARPENTERY WORK ON MRS. CAHN'S DOCK. MRS CAHN PAID HER ASSEMENT FEES AND OFFERED POINT OF DIVERSION FOR H_2O SOURCE. FRANCIS WAS AND STILL IS FRANCIS. FRANCIS H_2O LINE IS NOW JACK JOHNSON'S W/ PURCHACE OF HIS PROPERTY FROM MRS. SWANSON. MRS. CAHN'S WATER LINE IS STUBBED OFF AND BURRIED AT HER PROPERTY LINE, THE BULLDOZZED AREA ABOVE LLOYDS HOUSE AND BELOW AND TO THE NORTH OF THE TED DUNCAN PROPERTIES. THE FOUST AND NORDEEN PROPERTY RECIVED WATER AT NO CHARGE FOR THE ALLOWANCE OF EASEMENT. MR & AND MRS SOSS PURCHACED TWO LOTS WITH ONE LINE OF WATER / I RESERVED MY LINE TO TRANSFER TO LOT BELOW LLOYDS RESIDANCE. WELCH ENGEERING DESIGNED SYESTEM / DAVID BELLOMEY INSTALLED SYESTEM / ATTORNEY GARY FINNEY CORPERATION PAPERS AND LEGALS / ALLEN KABERT SURVEY / KEN BEEBEE PANHANDLE HEALTH FOR APPROVIAL.

THE CORPERATION ARTICLES CALL FOR MEMBERSHIP CERTIFICATES IN LIEU OF STOCK. MEMBERSHIP CERTIFICATES NEVER ISSUED TO MY KNOWLEDAGE.

LLOYDS PROPERTY HAS TRANSFORED TO GRAVES / GRAVES LISTS PROPERTY FOR SALE / PUMP-HOUSE ON BEACH IS INTERGURAL PART OF SYESTEM BUT TO MY KNOWLEDAGE IS NOT IN SYESTEMS OWNER SHIP.

KINDLY LET ME KNOW WHO TO FOREWARD PERMIT FORMS AND SECERARY OF STATE DOCUMENTS TO UPON RECIPT.

REGARDS
ROBERT PRUETTE

MATT

Its 3:30 And Im stopping At WHAT Im Doing TO GET THIS IN MAIL FOR You So You RECIVE It TomorRow. A REAL ESTATE PAL JUST STOPPED IN to "GAFF-FA" A WHILE And SHE MENTIONED GRAVES PROPERTY is selling THE Pump-House is Located on THAT PROPERTY /w PIPES etc. SHould not THAT PROPERTY BE PART OF THE ASSOCIATION? ED OSTRUM, REAL ESTATE AGENT, _____ _____ IS HANDLING SALE. _____.

THE TALCHE SHORE SIDE H_2O Inc. - HAS NOT Registered with STATE of IDAHO FOR 9½ YEARS! 10 YR STATUTE HERE And CORPORATION is GONE FROM BOOKS.

THE TAL-SHOR-H_2O - DOES NOT EXIST According to IDAHO STATE H_2O RESOURCES AGENCY. NO PERMITS FOR H_2O WithdrawL.

ASSOCIATION HAS NO EASEMENTS OR OWNERSHIP NOR CONTROL OF POINT OF DIVERSION. i.E. SEE Item NUMBER 11 Application FOR PERMIT.

SHould'nt SomethiNG BE DonE BEFORE SALE FROM GRAVES To SOMEONE ELSE?

PETE T. CENARRUSA
SECRETARY OF STATE
STATE CAPITAL
BOISE, IDAHO

State of Idaho

Department of State

CERTIFICATE OF INCORPORATION
OF

TALACHE SHORESIDE WATER USERS ASSOC., INC.

I, PETE T. CENARRUSA, Secretary of State of the State of Idaho, hereby certify that duplicate originals of Articles of Incorporation for the incorporation of

TALACHE SHORESIDE WATER USERS ASSOC., INC.

duly signed pursuant to the provisions of the Idaho Nonprofit Corporation Act, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I issue this Certificate of Incorporation and attach hereto a duplicate original of the Articles of Incorporation.

Dated October 17, 19 80.

Pete T. Cenarrusa
SECRETARY OF STATE

[illegible]
Corporation Clerk

[illegible]

CIN-779

ARTICLES OF INCORPORATION

OF

TALACHE SHORESIDE WATER USERS ASSOC., INC.

KNOW ALL MEN BY THESE PRESENTS:

That I, the undersigned, have this day voluntarily associated myself and do hereby and by these Articles of Incorporation unite and associate myself for the purpose of forming a non-profit corporation pursuant to the Idaho Nonprofit Corporation Act, Idaho Code §30-301 and following, for the maintaining, operation and distribution of water for the property lying within Bonner County, Idaho, in the area known as Talache, Idaho.

ARTICLE I

The name of this corporation shall be TALACHE SHORESIDE WATER USERS ASSOC., INC.

ARTICLE II

The objects and purposes for which this corporation is organized are as follows:

(1) To own, operate, provide, care for, and maintain a water distribution system in such a manner as to protect the health of the association members in accordance with state and Federal laws and regulations, for the maximum social and residential use of the members and their guests; and generally to further those purposes for the members, and to do and perform any and all acts or make such contracts that may become necessary or convenient for the full and perfect enjoyment and the carrying out of the purposes aforesaid; and in that behalf, to purchase, sell, own, use, lease or improve personal property and real

estate which may be acquired or deemed necessary or convenient for the purpose of carrying out any of the objects of the corporation.

(2) To borrow money and mortgage or hypothecate any of the property of the corporation as a security for the payment thereof, with power to receive gifts or bequests on behalf of the purposes of said corporation, and to loan and extend credit in the furtherance of said purposes.

ARTICLE III

The initial registered agent and his location are Mr. Terence Nordeen, P.O. Box 682, Sandpoint, Idaho 83864.

ARTICLE IV

The number of directors who shall manage and conduct the affairs of this corporation shall not exceed seven (7), but shall be in the number as provided by the By-laws. The directors shall be elected by the members at the organization meeting for a term of one (1) year. The directors, by the By-laws, may increase the term of the directors.

ARTICLE V

The duration of this corporation shall be perpetual. It is not organized for pecuniary profit and has no capital stock.

ARTICLE VI

A certificate of membership shall be issued to each member based upon such requirements as shall be set forth in the By-laws as established by the Board of Directors and no transfer of membership shall be valid or recognized by this corporation unless such transfer be in the manner provided therein.

ARTICLE VII

The initial incorporator and Board of Director is as follows:

Lloyd J. Andrews, P.O. Box 1866, Bellevue, Washington 98009

Whose numbers may from time to time be changed in accordance with the duly adopted By-laws of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hands and seal this 14TH day of ~~August~~ October, 1980.

Lloyd Andrews
LLOYD J. ANDREWS

STATE OF ~~WASHINGTON~~ Idaho)
) ss.
County of ~~King~~ Bonner)

On this 14TH day of ~~August~~ October, in the year of 1980, before me, the undersigned Notary Public, personally appeared LLOYD J. ANDREWS, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same.

Mary A Finney
Notary Public - State of ~~Washington~~
Residing at Sandpoint Idaho

236275

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, that Grantors, FRANCES SWANSON, an unmarried woman, and LLOYD J. ANDREWS and WINNIE MAY ANDREWS, husband and wife, for value and consideration received, do hereby QUITCLAIM unto the Grantee TALACHE SHORESIDE WATER USERS ASSOCIATION, INC., of P. O. Box 602, Sandpoint, Idaho 83864, all of Grantors' right, title, claim and interest in and to the following described real property, together with after acquired title, situated in the County of Bonner, State of Idaho, to-wit:

A tract of land in the Mexico mineral survey number 2550, in Government Lot 2 of Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho, more specifically described as follows: From corner number 1 of said Mexico claim; thence South 34°41'12" East a distance of 164.14 feet to the true point of beginning; thence continuing South 34°41'12" East a distance of 15.0 feet to the Northwesterly right-of-way line of the existing public access road; thence North 48°13' East along said road a distance of 20.75 feet, (North 48°24' 30" East by original deed); thence leaving said right-of-way line, North 34°41'12" West a distance of 15.0 feet; thence South 48°13' West a distance of 20.75 feet to the true point of beginning.

IN WITNESS WHEREOF, we have hereunto set our hands on this 5th day of December 1980.

Frances Swanson

Lloyd J. Andrews

Winnie May Andrews

STATE OF Idaho)
: ss
County of Bonner)

On this 5th day of December 1980, before me, the undersigned Notary Public, personally appeared LLOYD J. ANDREWS and WINNIE MAY ANDREWS, husband and wife, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they and each of them executed the same.

Notary Public - State of
Residing at:

STATE OF Idaho)
: ss.
County of Bonner)

On this 5th day of December 1980, before me, the undersigned Notary Public, personally appeared FRANCES SWANSON known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same.

Notary Public - State of
Residing at:

QUITCLAIM DEED
ANDREWS to TALACHE SHORESIDE WATER USERS ASSOCIATION

* Situation is that Andrews sold in 1956, but no action was ever taken by Lloyd Andrews

V. David Welch Associates, Inc.

ENGINEERING & SURVEYING
P. O. BOX 934 - SANDPOINT, IDAHO 83864
Ph (208) 263-6581

SANDPOINT OFFICE
DOVER HIGHWAY
P.O. Box 934
SANDPOINT, IDAHO 83864
Ph. (208)263-6581

COEUR D'ALENE OFFICE
LIBERTY BUILDING
118 North Seventh St.
COEUR D'ALENE, IDAHO 83814
Ph. (208)664-9382

March 6, 1980

Mr. Gary Finney
Attorney at Law
101 North 1st
Sandpoint, Id 83864

Re: Andrew's Tallache Water System

Dear Gary:

Enclosed are a set of "As Built" plans for the above referenced water system.

As I mentioned in our telephone conversation I have not submitted either the as builts or construction plans to the State of Idaho, Department of Health and Welfare, Division of Environment. Based on the advise of the Senior Environmental Engineer of the Coeur d'Alene Division of Environment office, Roger Tinkey, the above referenced system is not considered a community system and plans review are neither required nor, because of their present workload, desired. Ken Babin from the Sandpoint office of the Panhandle Health District confirmed Tinkey's statement.

As I also mentioned, I have not filed for a State of Idaho Water Resources Permit. As you pointed out, this will have to be done to conform with State law.

If you have any questions or if I can be of further assistance please call.

Sincerely,
V. DAVID WELCH ASSOCIATES, INC.

V. David Welch, P.E.
President

VDW/kc
Enc

RECEIVED MAR 13 1980

Addresses of Owners of Record of Houses Currently [and also for at least the past 5 years, though not necessarily under the same owners]
Hooked up to the Talache Lot 1 Less Tax 1, Block 5 System

David and Elizabeth Gay
P. O. Box 809
Spirit Lake, ID. 83869
North Idaho Phones (if known) = 623-6302; 623-5902

A. E. Keir Nash and Marguerite B-R. Nash
1033 N. Ontare Road, Santa Barbara, CA. 93105.
also, P.O. Box 492, Sagle, ID. 83860.
263-0765

Daniel and Dee Soss
5325 Walker Way
Sagle, ID. 83860
265-6750; 263-8136

Jack and Rachell Johnson
P. O. Box 97
Newman Lake, WA. 99025

Mark and Paula Mays
E. 3306 Donora Court
Spokane, WA. 99223.

Bob and Barbara Fouts
320 Santa Helena
Solana Beach, CA. 92075.*

*The following persons seem to have an undisclosed interest [not on the public record] in the Fouts cabin, but I'm not sure exactly what:
Matt Sanger, 2503 East 38th, Spokane, WA. 99223.
Timothy J. Harkins, West 1304 College, Spokane, WA. 99201-2013.

RECEIVED
MAY 12 1995
NORTHERN REGION
IDWR

1033 N. Ontare Road
Santa Barbara, CA. 93105.

10 May 95

Allen G. Beardslee, Sr. Water Resource Agent
Dept of Water Resources, State of Idaho
Suite 210, 1910 Northwest Blvd.
Coeur d'Alene, ID. 83814-2615.

Dear Mr. Beardslee:

Would you please write, as you said you would, to the "protestants" and users to explain that it was at your instructions, not my initiative, that the Answer to 11b on the original application was filled out as it was, and that I thought the contrary [that it <u>should</u> include all property owners at the points of distribution] but deferred to you. This is creating any amount of trouble. As evidence, I attach a xerox of my little note to the Spokane attorneys on the water system when reporting to them last month.

Please find enclosed my letter of yesterday with the date typo correct, and discard the one with the typo. I have spoken with two of the "protestants" [Danyow and Cahn], and don't see any insurmountable problems. Deborah Cahn will be visiting UC Santa Barbara on May 20 and we will chat more then.

In addition to enclosing Mr. Privette's "warning" referred to, and in consequence of our conversation of this morning, I enclose: (1) the original incorporation Articles and (2) the only document of public record giving any real property to the defunct corporation (the land of the upper pressure-tank house, just above the upper road, carved from the lefthand lower corner of Penttila/now-Gay property). **This is it for public records about the corporation's ownership and there are no written easements. Bluntly, certain persons were negligent as to their duties and rights. The effect has been to create a potential legal morasse of bona fide purchasers in good faith and title insurance companies, on the one side, and anxious claimants on the other. I hope that we don't inadvertently have a bigger mess than ever. I strongly urge <u>that, if [after reading the dossier, especially IIIA and IIIB and IV] it is not obvious to you or Mr. Haynes why I am taking the positions I do and suggesting still the approach originally worked out with you, you promptly ask your department's legal counsel why this is necessary under Idaho property and tort law to protect my rights.</u> It will be obvious to any practising attorney in Idaho.** I can only guarantee others' rights if you do not inadvertently (because you are not thinking in property and tort law terms) undermine mine.

Mr. Haynes, Please not.

Mr. Johnson, if he thinks about it, wouldn't really wish to go back to the old Articles of Incorporation, or their equivalent -- as they would leave me (vice Andrews) as sole director, and almost all of the watersystem in a "who owns what?" limbo. There needs to be far greater specification as to purposes and terms and modus operandi of any new corporation. This may take considerable time to achieve, as people are pulling at cross-purposes.

Many thanks. --- A. E. Keir Nash, Professor [Constitutional Law and Legal History]

cc: Robert Haynes

A. E. Keir Nash

Brief Vita & Publications List

Addresses/Phones

Political Science Dept., University of California, Santa Barbara, CA. 93106. (805) 687-9315
Talache Landing, Lake Pend Oreille, P.O. Box 492, Sagle, ID. (208) 263-0765

Personal Data

Born 14 May 1936; Married 10 Feb 1968 (Marguerite Bouraad Nash); 1 child, 20 Nov 1968 (William Emerson Nash); Groton School, 1948-54

Higher Education & Related Honors/Fellowships

Harvard College, A.B. magna cum laude (History; Phi Beta Kappa), 1958;
University of Munich (Fellow of the Federal Republic of Germany) 1958-59;
University of North Carolina, M.A. (History; Woodrow Wilson National Fellow), 1961;
Harvard University, Ph.D. (Political Science), 1968

Employment

University of California, Santa Barbara: (Political Science) Assistant Professor, 1967-72; Associate Professor, 1972-80; Full Professor, 1980-94; Professor Emeritus on active duty, 1994- and Affiliated Professor in History and in Black Studies Depts, 1994-

Profession-related Elections, Membership, Service

Who's Who in American Law, 1983; Who's Who in the West, 1988; Who's Who in American Education, 1995. Member – *Organization of American Historians; American Political Science Association; American Society for Legal History* (membership committee 1979-86)

American Association of University Professors (selected offices): Local, Univ Calif Santa Barbara President, 1972-74; *State,* California President, 1974-75; California Committee Z (Economic Status of the Profession), 1989-; *National,* Chair, Assembly of State Conferences; 1975-77; National Council, 1975-79 & 1987-90; National Committees O (Organization) and F (Membership), 1977-80; National Committee R (Legislative Relations), 1988-90

University of California Academic Senate (sel.): Santa Barbara Division: Committee on Committees, 1971-73; Privilege & Tenure, 1972-73; Rules & Jurisdiction, 1981-85; Chair of the Senate, 1985-86; re-elected, 1986-88; *UC Systemwide:* Academic Council Member, 1985-88

Reader/referee/reviewer for (selected): National Science Foundation, National Endowment for the Humanities, Oxford University Press, Journal of American History, Princeton University Press, University of Chicago Press, American Political Science Review, Journal of Politics, Western Political Quarterly, Smithsonian Institution Population Program, Demography, Journal of Forest History, American Journal of Legal History

Principal Courses Taught

Graduate Seminars and Upper Division Undergraduate Courses in American Legal History and Constitutional Law; and in Environmental Law and Politics.

Research & Publications – see attached list

A. Publications *(Reprints and translation are listed below in italics)*

Nash's 3 Research Areas are:

I = Constitutional Law/Legal History

II = Public Policy/Higher Education

III = Public Policy/Environmental Law & Politics

Entry Number & Research Area	Year	Title	Publisher	Category	Pages
1/I	1967	"W.P. Gwyn, The Meaning of the Separation of Powers"	61 American Political Science Review 514 (June 1967)	Review	1
2/I	1968	"Chambers and Burnham (eds.) The American Party Systems"	62 American Political Science Review 1275-1276	Review	2
3/I	1969	"Negro Rights, Unionism, and Greatness on the South Carolina Court of Appeals: The Extraordinary Chief Justice John Belton O'Neall"	21 South Carolina Law Review 141-190 (Sum. 1969)	Article	50
4/I	1970	"Fairness and Formalism in the Trials of Blacks in the Supreme Courts of the Old South"	56 Virginia Law Review 64-100 (Feb. 1970)	Article	37
5/I	1970	"A More Equitable Past? State Supreme Courts and the Protection of the Antebellum Negro"	48 North Carolina Law Review 197-242 (Feb. 1970)	Article	46
6/III	1970	"Pollution, Population, and Cowboy Economy: Anomalies in Developmentalist Paradigm and Samuel Huntington"	2 Journal of Comparative Administration 109-128 (May 1970)	Article	20
7/III	1971	"Going Beyond John Locke?: Influencing American Population Growth	49 Milbank Memorial Fund Quarterly 7-31 (1971)	Article	25
8/III	1971	"Population Growth and American Ideology"	In Noel Hinrichs (ed.) Population, Environment and People (McGraw-Hill, 1971) 85-96	Chapter (from Milbank article)	12
9/III	*1971*	*"Problema Demografici e Sistema Politico"*	*Mercurio (Rome, Italy, Nov. 1971) 25-32*	*Translation of Milbank* article	*8*
10/I	1971	"The Texas Supreme Court and the Trial Rights of Blacks"	58 Journal of American History, 622-42 (Dec. 1971)	Article	21
11/I	*1971*	*"Texas Justice in the Age of Slavery"*	*8 Houston Law Review 438-456*	*Shorter version of* JAH article	*19*
12/III	1972	Oil Pollution and the Public Interest	Senior author with D. Mann & P. Olsen (University of Calif., Berkeley, Institute of Governmental Studies, 1972)	Book	157
13/III	1972	Governance and Population: The Governmental Implications of Population Change	Editor and author. (Washington, National Commission on Population & the American Future, 1972)	Book	342

14/I	1973	"John Gui[illegible]The Rocky Mountain[illegible]h, 1861-1890"	60 Journal of Am[illegible]an History 149-150 ([illegible]e)	Review	2
15/III	1973	"Demographology in U.S. Population Politics:	In Richard Clinton & K. Godwin (eds.), Research in Population and Politics (Boston: D.C. Heath, 1973) 71-94	Chapter	24
16/III	1973	"Population Growth and U.S. Politics in the 1970s"	3 International Journal of Health Services (Johns Hopkins Univ. Special Issue on Population, Fall 1973) 845-854	Article	10
17/III	1973	"Some Issues for Political Science in Population Studies"	In R. Clinton (ed.), Population & Policy 29-44	Reprint	16
18/III	1974	"F. LaMond Tullis, Politics & Social Change in Third World Countries"	36 Journal of Politics (1974) 220-222	Review	3
19/III	1974	"Edwin Driver, Essays on Population Policy"	11 Demography 156-166 (Feb. 1974)	Review Article	11
20/III	1975	"H.S.D. Cole et al., Models of Doom: A Critique of the Limits to Growth"	37 Journal of Politics 322 (1975)	Booknote	1
21/I	1975	"Thomas D. Morris, Free Men All"	19 American Journal of Legal History 315 17(1975)	Review	3
22/I	*1976*	*"Fairness & Formalism in the Trials of Blacks in the State Supreme Courts of the Old South"*	*In Wythe Holt (ed.), Essays in 19th Century Legal History (NY: Greenwood Press, 1976) 499-536*	*Reprint of Virgin. L. Rev. article*	*37*
23/III	1976	Offroad Riding on Forest Lands as a Public Policy Problem	Report to Los Padres National Forest in fulfillment of L.P. Nat'l. Forest Contract #710-07-75	Research Monograph	162
24/III	*1977*	*"Agenda-building Unorthodoxies on the Population Commission"*	*6 Policy Studies Journal (Winter 1977) 185-194*	*Article (condensation of next item)*	*10*
25/III	1978	"Procedural and Substantive Unorthodoxies on Population Commission"	In Michael Kraft & Mark Schneider (eds.), Population Policy Analysis (Heath Lexington, 1978) 55-65	Chapter	11
26/III	1978	"Thomas B. Littlewood, The Politics of Population Control"	40 Journal of Politics 1119 (1978)	Booknote	1
27/I	1979	"Reason of Slavery: Understanding the Judicial Role in the Institution of Slavery"	32 Vanderbilt Law Review (January 1979) 7-218	Monograph Article	212
28/I	1979	"Morton Horwitz, The Transformation of American Law"	73 American Political Science Review (Mar. 1979) 244-45	Review	
29/I	1979	"Slave Codes"	In D. C. Roller & R. Twyman (eds.), Encyclopedia od Southern History (LSU Press)	3 Encyclopedia articles	5
30/I	1979	"Drapetomania"			
31/I	1979	"Southern Judiciaries"			
32/III	1979	Understanding & Planning for ORV Recreation: The 1978-79 Washington Offroad Recreation Survey	Washington State Government Printing Office, 1979	Monograph	159
33/I	1980	"Leon Higginbotham, In the Matter of Color: Race and the American Legal Process"	74 American Political Science Review (March 1980) 200-01	Review	2

34/III	1981	"Nature Aesthetics, the Public Interest a[redacted] Users Perspectives"	In Richard Andrews & Paul Nowak (eds.), Off[redacted] Vehicle Use: A Management Challenge (U.S. Govt. Office of Environmental Quality, & University of Michigan) 12-77	Chapter	66
35/III	1981	"Reflections on the Exclusionary Zoning of American Nature--Sax, Mountains Without Handrails"	79 Michigan Law Review 1299-1313	Review Article	15
36/III	1983	"S. Isaacs, Population Law and Policy"	45 Journal of Politics (Aug. 1983) 801	Note	1
37/II	1983	"Quite Astonishing Strength?--The Quality and Reputation of the Ph.D. Programs at the Smaller University of Calif.Campuses"	Report prepared at the request of the Chancellor	Report	40
38/II	1983	"California's Wacky Way of Funding Higher Education in the 1980s, Part I--Spending It Less Wisely"	2 California Higher Education (Nov. 1983) 15-18	Article	4
39/II	1983	"California's Wacky Way of..., Part II--State Politics vs. the National Interest"	2 California Higher Ed. (Dec. 1983) 15-18	Article	4
40/I	1984	"In Re Radical Interpretations of American Law"	81 Michigan Law Review (Nov. 1983) 274-345	Monograph Article	71
41/III	1986	"Wilderness Allocations and Wildernist Advocacy in American Wildlands Policy"	11 Western Wildlands (Winter 1986) 27-31	Article	5
42/I	*1987*	*"In Re Radical Interpretations of American Law: The Relation of Law & History"*	*Kermit Hall (ed.) United States Constitutional and Legal History (Garland Pub. NY, vol. I.*	*Reprint of 81 Michigan Law Review (1983) 274-345*	*71*
43/I	*1987*	*"Fairness and Formalism in the Trials of Blacks.."*	*In id., vol. V*	*Reprint of 56 Virginia Law Review (1970) 64-100*	*37*
44/I	*1987*	*"A More Equitable Past? Southern Supreme Courts and the Protection of the Antebellum Negro"*	*In id., vol. IX*	*Reprint of 48 North Carol. Law Rev (1970) 197-242*	*46*
45/II	1988	Principal author, with P. Abbott & R. Flacks, "A Two-Tier UC Is In No One's Interest"	Los Angeles Times, Sept. 17, 1988, p. II-8	Op-ed Article	1
46/III	1988	"Wilderness Aesthetics & Metro-Wildernist Trump Rights in American Wildlands Policy"	14 Western Wildlands 27-33	Article	7
47/I	1988	"Slave Trials"	In R. Miller & J. Smith, Dictionary of Afro-American Slavery (Greenwood Press, N.Y.) 740-742	Encyclo pecia Article	3
48/III	1989	"Brighter & Dimmer Analytic Lights in the Wilderness"	33 Journal of Forest History 201-202	Review Essay	2
49/I	1990	Review of Philip Schwarz, Twice Condemned: Slaves & the Criminal	20 Journal of Inter- Interdisciplinary History	Review	2

Number & Research Area	Year	Title	Publisher/Pp.	Category
50/I	*1990*	*"Fairness & Formalism in the Trials of Blacks..."*	*in Paul Finkelman, Articles on American Slavery (Garland Pub. NY), XI*	*Reprint of 1970 Virginia Law Review piece (see entry no .4)*
51/I	*1990*	*"Negro Rights, Unionism, and Greatness on the South Carolina Court of Appeals: The Extraordinary Chief Justice John Belton O'Neall"*	*In id, vol. XI*	*Reprint of 21 South Carolina Law Review (1969) 141-190*
52/I	1990	Review of Arthur Howington, "What Sayeth the Law? The Treatment of Slaves and Free Blacks in the State and Local Courts of Tennessee"	34 American Journal of Legal History 79-81	Review
53/II	1990	"'Reaganizing' the Profession's Salaries, 1979-1990"	California Academic Review, March 1990, pp. 1-6	Article
54/I	1992	"Chief Justice Harlan F. Stone"	K. Hall (ed.), The Oxford Companion to the Supreme Court (1992) 838-840	Encyclopedia Article
55/I	1992	"State Sovereignty and States' Rights"	K. Hall (ed.), The Oxford Companion to the Supreme Court (1992) 830-835	Encyclopedia Article

56/III	1992	Review of Turner and Clifton, "Wild By Law: The Sierra Club Legal Defense Fund and the Places It has Saved" (Sierra Club, 1990)	36 Forest and Conservation History 82	Review
57/III	1992	Review of W. McGucken, "Biodegradable: Detergents and the Environment" (Texas A&M University Press, 1991)	79 Journal of American History (Sept. 1992) 731-32	Review
58/III	1993	Review of Charles Wilkinson, "The Eagle Bird: Mapping a New West" (Pantheon, 1992)	37 Forest and Conservation History *(July 1993) 142-43*	Review
59/I	1993	Review of Stephen J. Burton, "Judging in Good Faith" (Cambridge UP, 1992)	*55* Review of Politics *(Summer 1993) 538-40*	Review
60/I	1994	Review of Morton Horwitz, "The Transformation of American Law, 1870-1960" (Oxford UP, 1992)	17 Legal Studies Forum, (no. 4 of 1994) 437-440	Review
61/I	1994	"Justice John Catron"	Melvin J. Urofsky (ed.), A Biographical Dictionary of U.S. Supreme Court Justices (Garland Publishing, 1994) 95-99	Encyclopedia Article
62/I	1994	"Justice Horace Gray"	Melvin J. Urofsky (ed.), A Biographical Dictionary of U.S. Supreme Court Justices (Garland Publishing, 1994) 197-201	Encyclopedia Article

63/I	1994	"Justice Wiley Rutledge"	Melvin J. Urofsky (ed.), A Biographical Dictionary of U.S. Supreme Court Justices (Garland Publishing, 1994) 391-393	Encyclopedia Article
64a/b/II	1994	"VERIP III -- What's It Worth?"	UCSB Faculty Association Newsletter, reprinted in UCLA Faculty Association Newsletter	Newspaper Essay
65a/b/II	1994	"If UC Salaries Go Down the Tubes, Can UC Be Far Behind?" (with Marguerite B-R. Nash)	UCSB Faculty Association Newsletter, Dec. 1994, revised version/ & reprinted in part in UCLA Faculty Assocation Newsletter	Newspaper Essay
66/I	1994	Review of William G. Ross, "A Muted Fury: Populists, Progressives, and Labor Unions Confront the Courts, 1890-1937 (Princeton U P, 1994)	4 The Law and Politics Book Review 165-169	Book Review

5 ORIGINALS - DETACH & CORP

TIMOTHY J. HARKINS
ATTORNEYS AT LAW

(509) 325-5466

WEST 1304 COLLEGE
SPOKANE, WASHINGTON 99201-2013

ASSOCIATE
PHILIP E. NINO

RECEIVED
MAY 11 1995
IDWR

March 23, 1993

Mr. and Mrs. A. E. Keir Nash
1033 N. Ontare
Santa Barbara, CA. 93105

RE: Talache Landing Water Association

Dear Mr. and Mrs. Nash:

It is my understanding that you have recently purchased a summer cabin at Lake Pend Oreille in Northern Idaho. First of all, let this letter act as a welcome to you from a neighbor. The cabin right next door to you is owned by a partnership of my brother-in-law and his wife, Bob and Barbara Fouts in San Diego, California, Matt and Jill Sanger of Spokane, Washington, and my wife and I Tim and Patti Harkins.

The purpose of sending this letter is to let you know that approximately one year ago, and I might add by default, I was appointed the person to act as Water Administrator of the small and unofficial water association which governs our water usage.

On February 5th I sent a letter out to the various members of our water association. I include a copy of the letter which was sent out. Upon sending that out I received a notice from Eldon Graves indicating that he had sold his interest in the cabin and after checking with the realtors, was given your name.

The water supplied to our various cabins was set up quite some time ago by your predeceasor in title, Mr. Lloyd Andrews. Although my cabin and the cabin on the other side of me presently have access and are still hooked up to an alternate water system the remaining four other cabins were not. Therefore, two of us have an alternate source of water and water is supplied through our common system through a total of six lots. I give you a bit of this history merely to point out that I have inherited a mess. As best I can determine although it was professionally engineered, the water system never obtained a water permit and it is questionable as to who belongs to this water system. Although there are six present users actually tied into this system the rumors that run wildly in Northern Idaho are that several other persons also participate in

the system. These other participants are, however, not hooked up. I have attempted to obtain some documentation but to date have not received what I would consider true verification of ownership by the various people. While I am not telling you this background information to overly concern you, I simply wanted to welcome you to the area and hopefully will have a chance to talk further. At the same time I have billed your predeceasors as evidenced by my February 5, 1993, letter. I would very much appreciate it if you would let me know how you wish to handle this matter.

If you have any questions in the interim, certainly do not hesitate to contact me at my office at 509-325-5466, or in the alternative at my home at 509-448-3702.

Very truly yours,

TIMOTHY J. HARKINS

TJH:th
encl-

February 5, 1993

RE: Talache Water Association

Dear :

As you will recall I took over duties as the person managing this system in the fall of 1991. At that time we required some significant repairs in order to repair and protect our system as well as put it on a regular monthly operating basis so that it was manageable. The system as you are aware is a relatively maintenance free system but never-the-less incurs power expenses and some operation expense. Assessments were made in the fall of 1991 for not only the repairs but also for amounts in order to continue to pay the electric bills for this system. We additionally now have a minimum of one year's calendar experience in watching the power usage following the repair of this system. Secondly, in past correspondence I suggested to you that we build up a bank account balance over time so as to offset any significant expenses that might accrue for future major repairs. In chatting with the majority of you during the months of the last repair, everybody seemed to be in general agreement that we should have a balance.

As a result of this general consensus as well as watching the power usage over the years I would propose that we set up an account balance so as to try and achieve a $2,000.00 minimum balance in our bank account to be set aside for further future repairs. Additionally, I have afer watching for calendar year 1993 power usage discovered that our power bill for this past year through December 1992 averages approximately a little over $32.00 per month. Therefore, the total estimated electrical usage for the calendar year would be at approximately $400.00 per year. I would, therefore, propose that in order to achieve a bank account balance of $2,000.00 plus a normal yearly usage assessment on the basis of the past years usage rates, then I would estimate that if we were to pay this over a two year period of time each cabin would be assessed $20.00 per month for a total of $2,800.00. This would cover two years worth of usage at $400.00 per year as well as

slowly and gradually build up a bank account of $2,000.00 to cover future usage. Although a regular assessment would be made obviously if anybody wanted to pay their cabin's full year's rate, one year's rate would be $240.00 and two year's rate would be $480.00. This would pay you in full to arrive at this desired goal. Thereafter, assuming costs don't change drastically, I would estimate that each individual cabin's assessment be $72.00 per year or $6.00 per month which would go merely toward the electrical usage. As a result of this accounting I would therefore ask each cabin to agree to participate in this assessment and forward to me a statement that you would like to be billed monthly or in the alternative be billed at some other designated interval. Personally I would prefer an assessment paid in full annually and thereby cut down on the cost of my mailings. As this is a volunteer job, I do not desire any additional headaches that would come with monthly accountings. On the other hand I understand that if you choose to make it monthly or at some other more manageable installment that I will understand everybody's personal budgeting problems.

Additionally, as merely being a person who makes suggestions regarding future development, I would also make the following suggestions for us to consider as a group for our future management. I would suggest that our group update our incorporation so that we are a valid functioning entity under the laws of the State of Idaho. I do not believe at the present time we are. I would propose that we have an annual meeting to elect new managers and for discussion of any pending business at that time. I would suggest that we find out just who owns what property. There have been many theories on this and many theories as to who are the actual participants in this water usage group. If there are other members in this water usage group that are not presently participating in the costs and assessments, I would propose that rules be developed for including these "silent but inactive members" on some scheduled fee for non-users. I would additionally think that we should research title to all of our individual properties and make sure that deeds include easements to the actual water association property users so that any time someone sells a piece of property or has concern with title that that recording actually be in existence.

On a more grand scale, I think it would be appropriate to consider some sort of development of our lake front property, if in fact we own lake front property so as to consider the possibility of an

additional assessment for the development or a ramp or lake access for the use of all private members of this group.

Please let this letter act as the first notice of assessment for calendar year 1993 and a statement as to how I feel we should be addressing these problems in the future. If you have comments regarding these assessments or any future development questions, certainly do not hesitate to write your comments or concerns to me. Additionally herein, I include a statement which I would ask you to check how you wish to be billed either monthly or annually and return it with your first installment check. On the other hand if you object to this assessment in any way, shape, or form, certainly do not hesitate to offer your services as the future manager of this association. I claim no proprietary interest to this job.

Very truly yours,

TIMOTHY J. HARKINS

TJH:th
encl-

_____ I wish to be bille montly.

_____ I wish to be billed annually.

_____ Other, Please explain.

Please send your response to Tim Harkins
W. 1304 College
Spokane, Wa. 99201

Political Science Department, University of California
Santa Barbara, CA. 93106.
(805) 687-9315

June 8, 1994

Everett D. Hofmeister, Attorney at Law
Sunset Mall, Suite 20; 296 Sunset Ave & Highway 95 North
Coeur d'Alene, ID. 83814.

Dear Mr. Hofmeister:

My apologies for not finishing this letter as quickly as promised in our phone conversation last week. But disentangling the relevant history and documentation is time-consuming. Also, I had to deal with an inquiry from Oxford Univ Press and the American Council of Learned Societies about which judges' and lawyers' biographies, if any, I wished to write for the 20-vol. successor to the 1/2-century-old Dictionary of American Biography. Justice Robert Jackson (whose Korematsu good sense and Steel Seizure delineation of presidential powers have long appealed) and Davis, Polk co-founder Frank Polk (whose grandson was a school formmate) were too tempting to resist.

I hope it's possible to solve to everyone's satisfaction the problems of the water-system that withdraws from Lake Pend Oreille onto my Talache waterfront property and distributes water to 6 properties 100 feet uphill and abutting the county-dedicated "Talache Loop" road. [See Attachment A–Map of Water System and Talache Properties.] These problems are brought to a head by the claim of your client Frances Swanson of a dormant right to a system hook-up on the hairpin bend property she has now logged prior to selling it. It is one of 4 claims said to have been created in 1980 but left unexercised for 14 years. Other claims are those of R. Privette (1) & D. Cahn (2). Also pushing things along, D. Cahn (of Philo, California) visited Talache Landing last month to examine her properties (Exchange 821-B). If all claims were valid and exercised, they could have substantial cost consequences to current users. Beside the question of the system configuration's capacity to pump additional water volume even at current quality levels, there are the circumstances that: (a) Idaho and federal water quality regulations have stiffened considerably since the system's 1979-80 building and (b) rapid growth of settlements around Lake Pend Oreille since its national discovery has affected its water's quality. At points around the lake, water withdrawals with modest treatments that produced potable water in 1980 are now sub-marginal.

Pre-1992 Talache owners of properties with hookups seem not to have bothered about these environmental changes--perhaps in part for the reason that the lobster in a cold water pot doesn't note temperature changes induced by a slow flame beneath until too late and in part because since 1989 the individuals informally ministering the water system have been busy professionals and only occasional week-end users. Such may explain Spokane Attorney Tim Harkins' not replying for 6 weeks to your April 21 letter to the dissolved "Talache Shoreside Water Users Assoc. Inc. c/o Timothy J. Harkins" and not cashing your $240 cheque made out to this defunct Association. But there is an additional circumstance. *Harkins has never been an officer of said defunct corporation. He cannot legally so act.* Said corporation has been in forfeiture since 1982, and irretrievably defunct since March 1993. As Attachments B (Idaho Secretary of State Certificate of Corporation Dissolution) and C (Idaho Non-Profit Corporation Act) indicate, no one can lawfully so act post-dissolution--unless Court-directed.[1]

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[1] *To be sure, Harkins might well have bothered to let you know of this sooner.* I regret it took your advising your client Swanson to resort to "self-help" and put in her own hook-up without user consent, and my conveying such information to Harkins, to produce a response. Prior messages of mine to him

As far as I can ascertain, for the decade prior to my spouse's and my Oct 1992 purchase of the Lloyd Andrews/Graves property, no system users acted as if there were such a corporation. Nor did they act upon the knowledge that no water-diversion permit was ever obtained from the State by the original single 1980 incorporator (Lloyd Andrews). Nor in the sale and transfer of properties served by this water-system were the charter's provisions for transferring memberships followed. At a Labor Day 1993 Weekend meeting of users and claimants divergent viewpoints emerged about claimants' rights. I sought the meeting because it troubled my spouse and myself that system users seemed to be "scoff-laws" as to how they ran the system and selfish in ignoring claims of rights in the system by putative 1980 purchasers. Information acquired since then (especially the Idaho Non-Profit Corporation Act) makes matters seem more complicated than I anticipated and than Frances Swanson seems readily to concede. I sketch these complications and related arguments as put to me below by others & venture my own views after each, as relevant.

LEGAL SITUATION

A. Here are the chief arguments of longterm users against the claims of all 3 claimants.

A1. *"The 1980 system's chief physical parts depreciated and deteriorated. It no longer exists. The claimants cannot costlessly hook-up after so long a delay to essentially another system not substantially paid for by them."* The system's 1987-1993 repair/replacement bills recently provided me leads me to see more in this argument than I first did. All the system's main operating parts became non-functional after the TSWUA went into 1982 forfeiture – the pump in the lake; the chlorinator situated on my property; and the pressure-maintaining bladder/tank situated on the only piece of property ever deeded to the TSWUA (by Andrews and Swanson; 15' x 20.75'; just above the upper Talache Loop road; see Quitclaim Deed #236275 notarized 5 Dec 80 by Gary Finney).[2] Some original piping from the lake to the chlorinator house was abandoned--due to leaks seemingly caused by storm damage to the sea-wall. As far as I can reconstruct from available documents, expenses prior to 1987 amounted to $2647 (Soss figure). This figure may include running expenses also. But since that time there appears to have been spent (excluding running expenses) at least $8700. These occurred before Nash purchase of the Andrews house--so I perhaps speak with less fervor on this than do users who have had to pay. But, conservatively speaking, $10000+ seems to have been incurred--about 70% of the original system's net cost of $14705.[3] I am less confident than in Fall 1993 that the system will, as it is now constituted, "take" 4 additional hook-ups. This needs examining. See health & water-quality considerations in Attachment E. No easements are recorded for the original system. Of the three claimants with whom I have spoken only D. Cahn seems willing to reckon with these points of longterm users.

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and other users that a difficult situation was shaping up went unheeded. *With respect to "self-help," may I note 4 reasons (apart from the question of trespass) why this is not now helpful: It seems important:*

(a) to proceed in accordance with Idaho law (adding hookups to a currently illegal system won't help);

(b) to avoid negligent damage from inexpert hook-up to water heaters of current users [see Attachment D--13 Sept 90 Soss letter to M. Mays (water heater element damaged by turning off water system pressure)];

(c) to avoid winter bursting of system pipes due to laying hookup pipe in too shallow trench;

(d) to avoid a purchaser of this property later coming back against Swanson on the ground that he was sold a hook-up to a system that supplies water too unhealthy to obtain a building mortgage [a related prob`lem emerged during the Autumn 1993 sale to the Pentillas of the former Duncan property].

[2]Your 21 April 1994 letter errs in para. 2 re Swanson's "contribution of parcels of land which are used by the Association." There were no solo "contributions" by Swanson. All private land through which the system passes and sold since its construction was deeded as parcels without encumbrances or easements.

[3]I say "net" to exclude from the total $16,205, the $1500 Andrews deducted at the outset "Andrews value for storage side of pump house" (1980 records) so to retain that side for himself. He calculated "14,705.5 /. by 9 users = $1633.95 per share." (same source). Note 9; at the time Cahns seem to have been calculated for 1 share, the 2nd being added later.

A2. *"(2a.) Claimants ignored at their peril the provisions of the Idaho Non-Profit Corporation Act, the failure of Lloyd Andrews and others to run the corporation accordingly, and its consequent forfeiture. (2b.) Their claims, if any, are against Andrews."* 2a seems so. 2b I'm not sure about. See Appendix F for discussion of said Act, its substance given to Frances Swanson in Oct 1993.

A3. *"As of the TSWUA's forfeiture, or by its final 1993 dissolution, ownership of the system's parts on private property, either (3a) was and is separately in the various parcel owners or (3b) was and is a tenancy-in-common acquired by adverse possession, of all the de facto users who have been paying the system's expenses."* (3a) has potential, and is probably the simplest way out of the present messiness: it provides some leverage; maintaining a functioning system requires co-operation. My WESTLAW search so far finds no support in Idaho court cases or statute for (3b). The situation 1982-1994 looks one of license, not adverse possession. No one has so far objected. No clock of limitations has started to tick. Further, the withdrawal from the Lake has been illegal since its inception; it is hard to see how tenancies-in-common can be derived from illegal acts. As my favorite expositor of Western settlement law, Stephen Field, (reaching far--through Mansfield back to Rome) once observed: "Nemo allegans suam turpitudinem est audiendus." (94 US 426.) [May I distinguish here 3(a) & (b) from a 3rd alternative--3(c)--that Swanson sometimes advances and so attributes more power to Nash&Nash than consonant with an obligation my spouse & I feel to other users, to secure a legal flow to them, easements in titles or not. 3(c) avers that he who controls the lower pumphouse controls the world, or at least the system. But, lower pumphouse is a misnomer; it's a chlorinator house; the pump's in the lake, not on Nash property.]

A4. *"A claim a decade and half after the fact and in effect largely against bona fide property purchasers not on notice and not privy to the original incorporation is no better than a claim three decades after the fact by Mays or Nash to right of ingress/egress to their properties over the very land that Swanson wishes to sell--a claim based on Attachments G1-G3."* These documents come from a 1992 compendium drawn up by Terry Gonzales of Sandpoint Title Insurance for Dr. Charles Kimes in connection with pending (but recently settled) litigation against Ted Wert, Sr. G1, #86046, notarized 9 July 1962, titled "Idaho Mortgage," *shows that predecessor-purchasers of the Mays property enjoyed an appurtenant right of ingress and egress along its northwest boundary (where the then non-existent county-dedicated road now is). It reached Talache Road over Frances' hairpin bend property (then part of Gabel and Gabel holdings).* G2, #109/579, dated 1 October 1962, titled "Deed," shows Gabel and Gabel granting that same ingress/egress right not only to owners of what is now Mays' property but also to owners of the southerly-adjoining (O'Higgins) property recently purchased by Nash, Nash and Swanson. *G3 is a map showing in Terry Gonzales' handwriting the routing of these ingress/egress rights across the Swanson hairpin-bend property--see near page bottom the smaller short line attaching to the long vertical Talache Rd line.* Whether or not the three-decade-old ingress/egress claim is just as good (or bad) as the one-and-a-half-decade-old water-hookup claim need not be settled here. My main point is to stress that there have to be some limits to such claims. The water-system can't go on forever ill-defined and helpless against such claims. Suppose, e.g., that Privette waits to 2004 to decide he wants a hook-up, or Cahn to 2014. It would be easier and cheaper in the long run to straighten matters out now. After noting related complications and issues, in B below, I propose a possible solution to all (or most) in C below.

B. Here Are Related Complications/Issues That Need Dealing With At the Same Time.

B1. Diminution in already marginal water health-quality arising from 7th hookup. Although [as E1 of Attachment E shows] a 7th hookup poses little quantitative-flow difficulty, a 10th would. However [as E2, id, shows], a 7th hookup exacerbates the system's marginality (as it lacks particulate filter and holding tank) even with the simplest type of bacterial purification--of coliform. 8th, 9th, and 10th each increase the problem. Even now, when more than 1 house is occupied of a weekend, at least after about mid-morning each day tap-water use for drinking, washing dishes or vegetables may be a gamble.

B2. Delay in asserting claim and increased costliness of compliance with Idaho regulations. Exercising a claim in 1994 is more expensive to all than in 1980. In recent years Idaho has been adopting federal regulations as they stiffen. At 10 users one is in for temperature and pH monitoring devices. See E3.

B3. Whether "granting" a 7th hookup means "granting" an 8th, 9th, and 10th. I use quote marks around "granting" for obvious reasons. But B1 and B2, like B4 and B5 below, suggest why current users might be much more disposed--if they have any say on the matter--to fewer rather than more new hookups and/or to seek offsets. There is 1 difference between the Swanson and both Cahn claims ($ paid with cheques) and the Privette claim (based on alleged work on, inter alia, the dock and seawall; and no demonstrable $ exchange). There is a 2nd difference between the Swanson and at least one of the Cahn claims (they are attached to the original properties and don't pose "pumping altitude" problems) and the Privette claim--seemingly now in order to pump much higher south of Talache Road. Whether these would avail to distinguish, I have no idea.

B4. Diminution of Marketability of Houses. At least one owner may be wishing to sell soon. One house recently was not "mortgageable" until additional filters were installed. It has been suggested to me that the mode of clear-cutting on the hairpin bend (especially leaving no substantial trees standing along the upper side fronting Talache Road): (a) may have diminished the property's market value by more than the profits from the logs; & (b) will result in increased road-dust during summer dry spells settling on nearby properties (Johnsons,' Stewarts'). Be that as it may it is clear that similar clear-cutting (as distinct from 'selective-cutting') on the Gibbs-now-Swanson property (see Attachment A – Map) in conjunction with your client's efforts to put 2 drainage fields there for waterfront lots would yield a row of "shorn-Mohawked lots" just as one approaches the Lake. Gibbs/Swanson and Danyou lots are where the really nice large ought-to-be-preserved trees are concentrated. (There are only a few on the Nash/Nash/Swanson lot.)

B5. Historical Factors Leading to Current User Reluctance to be Forthcoming. I just state, rather than adjudicate, the surprising number of "unhappinesses" felt by various users about various claimants. These include particularly: (B5a) blaming Swanson for running up users' system repair costs by interfering with repairers on Andrews/Graves (now Nash) property and for causing removal by Cahn (the elder) of a privilege to sun on the Cahn dock extended during Andrews' ownership (to 1988) and lost during Graves' ownership (1988-1992) of the Nash house; (B5b) unhappiness with Cahns in consequence (the more so because Privette's system claim is based on work on that dock and is assumed to have been somehow priced into the system); and (B5c) unhappiness with Privette's strange excavations, abandoned jalopies and record with the upper Talache Water system. [Of these, Nash&Nash have only experienced (B5c).] There is also unhappiness in the other direction--(B5d) chiefly that occasional Spokanian week-end users swamp the place and (B5e) operate in a loose combination ignoring the interests of year-round residents. [Nash&Nash as more than occasional-weekend, but less than fulltime, residents are somewhat non-plussed by this impasse.] Right or wrong, in whole or in part, these "unhappinesses" are felt.

C. Getting Beyond Short-Run Self-Interest Maximizing. Some Proposals.

Given the foregoing, would the following proposal be acceptable for moving beyond what I really do have to judge an extraordinary focus on short-run self-interest by too many (not all) at Talache. We would:

(1) legalize the withdrawal and bring the system up to reasonable health standards either as a whole or connection-by-connection (as more efficient);

(2) set up some sensible by-laws;

(3) apportion the costs of getting up to snuff so to equalize longterm users and new "hookuppees" by: (3a) first taking the users' expenditures heretofore for capital replacements [$10000/6 = $1667 per hookup — (see A1, page 2 above)] and levying such sum $1667 on any new hook-up, such sum(s) being the first to be expended on getting up to snuff; provided further, (3b) that these sums be paid now in order to retain a future hookup right; and,

(3c) that "hookupees" guarantee that any development of these properties and other undeveloped properties very near the Lake owned by the hookupee be done in an aesthetically reasonable fashion so far as flora and junk-cars and the like are concerned; and,

(4) further apportion any remaining 'up to snuff' system costs:

(4a) equally among users and hookup-right-claimant non-users and;

(4b) if it proves economically sensible due to 'Nth-user' step-level cost-jumps in bringing up to snuff, permitting new "Nth + 1" hookup purchases for other properties at a rate equal to the per capita (non-running) costs of the 1980-1994 hookups [($14705/10) + ($10000/6) = 3137] per hookup plus the additional costs brought by these hookups.[4]

Obviously this would require some refinement. Perhaps some relief for your client's need for 4 sewage drainfields could be somehow built in. Perhaps at the same time there should be taken up with local government officials[5] the anomaly of a 30' wide "county-dedicated, but not maintained" road by the upper houses. If the county is not going to maintain it, why should it have 10' more than needed for firetrucks? Why not drop the width to 20' to 22' and so let those houses without any driveway/garage space (Mays, Harkins) have some? Why not see if Cahn could come to some dock rental agreement with interested users (chiefly, probably, Mays and Harkins/Sanger)? Why not lessen some of the effective grade on the driveway from the beach up across Forest Service, Cahn, and Nash property to the upper "county-dedicated" road? The Forest Service seems willing. Nash&Nash are. Why not a picnic table or two and trash-baskets at the bottom on forest land for the general public? The National Forests are after all public property and we should be happy reasonably to share our extraordinary view of an extraordinary Lake. It would probably lessen the trash problem. The Forest Service seems willing about this too.

If you and your client think this feasible and fair, I would be delighted to try to persuade other users and "claimants" of its equity. In the meantime, we will have a little test of B5e – i.e., whether your other current-watersystem-user-correspondent has "cced" his correspondence with you to the recipients of your April 21, 1994 letter. Nemo alienas rei, sine satisdatione, defensor idoneus intelligitur. [1 Curtis 202.]

Sincerely,

A. E. Keir Nash, Professor

cc: Current System Users, Swanson, D. Cahn, R. Privette

Attachments: A Map of Water System and Properties; B Certificate of Corporation Dissolution; C Non-Profit Corporation Act (selections); D 13 Sept 90 Soss letter; E Summary of Nash Discussions with various Idaho agencies re water health quality; F Discussion of Idaho Non-Profit Corporation Act; G1-G3 Documents re Mays, Nash properties' right of ingress/egress over Swanson hairpin bend property

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[4]Here's an example to explain (4b). Suppose we find we have by law to have a 10th hookup and such hookup requires an expenditure not required by 9 hookups--e.g., (hypothetically as to price) a $2000 pH monitor. If we stay at 10 and the costs through the 9th just equal what is obtained by 3(a) through 3(c), then all 10 would have each to pay 1/10th of the additional costs. But suppose, further, there is an 11th would-be hookupee and that there are no step-level cost-jumps in going from 10 to 11 hookups. Under 4(b) the 11th hookup would pay for the cost of the 10th (the hypothetical $2000) + the $3137.

[5]Who have seemed to me genuinely helpful and quite happy at the prospect of more "common good" thinking in Talache Landing--it has an atrocious community reputation with such officials.

Attachment E.

Water Quality and Expanding The Water System to 7 - 10 Hookups. From Discussions with Idaho government agencies (Div of Environmental Quality; Panhandle Health; Dept. of Lands)

E1. Quantity & System Capacity. If the new system pump has the pumping ability of the original (5 hp), and if the hookups are no higher above the lake level than existing hookups, expansion to 7 is not problematic re the quantity side. Expansion to 10 is nearing FHA limit.

E2. Quality of Water Supply. This is the 1st main problem, *and is intensified by any expansion.* **The system is probably not effective re coliform bacteria by midmorning when more than two hookups are functioning.** Whether the operation of the current sewage mechanism on waterfront lot #6 (serving Bandelin, Swanson, and Stewart houses) poses any particular threat is unclear. The water-system has no monitoring capacity. [Panhandle Health would like to see the lot #6 sewage piped uphill, but absent clear evidence of pollution has no power to require such. Dye tests in the Lake have been inconclusive. *Panhandle Health would certainly not approve* the lot #6 sewage mechanism were it being put in now. Hence the Bandelin/Swanson lawsuit.] **The water system is minimally protective against giardia and cryptosporidium. The former disease is already nearby; there are several dozen giardia cases a year in the Lake Pend Oreille area.**

Our system lacks 2 items to begin with--a particulate filter between the lake intake and the chlorinator; and a holding tank past the chlorinator. Absent the particulate filter, too much organic matter enters with the water and "uses up" the chlorine. That difficulty aside, there is no proper holding-tank for the chlorine to have time to function. Only the water standing in the piping going up the hill (e.g., overnight) is affected by the chlorine--i.e., is purified relative to coliform bacteria.. The time required to purify (and hence the volume of needed "standing capacity) is a function of water temperature, pH (acidity/alkalinity), and chlorine concentration.

The formula for the volume of water (in gallons) held by each 100 foot-length of piping between the chlorinator and its outlets in the various houses is of course just a version of the standard one for a cylinder [area of base times height or length]. It is thus: (100) times (Pi x the square of half the internal diameter in feet) times the number of gallons in a cubic foot (=7.5). If the plans are correct in showing 4" (=0.333') pipe, and if we assume that the volume-affecting difference between its internal and external diameters is just about offset by the piping from the main to each individual house (1" or 1 1/2"), then for each 100 feet of main piping there are roughly: 100 x (3.14 0.333/2 x 0.333/2) x 7.5 gallons = 100 x (0.087) x 7.5 gallons = 65.28 gallons. If the main's length is 300 feet, then it contains (3) (65.28) = 195.84 gallons. Call it 200 gallons in round numbers.

Overnight, then, with no water running, the chlorinator "gets the opportunity" (or it would were there a particulate filter) to purify 200 gallons.

What happens in the morning if, say, there are 4 persons in each of 3 cabins? 12 persons arise and go the bathroom @ 5 gallons per flush = 60 gallons. They next take fairly quick showers at 15 gallons each = 180 gallons--or 240 so far. What happens when they next make coffee, drink a glass of water, wash vegetables? They use what is essentially untreated, raw Lake Pend Oreille water. And so it continues through day until night.

Now this is only talking about coliform--the easiest to kill. What of giardia? Without boring you with the details of the calculations, the Division of Environmental Quality official with whom I spoke calculated that, chlorinating at the maximum concentration before the taste becomes extreme, the system needs a "CT" (contact time) number = 139, and currently has a CT of between 4 and 5. (!) He thinks we need a 6000 gallon holding tank--not to mention a 3rd item--a slow sand-bed filtation unit about 60' x 3' (different from the particulate filter, and unlike it, uphill from the chlorinator). The alternative is for each house separately to install, as the bank required Duncan/Adam in selling to Penttilas, particulate filter cartridge units and ultraviolet disinfector (in lieu of chlorinator holding tank) and points of use giardia filters (under kitchen and bathroom sinks). Quare, as to relative capital and running costs per house of the 2 solutions?

E3. Compliance with Idaho Regulations/Lawful Withdrawal. At 10 users the system has to have temperature- and ph-monitoring capacities but you don't have actually to monitor. [!] At 15 hook-ups--or an average of 25 persons using it for 60 days or more per year--the requirements jump (turbidity and filtration and effective chlorination standards come in, and you do have actually to monitor).

Attachment F. Discussion of
the Idaho Nonprofit Corporation Act & the old Talache Shoreside Water Users Association

F1. Under the Idaho Nonprofit Corporation Act (Title 30-3), {1a} *although* the corporation was formed to the point of coming into legal existence [30-3-10-(2) "...a certificate of existence issued by the secretary of state may be relied upon as conclusive evidence that the ... corporation is in good standing"], and {1b} *although* it had an incorporator and Board of Director [sic=Andrews], {1c} it *never drew up* the bylaws required to function [30-3-21 "The board of directors shall adopt the initial bylaws for the corporation"] *nor* {1d} *appointed any other directors* beside Andrews, *nor* {1e} *held* the meetings required [30-3-46 "A corporation with members shall hold a meeting annually..." but note 'with members'], *nor* {1f} *secured the judicial relief required* not to meet periodically [30-3-14].

F2. The TSWUA Incorporation Articles provided: "VI. A certificate of membership shall be issued to each member based upon such requirements as shall be set forth in the By-Laws and no transfer of membership shall be valid or recognized...unless such transfer be in the manner provided therein." *Absent bylaws, there seem to have been no valid members besides Andrews ever--and no valid transfers.*

F3. 30-3-34 (3) says, "No person who is not an incorporator shall become a member of a cooperative corporation **unless such person shall agree to use services furnished by the corporation when such service shall be available through its facilities.**" Could it be said that the rights of persons who purchased memberships but failed to use them once the pipe got to the edge of their properties were lost by non-use? Could Andrews be successfully asked to repay such money?

F4. What are the effects, if any, of Andrews' declaration in October 27, 1980 letter to Finney that: "The names and addresses of all members...is [sic] as follows... Andrews... Nordeen...Harrell...Johnson...Foutz...Cahn (two)..Privette...unsold lots: Andrews...Swanson - two memberships." What of: "To date I have been fully paid by Nordeen, Johnson, Fouts, Privette, Andrews...."? What of: "I think the note from the Association to me should have a face value of $4900.00 with an interest rate of nine percent...the lowest allowed for this type of venture." *Do Association members, if any, owe Andrews $4900 + 9% interest?* And what of: "The small parcel of ground as laid out on the map last week when I was in your office with Allan Kaibert, should be transferred from Frances and me to the Association." This seems to have been about the only follow-up accomplished.

F5. Whatever the status of the bylaw-less and board-of-directors-less corporation for 1980-81, on December 1, 1982 the still bylaw-less and board-of-directors-less corporation went into a state of forfeiture because it [20-3-136 and -137] "failed to file its annual report." It became on that date [20-3-138] "unlawful ... to exercise its corporate powers or to transact any business in" Idaho.

F6. Although, for ten years thereafter [see 30-3-139] the director[s] "or any other person or persons appointed by any court of competent jurisdiction" could have [30-3-140] gotten it reinstated, on Mar 1, 1993 [30-3-141] the corporation was "dissolved by operation of law." All this inattention occurred, despite the fact that Privette in writing pointed the situation out to attorney-owners of the Fouts/Harkin cabin and to Soss [who did, however, point the matter out to the former.] *Further, during all this time no one took any steps to comply with the requirement known perfectly well to the "founder" and his attorney: As David Welch observed in Mar 6, 1980 letter to Gary Finney, "..I have not filed for a State of Idaho Water Resources Permit. As you [Finney!] pointed out, this will have to be done to conform to state law.."*

F7. Note in this connection that [30-3-141 (2)] "upon request, the secretary of state shall issue a certificate verifying the dissolution of any [such] corporation" and (3) "the district court in the county of the corporation's registered office shall have full power to liquidate the assets of a corporation so dissolved...."

F8. Note that though Andrews' 1980 letter counts Privette as paid (and one can't tell from the letter the actual circumstance that it wasn't a cash--rather a work--"payment"), we know from Privette's own declarations that the payment was in the form of work for Andrews and Cahn--on the dock & seawall.

F9. Finally, what of the assurances of Finney in letter to Cahn of May 27, 1986--though seemingly Finney had never followed up on Andrews' requests that Finney secure a withdrawal permit. N.B., the geographic restrictiveness of Finney's May 27, 1986 letter's statement of Cahn's & presumably anyone else's rights: **"...you have two (2) parcels of real estate that are entitled to be served by the system. These are your two .. adjacent to the other present users. Each parcel's use is only for the use of a normal family residential use. The water usage is transferrable with the parcel of land to which it is attached."** *If Finney's version of the original restrictions is correct, the rights not only are restricted to parcels "adjacent to the other present users," but are also not separable from their original properties. On this view, Privette couldn't detach his now-Soss-land water-right or convert it into an easement to another parcel as his deed of sale to Soss purports to do. Cahn's 2nd right is mysterious as to location.*

PHONE: (208) 667-0569

MONDAY THRU THURSDAY

EVERETT D. HOFMEISTER
Attorney at Law
SUNSET MALL, SUITE 20
296 Sunset Avenue & Highway 95 North
Coeur d'Alene, Idaho 83814

Fax 208 667-0560

June 15, 1994

Professor Kier Nash
1033 N. Ontare
Santa Barbara, CA 93105

Re: Talache Water System

Dear Professor Nash:

Your dissertation dated June 8, 1994, sent to numerous other persons, stating your position has been received. My first reaction was to thank you for enlightening me on the law and giving you a facetious response about the situation at Talache with one of my favorite legal phrases: Testis lupanaris sifficit ad factum in lapanari. (A lewd person is a sufficient witness to an act committed in a brothel.)

However, in further reviewing your letter, I detected humor and that you merely wanted to detail your reasoning based upon your research. Your letter prompts inserting two other phrases from the dead language: Cujusque rei potissima pars est principium (The chiefest part of everything is the beginning), and, dux femina facti (a woman was leader of the exploit); the latter referring to my client prompting action to resolve a serious problem which may have well continued to be ignored.

As another passing observation, it is noted that the English originators of what we call the common law used Latin and French to the exclusion of any Gaelic. Being Irish, I submit a Gaelic expression to you which I believe also applies to the water situation at Talache: Bionn chuile dhuine lach go dteann bo ina gharrai (Everyone is sociable until a cow invades his garden).

In a telephone conversation, Mr. Harkins made it clear that he did not pretend to be an officer or hold any position regarding the water users and acted merely as a volunteer for the convenience of his neighbors. When I originally wrote to him, it was unknown whether there was any organization, formal or otherwise, that claimed dominion over the water system, which seemed largely neglected and somewhat abandoned regarding management.

A day prior to receipt of yours dated June 8, I received a letter from attorney Thomas Cooke who wrote to me on behalf of his client, Dr. Mark Mays, regarding a meeting between your son, Will, and Dr. Mays, and alerting me to a possible property boundary

dispute. In that letter there is the irony that Mr. Cooke requested neither you nor Frances Swanson take any "self-help" type of actions.

Your dissertation regarding the law omitted mention of the laws of Idaho dealing with prescriptive use, adverse possession and the like. Self-help is a requisite to establishing certain rights in some situations. However, that "self-help" should never include violence and should be used only to the extent necessary to later establish, as a matter of law, that property rights were not surrendered in a manner which gives the appearance of giving consent or permission.

It is frequently possible to use such self-help between people who remain friendly and who admit to a bona fide dispute that needs peaceful resolution. This was the objective of my client. As you are probably aware, my client, Frances, is not capable of physical combat and acted only to the degree necessary to establish that she has an interest and a claim.

At this time, there are two major concerns. First, that the water system will hobble along as it has in the past to everyone's detriment. Second, that Frances Swanson will be excluded from participation in any matters dealing with the water system.

Because you are mentioned, I enclose a copy of my reply to Mr. Cooke and am sending him a copy of this letter, with a copy to Mr. Harkins also. I do not know at this time if the water issue is intertwined with the boundary issue. The sentiments expressed in my letter to Mr. Cooke now apply to both issues.

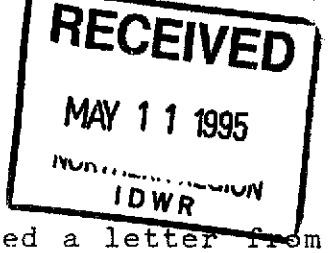
Yours very truly,

EVERETT D. HOFMEISTER

EDH/pyq

cc: Frances Swanson
Thomas Cooke
Timothy Harkins

II. USER SOCIETY started, received June 1994
+ "AUTHORIZATION" of NOSH



TO: Talache Landing Water Users:

RE: Dues and Nonusing Members:

Due to an inaccurate address, I recently received a letter from Attorney Everett Hofmeister, who represents Frances Swanson. He sent a check for $240.00 representing his estimate of 1994 annual payment for the continued involvement in the organization which we all loosely belong to. I don't have any idea how he arrived at this figures as I have never told either he or Frances of past or future assessment amounts. It is, however, close to the 1993 amount. Be that as it may, it brings to light more serious issues that, to my knowledge, have never been discussed or decided. Namly, she related to me by this letter from her attorney, that she intends to hook up to our system at some undetermined time of this year. While a meeting was held last year, and it was felt that she, Mr. Privette, and Ms. Kahn, had an interest in the system of the basis of evidence presented, the issue of regulations for future hookups, the cost thereof, the taxing of the system, bylaws, or who is actually in charge, or any number of other issues that affect our system, has never been discussed.

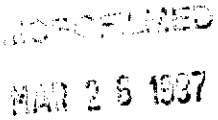
Hile I have not yet done so, I do not intend to cash this check until some determination is made by ALL members as to the above issues. I have never intended to be the speaking agent of the system but have been designated only as the person to collect sufficient funds to keep the electricity on for the system. I am by copy of this memo to Mr. Hofmeister, hoping to explain the delay in the cashing of his check, and to advise him and you that I am not in a position to accept his check or pass judgment on the propriety of any proposed membership or the rules regulating the same. When I had a phone conversation with him on June 6, 1994, he told me he has advised Frances not to take any self-help measures to hook herself up to our system until these issues are resolved.

Please advise Matt Sanger (work 509-838-2700) or me (work 509-325-5466) of your attitude and availability to discuss this matter.

I thank you for your attention to this matter. Your prompt response would be appreciated.

Tim Harkins

P.S. For those of you who have not paid your 1994 annual assessement, please pay $240.00 for your annual assessment for the continued operation of our system.



A. E. Keir Nash
1033 North Ontare Road
Santa Barbara, California. 93105.
(805) 687-9315
July 8, 1994

To: J&R Johnson, W&K Penttila, M. Sanger, D&D Soss, T. Harkins, T. Cooke (Mays' att'y)

A. Re Results of Swanson Water Hook Poll.
The users of all but 2 hookups have now replied to the 22 June survey. Thanks. I attach xeroxes of the returns. There seems respondent consensus as follows.

1. Unanimous, that Swanson has a right to a hook-up as long as some conditions are observed.
[vote = unanimous though some would attach more conditions than others]

2. Almost unanimous, that she has moreover such a right **without condition (c)** = *paying equivalent of 1980-1994 capital outlays per hookup.*
[vote = 1 uncertain; 1 somewhat disagree; 2 strongly disagree; Nash&Nash is the "uncertain" vote; we defer to others – it is the longterm residents who have been paying these bills]

3. Strong consensus, that approval depends on Swanson's **observing 2 conditions, (d) and (e):**
(d) = *committing hairpin bend prop. purchaser in sale to sharing costs of system upgrades needed now*
[vote = 3 strongly agree; 1 uncertain]
(e) = *paying for upgrades required by the hairpin bend hookup due to strain (if any) on the system in providing 7th hookup and for additional costs (if any) generated because of stiffening of environmental regulations between 1980 and 1994.*
[vote = 3 strongly agree; 1 uncertain]

If any respondents disagree with my interpretation, please let Everett Hofmeister and/or me know ASAP. His number in Coeur d'Alene is (208) 667-0569.

B. Information to E. Hofmeister.
I am sending a copy of this memo to Hofmeister so he may act as he judges best. I'm not empowered to tell him to go ahead, but the consensus seems clear. In my view he would do well to call the owners of the 2 non-responding cabins (Mays & Harkins-Sanger-Fouts).

C. Update on Adverse Possession Claim.
You probably won't want to bother with the details of my legal reasoning in the enclosed letter to Cooke. But you might like some of the photos and find useful generally the map in the enclosed Portfolio (which turned into an offbeat 85th birthday present to F. Swanson – b. July 11, 1909).

Special Request to Dan Soss to Check Out Needed Depth of Pipe. [Worst and Hofmeister/Swanson seem to differ.] I ask this because you're in Sagle and I'm here, all this is terribly time-consuming, and I really have to get back to writing a paper for the American Sociological Association's August annual meeting. The only thing that leaves me a bit uncomfortable about the hook-up is the trench depth. George, Worst's service manager, says it should be 48+ inches. H & S think 32 inches will do. You are much more familiar than I with how deeply North Idaho soil freezes in winter in a shady area. [Frances has already obtained a chlorinator house key from another source than Sosses or Nashes and told me I underestimate her wiliness. I suggested she is marginally less wicked than Lady Macbeth.]

A. E. Keir Nash

MAR 2 6 1997

June 22, 1994

Questionnaire re What Arrangements You Are Willing to Make
Re Swanson Water-System Hookup to Hairpin Bend Property

Please note : (a) the line to Johnsons' house (to which Swanson proposes to attach) runs from near the upper "pumphouse" under the county-dedicated road, thence on Swanson property to Johnson property near the door of Johnsons';

(b) this is now the peak of the summer property selling season;

(c) Wayne Penttila, D.D.S. (purchaser of Duncan property), has been doing his own research re the water system's purity shortfalls, has noted problems with the pressure tank not filling properly, has reached largely similar conclusions to those in Nash's 8 June letter, Attachment E, and (with Nash and Nash encouraging) is looking into costs of a well as an alternative to upgrading the existing lake-withdrawing system.

If you have already replied to Harkins, whom I think is out of the country, forgive the additional request.

Please check the closest to your view about each of the following proposals re Swanson's request.

	Strongly Agree	Somewhat Agree	Uncertain	Somewhat Disagree	Strongly Disagree
Swanson should be allowed to hookup:					
(a) without any conditions	___	___	X	___	___
(b) regardless of whether hooking up Swanson requires hooking up other claimants	___	___	___	___	___
(c) only if Swanson agrees to pay approximate equivalent to capital outlays per property 1980-1994 by hookedup properties	___	___	___	___	X
(d) only if Swanson commits hairpin bend property owner as part of sale to sharing costs of system upgrades needed now	X	___	___	___	___
(e) only if Swanson commits similarly to upgrades required by 7th hookup due to strain on system and post-1980 stiffening of environmental regulations	X	___	___	___	___
(f) only if certain other conditions [please specify in blank lines below] are agreed to by her	___	___	___	___	___
(g) under no conditions whatever	___	___	___	___	___

What does this mean?

All parties should share in cost of upgrades or improvements needed.

Same as above

I assume Frances paid her share in the establishment of the current system & she should be allowed to hook up. Any buyer of her lot should be aware that upgrades will be necessary & will be expected to pay their share.

Please sign Wayne F. Penttila and return in enclosed envelope. Thanks!

June 22, 1994

Questionnaire re What Arrangements You Are Willing to Make
Re Swanson Water-System Hookup to Hairpin Bend Property

Please note : (a) the line to Johnsons' house (to which Swanson proposes to attach) runs from near the upper "pumphouse" under the county-dedicated road, thence on Swanson property to Johnson property near the door of Johnsons';

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If you have already replied to Harkins, whom I think is out of the country, forgive the additional request.

Please check the closest to your view about each of the following proposals re Swanson's request.

	Strongly Agree	Somewhat Agree	Uncertain	Somewhat Disagree	Strongly Disagree
Swanson should be allowed to hookup:					
(a) without any conditions	X - see (d)				
(b) regardless of whether hooking up Swanson requires hooking up other claimants	X - see remark				
(c) only if Swanson agrees to pay approximate equivalent to capital outlays per property 1980-1994 by hookedup properties				X	
(d) only if Swanson commits hairpin bend property owner as part of sale to sharing costs of system upgrades needed now	X				
(e) only if Swanson commits similarly to upgrades required by 7th hookup due to strain on system and post-1980 stiffening of environmental regulations					
(f) only if certain other conditions [please specify in blank lines below] are agreed to by her					X
(g) under no conditions whatever					X

I believe Swanson to be vested in the water system. I don't believe Trivette is.

Please sign _____ and return in enclosed envelope. Thanks!

Johnsons' [illegible]

MAR 2 8 1997

June 22, 1994

Questionnaire re What Arrangements You Are Willing to Make
Re Swanson Water-System Hookup to Hairpin Bend Property

Please note : (a) the line to Johnsons' house (to which Swanson proposes to attach) runs from near the upper "pumphouse" under the county-dedicated road, thence on Swanson property to Johnson property near the door of Johnsons';

(b) this is now the peak of the summer property selling season;

(c) Wayne Penttila, D.D.S. (purchaser of Duncan property), has been doing his own research re the water system's purity shortfalls, has noted problems with the pressure tank not filling properly, has reached largely similar conclusions to those in Nash's 8 June letter, Attachment E, and (with Nash and Nash encouraging) is looking into costs of a well as an alternative to upgrading the existing lake-withdrawing system.

If you have already replied to Harkins, whom I think is out of the country, forgive the additional request.

Please check the closest to your view about each of the following proposals re Swanson's request.

	Strongly Agree	Somewhat Agree	Uncertain	Somewhat Disagree	Strongly Disagree
Swanson should be allowed to hookup:					
(a) without any conditions	X				
(b) regardless of whether hooking up Swanson requires hooking up other claimants	X				
(c) only if Swanson agrees to pay approximate equivalent to capital outlays per property 1980-1994 by hookedup properties					X
(d) only if Swanson commits hairpin bend property owner as part of sale to sharing costs of system upgrades needed now			X		
(e) only if Swanson commits similarly to upgrades required by 7th hookup due to strain on system and post-1980 stiffening of environmental regulations			X		
(f) only if certain other conditions [please specify in blank lines below] are agreed to by her					
(g) under no conditions whatever					X

I feel Past cost have been paid. Future costs should be handled by the property owners at the time they exist in the future - who ever may be the owner at the time.

Please sign [signature] and return in enclosed envelope. Thanks! DLCN

5 0 5 2

RECD 1994

Questionnaire re What Arrangements You Are Willing to Make
Re Swanson Water-System Hookup to Hairpin Bend Property

Please note : (a) the line to Johnsons' house (to which Swanson proposes to attach) runs from near the upper "pumphouse" under the county-dedicated road, thence on Swanson property to Johnson property near the door of Johnsons';

(b) this is now the peak of the summer property selling season;

(c) Wayne Penttila, D.D.S. (purchaser of Duncan property), has been doing his own research re the water system's purity shortfalls, has noted problems with the pressure tank not filling properly, has reached largely similar conclusions to those in Nash's 8 June letter, Attachment E, and (with Nash and Nash encouraging) is looking into costs of a well as an alternative to upgrading the existing lake-withdrawing system.

If you have already replied to Harkins, whom I think is out of the country, forgive the additional request.

Please check the closest to your view about each of the following proposals re Swanson's request.

	Strongly Agree	Somewhat Agree	Uncertain	Somewhat Disagree	Strongly Disagree
Swanson should be allowed to hookup:					
(a) without any conditions					✓
(b) regardless of whether hooking up Swanson requires hooking up other claimants			✓		
(c) only if Swanson agrees to pay approximate equivalent to capital outlays per property 1980-1994 by hookedup properties			✓		
(d) only if Swanson commits hairpin bend property owner as part of sale to sharing costs of system upgrades needed now	✓				
(e) only if Swanson commits similarly to upgrades required by 7th hookup due to strain on system and post-1980 stiffening of environmental regulations	✓				
(f) only if certain other conditions [please specify in blank lines below] are agreed to by her					
(g) under no conditions whatever					✓

Please sign RL + Nash and return in enclosed envelope. Thanks!

MAY 13 1997

July 13, 1994

A.E. Keir Nash and Marguerite
1033 N. Ontare Road
Santa Barbara, CA. 93105

Dear Keir and Marguerite:

First off, let me apologize for the delay in getting back to you. Because of my schedule through June I was simply totally and completely unavailable due to work and a planned vacation.

I secondly would like to thank you for your imput and observations and the survey you performed with responses thereto. I have now had the opportunity to speak with Mr. Sanger and Mr. Sanger and I and presumably Bob Fouts agree with the majority that we believe the participants to the meeting in 1993 were entitled to their respective share. We further agree that we do not expect that past charges or repairs to the system are necessarily the obligation of the non-users. However, our concern is that if these rightful owners of a share of the system choose to hook up to the system we are concerned as to the effect it would have on the proper functioning of the system as you have described in much of your correspondence.

While the system was designed to apparently meet ten users, the concern of pumping and treatment of the water as outlined in past correspondence is a concern. We believe that the cost of hook up should be that of new potential user and further believe that if the system has to be modified in some fashion in order to meet proper functioning standards, that this should not be taxed to the present users. I also believe that, as is the apparent consensus, that the matter should be formulated into a proper functioning and legal system. I simply have not had the time or opportunity to do that. Mr. Sanger apparently is in the same boat. While I believe it is the intent of all parties to cooperate toward reaching this goal, obviously there has been a problem of money on the past of some members and the ability and desire to go that one extra step to actually formalize By-laws, a legal corporation, and passage of any necessary licensing from the State as well as appropriate easements to all users.

While it appears we have a consensus as to the goal I presume the next problem is to decide and affirmatively tackle who will do

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what. The restrictions by any governmental officials, I can only assume, will get worse rather than better.

Because you have spearheaded most of this organization to date, I welcome your imput and would ask that you have the opportunity to give your organizational thoughts or proposals. This would be appreciated.

I thank you for your attention to this matter.

Very truly yours,

TIMOTHY J. HARKINS

TJH:th

pc: Matt Sanger

MICROFILMED
MAR 26 1997

PHONE: (208) 667-0569

MONDAY THRU THURSDAY

EVERETT D. HOFMEISTER
Attorney at Law
SUNSET MALL, SUITE 20
296 Sunset Avenue & Highway 95 North
Coeur d'Alene, Idaho 83814

RECEIVED
MAY 11 1995
NORTHERN REGION
IDWR

July 20, 1994

UNSUCCESSFUL ADVERSE POSSESSION CLAIM 1994

Professor Kier Nash
1033 N. Ontare
Santa Barbara, CA 93105

Dear Professor Nash:

Please excuse my delay in responding to your letter dated July 8 and received July 11, 1994. My preparations for trials during August and an attempt to take a few days vacation are to blame.

So long as you and Frances Swanson have no conflicts of interest, and none are foreseen, there is nothing unethical in advising each of you. The communications from each of you must remain separated and confidential unless you both give permission otherwise, which would occur only in the event you have a mutual interest and a common cause. Likewise, my advice to each of you will be rendered separately unless it is in your mutual best interests to advise jointly, which would still require the permission of both of you.

Your letter to attorney Cooke is well reasoned, logical and sound. My only comment would be that I do not usually write other attorneys such letters because they are presumed to know the law and seldom achieve a result. I prefer to present such materials to the courts where argument achieves a decision and obtains an effective result. Your letter put Mays on notice that any intrusion upon your property would be opposed and would clearly be without your consent or approval. Notice to Mr. Cooke, as their attorney, is notice to Mays.

In reply to your questions, I make the following suggestions. To build "competitively" or to construct your own "bigger" constructions merely for the sake of exerting dominion over the property should not be necessary. I would suggest a simpler method to show your dominion, such as a small fence or other indication of your claiming right to possession of the disputed property. A post driven into the ground with a small sign such as "no trespassing" or "Nash property boundary" would suffice.

In the event Mays continues to trespass after being put on such notice, legal action is the better response to their intentional and wilful trespass. Such an action should include requesting punitive and other damages against him. Another warning to him, perhaps through Mr. Cooke, might be considered in order to

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impress him with the fact that his trespass will cost him money. It is the nature of most people to disregard such warnings unless they know it is going to cost them financially.

Physical confrontation should be avoided. Such confrontations usually lead to situations which both parties later regret and rarely resolve the real issue. Frequently in such disputes, sneak tactics are used, such as tearing down signs or fences in the middle of the night so the perpetrator cannot be identified. Such conduct can become frustrating yet such conduct is good evidence that the other party or someone acting in their behalf caused such destruction and points to the persons who had the motive to use such tactics.

Only if Mays continues to ignore warnings and the notice of your exercising dominion by continuing his trespass, should legal action be considered. In the event it appears he is placing a permanent structure or fence on your property, legal action should be commenced immediately. Mays may back down of his own accord and should be allowed the courtesy of "saving face" gracefully. If Mays commences legal action, you have no choice except to respond to any legal action initiated against you.

If you act in good faith upon the representations of Coldwell Banker, as agents of the prior owners of your property when the boundaries were shown to you at or prior to your purchase, and those boundaries are erroneous, legal action exists against the persons making or causing the misrepresentations to you and upon which you relied. Your must have relied upon such false representations when acquiring your property.

If a realtor, such as Coldwell Banker, represents to the purchaser of an adjoining property that they are purchasing a portion of your property, your remedy is against the adjoining property owner who then must look to those who made the misrepresentation to them.

It must be realized that, if a stranger pointed out the boundaries, any reliance upon such boundaries is not well founded or justified. I do not know the circumstances under which Coldwell Banker represented the boundaries and whose agent they were when doing so. There must be some business privity between you and Coldwell Banker to justify reliance upon any representations made by them. Otherwise they are merely strangers.

MAR 2 6 1997

Another major question is when and who was the last licensed surveyor to make a survey of the boundaries and whether the boundary markers placed by such a survey remain in the same location. Although a survey is good evidence of the boundaries, those who occupy and use real property can, by various means, change the locations of the boundaries accepted by them and, by conduct or omissions, change those boundaries. For example, a long established fence which appears to be the boundary between two properties will often prevail over the subsequently surveyed boundary.

To use a frequent phrase, "the land pirate must run his Jolly Roger to the top of the mast to give notice of his open, notorious and adverse claim to another's property." Under Idaho law, he must keep his flag there for five years and pay the taxes.

In your letter to Mr. Cooke, mention is made of the County spur-road. The means by which that road came into being is an entry level issue regarding any private claims to it. Such roads can be created by various means, including, but not limited to, being deeded to the county, by dedication, or by the county maintaining it. Whether the road was accepted by the county and placed on the county road system map is also a question. Some county roads, depending on the manner in which they were created, can be lost and returned to private ownership when the county has not maintained them. In other cases, roads which have been deeded to and accepted by the county, cannot be lost to private ownership or use.

Legislative changes regarding county roads over the past twenty years have added to the complexity of the law regarding such roads and generally favor retention of ownership by the county against private claimants. It is for the Law Review writers in their ivory towers to speculate about the operation of such subsequent statutes in the light of Idaho Code 5-202 which bars the county from actions in some cases after ten years.

As a practical matter, the question regarding such roads is what, if anything, the County Commissioners will do regarding such roads. It is my experience the County Commissioners in Bonner County have traditionally avoided doing anything whenever possible. On a few occasions it has become necessary for the Prosecuting Attorney to take action under the criminal statutes, but he is reluctant where there is a question regarding the ownership or use by the county. It is best not to rely or expect any assistance from county regarding such roads.

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The situation with Mays may be viewed as a sort of chess game. Although overall tactics exist, they must give way to the most effective way to respond to the opponents moves without losing sight of the final objective.

In responding to your letter and questions, I hope that I have not been too simplistic and have given you some thoughts regarding any future actions that might be required. I shall remain available to offer further advice and representation as you deem appropriate. The only condition is that no conflict exists between you and my long standing client and friend, Frances Swanson.

Lastly, I must comment that I was greatly impressed by the portfolio you prepared. In the event of legal action, it would be a valuable piece of evidence.

Yours very truly,

EVERETT D. HOFMEISTER

EDH/pyq

MAR 26 1997

UNIVERSITY OF CALIFORNIA, SANTA BARBARA

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DEPARTMENT OF POLITICAL SCIENCE SANTA BARBARA, CALIFORNIA 93106 June 30 1994

Thomas E. Cooke, Attorney at Law
Cooke Lamanna Smith Cogswell & Elliott, P. O. Box 789
Priest River, Idaho. 83856-0789

Dear Mr. Cooke:

Having examined Idaho appellate decisions about adverse possession, I now take you up on your June 10 letter's offer: "If you have any questions, please contact me." I do. Your letter was brief and general. Here are my questions. I also enclose a Photograph Portfolio of relevant Talache properties and scenes, with references to it in this letter, on the old theory that a picture can be worth many words to any 3rd party unfamiliar with the locality, and possibly also to you.

A. You say that Mays has expanded his "dominion...to a row of old railroad ties" several yards southwest of his property's record boundary. But, so far, you only describe *types of activities* there. You say little re their frequency, continuity, openness, or notoriety. Some non-exclusive activities you mention in your letter to Hofmeister but not in yours to me--such as occasional picnicking--don't count according to Idaho appellate courts. We could spend time gathering evidence from Talache Road residents or by sampling colleagues in Mays' office's Spokane medical-professional building whom he might have hosted for Pend Oreille weekends and who might corroborate him. But, Idaho cases suggest it's quicker first to ascertain if and when he has successfully crossed 3 prior legal bridges.

A1. **The Tax-Payment Bridge.** Required are 5 successive years' payments of the disputed area's taxes by the adverse-possession claimant [not necessarily just before commencement of the action (Cramer v. Walker, 1913)]. *Otherwise the claim aborts regardless how much improvement, cultivation, or enclosure by the adverse possession claimant.* Idaho Code 5-210. Stout v. Westover (1984) read curiously the code's phrasing ["in no case shall adverse possession be .. established under the provisions *of any sections* of this code unless" such taxes have been paid] as inapplicable to a 5-208 adverse-possessor "claiming... upon a written instrument." But Mays has no such written instrument. Mays' deed contradicts Mays' claim. Mays can only claim under 5-209 with its tougher requirements.[1] [Persyn v. Favreau (1990)]. In some of its 52 tax-&-adverse-possession cases the Idaho judiciary for a time favored 5-209 claimants when doubts arose re tax-paying. Thus, Flynn v. Allison (1976) -- requirement met when encroachment fully fenced so to appear part of adverse possessor's deeded property & assessment sheets unclear about area or boundaries of lands taxed. Similar is Gage v. Davis (1982), when both the adverse possessor and the record owner were shown to have been paying taxes on the disputed parcel.

Yet, even decisions tilting most toward adverse possession [e.g., Scott v. Gubler (1973)] as well as recent, balanced ones [e.g., Cluff v. Bonner County "I" (1992)] set limits on tilt. *All stand for 2 propositions: (a) Fencing or equivalent visible enclosure is a prerequisite for a who-paid-the-taxes doubt to resolve against the record owner. (b) Absent long-established kept-up fencing contrary to the recorded deeds, where tax assessment sheets make clear (as by metes and bounds, or total area of property, used to reckon $ assessed) that the record owner paid and the adverse claimant didn't, the claim aborts.*

[1] 5-209 requires (1) tax payments + one of (2a) "a substantial inclosure" or (2b) being "usually cultivated" or (2c) "improved." 5-208 doesn't require (1); and, not only (2a), (2b), or (2c) suffice alone; so too do 5 years of: (3a) its timber's being logged for the claimant's fuel or his fences or (3b) use as pasturage.

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Resultant Questions. A1.1. Since the recorded deeds of the Swanson/Nash and the Mays properties are clear as to boundaries and show the area as Swanson/Nash, since the assessor uses metes & bounds to calculate the acre-fractions of each and determine $ taxes, since the areas stated on the tax notices are just what you would get by keeping the disputed area as the deeds show[2], and since the owners have always paid accordingly, isn't the following clear? -- **Mays has never paid taxes on the area.** *A1.2.* **Doesn't thus Mays fail to cross this first bridge and his claim miscarry there?**

A2. **The Wild-Lands-Presumption Bridge.** Your letter's statement re "a check with the previous owner" differs enough from Swanson's account of recent discussions with him (Terry Nordeen) and from Mays' saying nothing about adverse possession in March 1994 to yield ambiguity if, how, & when any cognizable encroachment started. Usually in Idaho law, ambiguity creates a presumption that the use is hostile, not permissive. The record owner loses, here, unless he can rebut by showing origin in license. But, re land undeveloped & wild at encroachment's inception, Idaho reverses that presumption [Trunnell v. Ward (1964); Christle v. Scott (1986); West v. Smith (1973); Burnett v. Jayo (1991)]. As Portfolio's recent Pictures 15A-15D of the Swanson/Nash property show, it looks wild. *Question A2.* **How can Mays rebut the presumption of permissive use starting "x" years ago?**

A3. **The Difficult Bridge of Trying-to-Adversely-Possess-a County-Road.** You say it matters not where deeded property lines are (p. 1, para. 4). But no individual can secure bits of a county road by adverse possession. [Meservey v. Gulliford (1908); Hanson v. Proffer (1913).] A3.1. *If any Mays' encroachments are adequately open and notorious, aren't they on the county road, not on Swanson-Nash property even after our 1993 purchase?* [The swing on or near the road visible in Pictures 17 & 18 was the only substantial "fixture" on the ground prior to Mays' 1994 building of a log-rack]. *A3.2.* To determine if Mays has constructed "improvements" outside his deeded boundaries that pass muster under I.C. 5-209, **isn't it crucial to draw in county authorities to go over all 3 properties' boundaries and help apportion between N/S and County property any Mays encroachments?**

B. Extent of Hostile Use. For the 5 years adverse possession to begin to run on undeveloped Idaho property there should, under I.C. 5-209, be a clear beginning time of open and notorious, exclusive and hostile possession--signified by improvements, or substantial enclosure, or habitual cultivation. I consider the extent of each to May 1994 because I can't find anything clear and sufficient before then.

B1. Habitual Cultivation. A 5-209 claim of habitual cultivation would seem far-fetched -- in part, but not only, due to lack of continuity. As I noticed while in Talache from July 4 to mid-September 1993, even on summer weekends Mays is not there far more often than he is. [Cf. White v. Boydstun (1967).] Discontinuous watering (if any--Swanson claims she doesn't see any effects) of an irregular patch of scruffy grass and weeds is too fitful to produce aesthetic success. What little grass is there is the wrong species for commercial success.

B2. Improvements. The only structure so far that fits the bill of "improvements" is the log-rack (if it's not a welcoming gift). It was not present in March 1994 when my spouse and I walked and photographed our property, but was begun about the time you visited Talache around Memorial Day. I doubt its sufficiency alone--certainly not until a 1994-1999 5 years' span has run. I have some curiosity how one can, by building construction almost simultaneous to the adverse possession claim, finesse the 5 years' requirement. *Question B2.1.* **Under what circumstances does your firm think advising this an efficacious gambit, rather than encouraging trespass? Alternatively, what happens if Swanson and Nash perceive the log-rack as a nice gift for their use?**

---

[2]Mays' recorded property is a rectangle of [135.71' x 60' =] 0.19 acre and so appears on tax assessment notices. O'Higgins/S/N is a trapezoid of [126.69' x 60.36' x 135.71' x 60.02' =] 0.18 acre and so appears on tax assessment notices. Including the disputed area in the Mays' property would raise it to something like 0.22 acre and reduce the O/S/N property to something like 0.15 acre--*entirely askew from the tax assessor's calculations.*

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Mays' only other structural "improvement" of our property seems to be installing (also since March 1994) 2 eyehole screws into railroad ties to hold down via a cable a heretofore loosely and occasionally stored rusty metal skiff. Its de minimis quality does not seem sufficient addition to put an adverse possession claim over the top. As for the only other "structure" we noted in March 1994 -- a bird-feeder -- the birds have Swanson's and Nashes' permission in perpetuo. Temporary storage in tattered plastic wraps is not an "improvement" recognizable under Idaho law. "The word 'improved' ... means to change or make better or to adopt it more to the purposes for which it is intended..." [Trask v. Success Mining (1916)]. *Question B2.2.* **Comparing Pictures 1-16 with 17-20 don't you agree Talache Landing's splendid vistas are not improved by the trash, & the development is minimal?**

B3. Enclosures. In many (40) Idaho appellate adverse possession cases, fences play a role for the obvious reason they can visibly and substantially enclose the boundaries of a property parcel. Neither a fence meandering off and on the boundaries [Christle v. Scott (1986)], nor a delapidated on-the-boundaries barbed wire fence [Standall v. Teater (1974)], nor a fence erected to keep in livestock [Capps v. Wood (1990)] will suffice. A visible chain link fence will [Standall]. So too will suffice a row of trees clearly on lot boundaries [Boise Valley Construction v. Kroeger (1909)], or a combination of hedges, trees,, and railroad-tie retaining walls provided that they really do enclose and bar other uses [Shelton v. Boydston Beach Ass'n (1982)]. Anything less won't--e.g., the combination of hauling sand to a beach + clearing brush and rocks + constructing a rail fence that doesn't quite completely enclose [Owen v. Boydstun (1981)]. All Idaho cases on the point hold plain visibility and completeness of substantial enclosure in order to give notice a sine qua non.

1992, 1993, and 1994 photographs demonstrate that Mays has not substantially enclosed the area in question to this date. There's a second way--deduction from your own June 10 letter. Having inspected the site, you say the railroad ties in question "run generally from the access road toward the lake" (though you do not claim they are readily and openly visible). Having inspected the site before sale, the selling Coldwell Banker realtor noted nothing indicating substantial enclosure. Going recently with a photographer (who took other photos, not these), Swanson thought many ties invisible from overgrowth and moss coverage but concluded the least invisible trend seemed to be at 90 degrees to your description. Most accurate, I surmise, was William Nash's recent inspection. *He concluded that the higher elevation ties do trend "from the access road toward the lake"--but in the middle the mossy ties turn, and thence angle on a line toward, but not reaching, the side of the Mays cabin.*

4 inspections. 4 different results. No obvious enclosure. One point the 4 of you seem to agree upon is alternately dispositive. None of you has yet suggested there is enclosure on the lakeward side. *Question B3.1.* **Don't you agree as of June 1994 there is not an enclosure at all?** *Question B3.2.* **Should you therefore now encourage your client to fill in the missing side with ties so to start now a 5 years span of time completing in mid-1999?** *Question B3.3.* **Since no Idaho appeals decisions come close to recognizing 1 row of ties as of sufficient height to constitute an open and notorious enclosure, should you also encourage him to construct an adequately tall "fence of ties"?**

Conclusion: If I do not hear from you to the contrary, I shall assume that you consider your June 10 "cautions" to Swanson, my spouse, and myself "improvidently issued," and that you now think "cautions" to your client more in order until we resolve this matter. It appears he alone so far has engaged in "self-help" -- or in "helping himself." My broader view of this whole affair is that it is unnecessary and that matters could be resolved if we would all sit down and chat. How about lunch, with wine, at Talache Landing, some nice day in August? My phone here is (805) 687-9315.

Very truly yours,

A. E. Keir Nash, Professor of Political Science, UC Santa Barbara
affiliated with the Departments of History and Black Studies

cc: E. Hofmeister

PHONE: (208) 667-0569

MONDAY THRU THURSDAY

EVERETT D. HOFMEISTER
Attorney at Law
SUNSET MALL, SUITE 20
296 Sunset Avenue & Highway 95 North
Coeur d'Alene, Idaho 83814

September 14, 1994

Professor Kier Nash
P.O. Box 492
Sagle, ID 83860

Re: Boundary Dispute - Road Easement

Dear Professor Nash:

Delay in responding to your recent letters was caused by my being away from the office and out of town from August 19 through September 1 because of a murder trial in federal court, after which a short vacation was taken until September 12 when it was necessary to again be in trial on that date. Your courtesy and understanding will be appreciated.

In an unexpected maneuver, Mays has offered $9,250 to Frances Swanson for her interest in the property involving the boundary dispute based upon the belief that you and Frances own the property as "tenants in common." Attorney Cooke confirmed the offer to me by telephone. Frances wants and intends to accept this offer. However, before doing so, it is appropriate that you first be notified.

By conveying her interest, this would leave you and Mays as owners in common, which possibly would then lead to a partition action to divide the property between you and Mays and perhaps resolve the boundary dispute.

Regarding the easement from Talache Land Company, Inc., through Bob Goebel to Frances, it was suspected at the time that the corporation was a defunct corporation and that the purported easement might be a stranger in the chain of title. However, it did bring attention to the fact that prior valid conveyances showed such an easement and merely reaffirmed the existence of such an easement.

Attorney Everett Coulter, who represents Bob Goebel, and I have discussed this purported easement signed by his client and the steps necessary to remedy any cloud it might cause to the title of others. (This is not an admission that it causes such a cloud.) Such steps will be taken after I discuss the matter further with Frances next week.

Mr. Coulter, Mr. Cooke and myself will all be in Sandpoint during the coming week. I hope to take advantage of this by exploring all possibilities with them to resolve the various controversies.

Yours very truly,

EVERETT D. HOFMEISTER

EDH/pyq

cc: Frances Swanson

P.S. After preparing the above letter, a message was received from Frances that she was going to sign the deed to Mays tomorrow. Upon phoning you, I was advised you were gone to Moscow this date because of an emergency.

Ill. DEED II ● NULLIFIED ATTEMPTED UNLAWFUL EASEMENT 1994

FILED BY Talache Land Co. Inc.

449888

EASEMENT

'94 AUG 2 PM 2 18

RECORDER OF BONNER COUNTY DEP.

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MAY 11 1995
IDWR

Talache Land Company, Inc., Grantor, for $1.00 and other valuable considerations, receipt of which is now acknowledged, now grants and conveys unto Francis L. Swanson, a single woman of Sagle, Idaho, the Grantee, the right of easement for the purpose of ingress and egress upon, over, and across the real property as described as follows:

The existing easterly 10' (ten feet) of Lots 1, 2, 3, 4, 5, 6, 7, and 8 of Block 5, Talache Village, Bonner County, Idaho.

To have and to hold all and singular the said easement rights to Grantee, her heirs, and assigns forever.

In witness whereof, Grantor has hereunto set his hand and seal this 1st day of August, 1994.

Talache Land Co., Inc.

Robert B. Goebel

by Robert B. Goebel, President

State of Washington)
)
County of Spokane)

Notary: Cindy L Andrews

My commission expires: 3/18/98

CINDY L. ANDREWS NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES MAR. 18, 1998

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I.C. ASNCA Talache Rd

A. E. KEIR NASH

RESEARCH PROFESSOR (AMERICAN LEGAL HISTORY)

Talache Landing
P. O. Box 492
Sagle, Idaho. 83860
(208) 263-0765

Political Science Department
University of California
Santa Barbara, California. 93106
(805) 687-9315

August 21, 1994

Everett B. Coulter, Jr.
Turner, Stoeve, Gagliardi & Goss, Lawyers
301 West Indiana, P. O. Box 5210
Spokane, WA. 99205-0210.

Dear Mr. Coulter:

Discussions with Bonner County's Clerk of the Court Marie Scott and Assessor Tim Cochran cause me to write concerning the astonishing notarized document filed in county records on 2 Aug 1994 by your client, Robert Goebel. One official observed that the document's filing has created a legal mess. *The document declares that Robert Goebel, as president of Talache Land Co. (in a state of forfeiture in Idaho since 1973), has, without consultation, granted on August 1, 1994 an easement across properties separately belonging to three families (Cahn, Nash, and Bandelin) to a 3rd party, Frances Swanson. Of course, neither he nor the defunct company has such power.* See Idaho Code Title 30, Chapter 1, sections 134 to 148 -- **particularly section 135: "Consequences of forfeiture. (a) It shall be unlawful for any forfeited domestic or foreign corporation to excercise its corporate powers or to transact any business in this state."** I understand the title-insurance company involved in the potential Talache Landing property sale giving rise to the document's filing thought it inadequate to the purpose.

1. Implicit Threat to Numerous Talache Titles & Owners' Need to Apprise Title Insurance Companies?

However, an implicit threat to numerous Talache property titles tracing back to Talache Land Company seemingly underlies Mr. Goebel's document, and suggests the need for potentially affected owners to let their title insurance companies know. My title insurance policy from Stewart Title (Texas), for example, states: ".. The insured shall notify the Company promptly in writing ... (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title ... and which might cause loss or damage...." Prudence suggests informing the realtor and previous owner from whom such property was purchased.

The larger difficulty is this. There now lies in Bonner County records this document with adverse implications for these properties' marketability -- and damage to their current and future market value. *What happens (even if the purported easement is let drop) years hence when one of these properties is up for sale and title-insurance companies come across this document in the records?* Is such property's chance of sale at a good price enhanced, unaffected, or diminished? *There could be similar adverse implications and potential market value damages to all owners (whom I therefore "cc") of Talache properties whose titles trace back to E. C. Wert, Paul Wert, Charles Kimes, or the Talache Land Company.* If Mr. Goebel thinks today that his and Carver Kearney's recent purchase of Kimes and Wert interests in the defunct Talache Land Co. empowers his altering at will the terms of its sundry property sales 2 decades ago, documents might tomorrow appear in Bonner County records purporting, say, to grant a corner of Wayne and Kim Penttilas' property to Dan and Dee Soss, to turn one of the Eickermans' bedrooms into a guestroom for Robert Privette, or to rent Ms. Swanson's boat station to Dr. Mark Mays. Grantees might be thereby delighted. Involuntary "donors" might not.

Because Deborah Cahn has had a not altogether satisfactory conversation with Mr. Goebel and my efforts to reach him have not succeeded, I write to you. I also "cc" him, Deborah Cahn, Everett Hofmeister

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(Frances Swanson's attorney), the Bandelins and their attorney in related litigation (Daniel Featherston). Mr. Featherston was, I gather, recently consulted by the possible purchaser of Frances Swanson's Talache Landing Block 5 shoreside Lots 7 & 8 whose concerns seem to be the specific impetus for this odd document. The possible purchaser's concern is posed in the following question.

> Is there is a lawful easement from lots 7 & 8 across sewage system lot 6 [whose ownership is in legal dispute -- Swanson, *or* Swanson & Stewart (lots 9, 10, 11 owner), *or* Swanson, Stewart, & Bandelin?] across lots 2 & 3 [Bandelin], across "lot 1 less Tax 1" [Nash], and across Tax 1 of Lot 1 [Cahn] to the only topographically practical egress, the county road [Lakeside Drive on 4 March 1961 plat map]?

Before doing my best to outline my understanding of the relevant law and the history of Talache properties as both affect current property holders [for the benefit of these non-lawyers' information, I include some details with which you are doubtless familiar], may I make three observations? One, as several adjacent property owners on the same water system and as Everett Hofmeister know, I have heretofore assisted Frances Swanson's efforts to gain a water system hookup to a nearby property she is also trying to sell. So I am dumbfounded by this effort behind Cahn and Nash backs.

But two, the inescapable effect of this document (at least until rescinded) seems to be to make it impossible for the Cahns, the Bandelins, or the Nashes to sign any easement agreements. We could be taken as concurring in the document's broader implications. Perhaps Frances Swanson can obtain an easement not freighted with such broader implications about defunct Talache Land Company's posthumous powers and that does not pose the spectacle of one private party long afterwards seeking to engraft limitations on sales completed without any scintilla of evidence of an easement apparent in the property purchase documents. But Mr. Goebel and Ms. Swanson seem to have tied at least Cahn and Nash hands for now. One consequence, I'm sure you'll agree, is: Given Idaho's new property sale disclosure law (effective July 1994), there is need to inform selling realtors.

Three, during Mr. Goebel's negotiations re acquiring Talache Land properties, I freely loaned him documents I had gathered during my own inquiries. His May 6, 1994 letter to me states: "All things have a conclusion! ... Hopefully, this will conclude your research .... It appears everyone will be a winner." Unfortunately, the August-2-recorded document looks more like re-opening a troubled history of Talache litigation and alleged fraud going back into the 1960s, taking a very odd turn in September 1974, quiescent until 1989, and more recently threatening lengthy lawsuits. I am enormously puzzled as to why Mr. Goebel should choose this course. Perhaps you can enlighten me. The following points appear relevant. Kindly let me know if you disagree with my conclusion that Mr. Goebel had on August 1, 1994 no legal power to grant the easements in question as, purportedly, president of Talache Land Company.

2. Idaho Status of California-Incorporated Talache Land Company in 1972 When it Acquired Talache Properties

Talache Land Company was originally incorporated in California by dentist Charles Kimes (then of Salinas, now of Phoenix) at some point perhaps prior to[1] conclusion of a Kootenai County suit in which Kimes won on April 17, 1970 (recorded April 21, Bonner County Records, Instrument #126889) a judgment of $190,690.50 (itself wholly unconnected with Talache properties) against E. C. Wert, Sr. (then of Spokane and now of somewhere in South America). Talache Land Company was incorporated in California prior to (or just after) a February 1972 Bonner County sheriff's sale (#138872) to satisfy Wert's debt to Kimes of Talache property allegedly held variously by E. C. Wert himself or as trustee for some unstated purpose in consequence of a 15 March 1968 quitclaim deed (Instrument # illegible on my copy but filed 18 March 1968 and in Book No. 127 of Deeds, p. 424) to him from a Washington corporation named D-K-C, or by Wert as trustee

[1] I say "at some time perhaps prior to" because the incorporation date given on the California document available (not the original charter) is 1956. This is probably a later typo because Kimes had no holdings in Bonner County prior to the 1972 sheriff's sale and is unable (in conversation) to recollect so early an incorporation date.

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for a family trust set up on 3 December 1969 a few months before trial (#125542), or under the name of a Spokane-based mining corporation he controlled, Imperial Silver, and to which he had conveyed mineral rights in a document dated 15 March 1968 but not recorded until May 2, 1969 (#121564). As of the sheriff's February 1972 sale, the California corporation was seemingly empowered under Idaho statute to conduct Idaho business. It is further clear: (a) that Kimes immediately after the sheriff's sale quitclaimed the properties received to (his) Talache Land Company; and (b) that, leaving someone in charge here (I believe, one Basil Hartley) and the Stockton-California-based secretary and treasurer, Comer and Comer, of Talache Land Company handling matters in California, Kimes (busy with dental practice and hotel/motel holdings outside of Idaho) thought little or nothing further about the matter for some 17 years. He was alerted to the subsequent history in 1989 by one Robert Privette (of Talache and Spokane).

Kimes was so inattentive to his rights (sleeping upon them for almost 2 decades) that he failed to secure a sheriff's deed confirming his title until May 14, 1992 -- rather than, as one acting with normal attentiveness would have done, securing such sheriff's deed in February 1973, at the expiration of the 1 year redemption opportunity provided by Idaho law to Wert. In the meantime there happened **[without title insurance companies noticing -- despite obvious tip-offs in a bizarre document (#162406), entitled "Release of Judgment Lien," dated 30 September 1974, but not filed for record until December 12, 1974, at the request of Gem State Title Co.]** an extraordinary sequence of events. Key to all is this document.

3. The Bizarre Sept 1974 "Release of Judgment Lien" Document, notarized by Glen Bandelin as signed by E. C. Wert "as Vice President of Talache Land Company," but seemingly signed by son Paul Wert

Instrument #162406 (enclosed) "Release of Judgment Lien" is surely one of the oddest documents in Idaho records. It is important because on it chiefly rest all sales of Talache Land parcels under the company's name from 1974 on. Please examine it -- bearing in mind:

(1) that, as of the February 1972 sheriff's sale to Kimes, E. C. Wert had no power to dispose of Talache properties (unless an effort, never made, had succeeded in showing that he held legitimately as trustee for the Wert family or some other beneficiaries and that hence the properties were immune from sheriff's sale -- perhaps the incompleted purpose of the above-mentioned Dec 1969 trust document);

(2) that Talache Land Company was Kimes' company and he its president (but which, interestingly, in its April 3, 1972 California-filed list of officers *contained a blank beside the title "Vice President"*);

(3) that the notary public signing the document was Glen Bandelin, who grew up and practiced law in Sandpoint but who in recent years has been principally located in Costa Rica, who is listed as early as the 1961 Talache plat map as the Secretary-Treasurer of Talache Lodge, Inc.,[2] who is mentioned as Idaho statutory agent for Wert's Imperial Silver Corporation in the 24 Sept 1975 Certificate of Qualification signed by Idaho's Secretary of State, and who was a principal officer of Gem State.

Three oddities are immediately apparent. First, *Bandelin notarizes that E. C. Wert appeared before him, but the signature is obviously not that of E.C. Wert -- rather seemingly that of his son Paul Wert, currently a Spokane physician, I believe.* The signature looks utterly unlike E. C. Wert signatures on many other documents available to Bandelin as Gem State Title officer, not to mention as agent of Wert's

[2]A predecessor Idaho corporation to which assets of the earlier in-the-1920s-very-profitable, but by the 1940s not-profitable Talache silver mining company were turned over in the late 1940s, which sought to develop the area as a vacation site, and operated a lodge near the site of Goebel's property until it burned down. *It engaged in land swaps with the U.S. government in the early 1950s.* In the early 1960s Talache Lodge sold out to Lou and Vern Gabel (aka Talache Development), and during the 1960s a complicated series of suits ensued involving Talache Lodge, Gabel/Gabel/Talache Development, E. C. Wert, one of the partners in D-K-C (Crick) which quitclaimed (see above) to Wert in 1968. The succession is complex and I shall not go into it here -- unless you need the information. Suffice it to say here: (1) only the small minority of Talache Landing properties with title chains *Lodge > Gabel&Gabel/Talache-Development > next purchaser* look plainly "regular"; (2) it remains unresolved whether Wert's 1968-1970 title-claims were sound.

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mining company. Does it not seem a little remarkable that Bandelin, so long a Wert associate, confused the physical appearance of father and son?

Second, the document purports to have E. C. Wert be vice president of (Kimes') Talache Land and forgive E. C. Wert as debtor to Talache Land. Vice-president of course was the office never filled by Kimes. *Any innocent but alert Sandpoint title officer should have seen something might be amiss* -- and checked further into the public records of the suit and sheriff's sale. Among the first fruits of exploration would have been finding that Kimes' company had forfeited its right to do business in Idaho nearly a year earlier.

Third, in Gem State Title's case, however, the evidence lay closer to hand -- in the company's own then recent letter files. A Gem State letter of May 16, 1974 had replied to one Lucinda Weiss' inquiry concerning the possibility of obtaining title insurance were there to be a purchase of certain Talache property of whom the then "Vestee: [was] Robert B. Goebel." The letter gives a lengthy list of 10 fee title exceptions, including the 1970 Kimes-Wert suit and the 1972 assignment of judgment from Kimes to Talache Land Company.

Robert Goebel's first business activities in the area date back to the middle 1960s and include: (a) purchase 29 Aug 1966 of beach lots 11 and 12 in Block 5 from (Gabel's and Gabel's) Talache Development; (b) purchase again on 18 Oct 1968 of the same properties (as well as of beachlot 10) from Wert; (c) on the same day a mortgage loan from Goebel to Wert in the amount of $20,000 for which the security was Wert's (alleged) title in certain St. Reca/Talache properties (now largely owned by Goebel and purchasers from him) and in nearby Exchange 821B properties (which later went to Cahns in the aftermath of another suit against Wert for failure to pay back an entirely different mortgage).

Bandelin was the notary public for the 1968 Wert/Goebel mortgage. At about the time of the 1974 "Release of Judgment Lien" document, Frances Swanson -- earlier introduced by Goebel to Wert -- came into the employ of Gem State Title and also took options and/or became agent for the Wert claimed properties which began to sell shortly after the document's recording. My copy of the 16 May 1974 Gem State letter to Lucinda Weiss is extensively annotated perhaps in Swanson's handwriting.

Local title company knowledge of the tangled state of Talache properties was not limited at the time to Gem State Title. Thus Bonner Title replied on March 10, 1972 to Lloyd Andrews' attorney (Patterson of Humphries, Patterson and Humphries, Spokane) with an essentially similar list of judgments and tax liens -- and noted that the last deed of record on a St. Reca parcel "runs to: Andrews... and Andrews .... undivided 1/2 interest, and ...Swanson...undivided 1/2 interest....warranty deed ... November 30, 1970. An August 4, 1972 letter from Patterson to Swanson and Andrews discussed the "property ... mixed up with Kimes, Hartley, Wert and the Wert family" and *Bonner Title's view "that it was getting such a mess that .... they were concerned about insuring any of the property in that area...."* A June 19, 1973 letter from Patterson to Andrews relates that Basil Hartley had stopped into see him the previous day and said "they are getting things unraveled and the property is going to revert to Wert... and Kines[sic] will apparently be out of it."

The prediction seemed to be born out a year later with the 1974 Release of Judgment Lien -- with one exception. Kimes was out of it [indeed, perhaps out to lunch] but didn't know he was. How could this all have come to pass? Was a bold scheme afoot, but a foolhardy one with no protection against Kimes' coming back to life in Idaho? Writing 18 years later, on July 14, 1992, to his Sandpoint lawyer, Kimes complained that the lawyer had informed him "several times by telephone of gross fraudulent sales of Talache Land Company properties by several parties in Sand Point [sic] which possibly could be defined as a conspiracy" but let his "letters and faxs go unanswered."

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4. Changed Addresses on Tax Notices and A Curious Redemption by Cominco American

Three documents of the middle 1970s offer a partial possible explanation as to why -- if Kimes' letter's description of what was going on is correct -- by September 1974 the parties could anticipate getting away with, to quote Kimes, "gross fraudulent sales." An 8 Feb 1974 Tax Deed (Instrument #155494) shows that Wert had been in arrears in tax payments on these Talache properties from 1970 (two years before the sheriff's sale). For whatever reason, perhaps habitual casualness in financial matters, Kimes did not notice this when taking them over in 1972. Additionally, he made no efforts to pay 1972 or 1973 property taxes. On 8 Feb 1974, accordingly, Alice Nelson, County Treasurer/Tax Collector, conveyed all Talache Land Company properties to Bonner County. Not quite three months later, on 2 May 1974, a Redemption Deed (#157129) reconveyed the properties back to Talache Land Company -- not because Charles Kimes had bothered to do anything about the situation (he had not), but rather because the delinquent taxes were paid off by Cominco American, a mining company which, prior to Kimes' 1972 acquisition, had leased, and retained, the right to conduct exploratory operations with an eye to re-opening the old silver mines. Or (inasmuch Kimes' attorneys, in the 1990s, could find neither a person recollecting, nor a record, at Cominco American of such tax redemption payments) someone else -- not Kimes -- purporting to represent Cominco American, redeemed.

The third relevant middle 1970s document is a sheet called "Real Property Valuation Summary" detailing the market values and assessed values of 11 mining claims and 2 lots in Exchange 821 for the years 1971 to 1976. *The curiosity lies not in the values, but in the alterations of addresses* whither the assessment notifications were sent. *The first address, typed, is to "Talache Development Corp c/ E. C. Wert, Trustee, 327 W. 8th, Spokane, WN."* Trustee of Talache Development?? No such beast. This is curious also inasmuch as Wert, in taking the properties from D-K-C on 15 March 1968, in deeding the mining rights over to his Imperial Silver on the same day, and in trying to set up the 3 Dec 1969 family trust, never used the name Talache Development, and, by the latter date, technically couldn't. That was the old Gabel & Gabel company, which was forfeited for non-payment of annual fees by the Idaho Secretary of State on 2 December 1968.

The second address, written in, with the first crossed out, is to: "Talache Land Company Corp., P. O. Box 577, Salinas, Calif." That address -- in the city of Charles Kimes' then residence -- suggests that at some point he received tax notices (but ignored them), or alternatively intended to receive them, but didn't and forgot to follow up. The alternative is possible because that second address is crossed out, though the name Talache Land Company is retained, and a third address (illegible as to city in my copy) is added. The third is presumably where the tax notices were thereafter sent -- for some time. I say "for some time" because as a later document (Bonner County Property Record Card) and Assessor Office computer printouts show, at least by the early 1990s, the old Talache Development name was still in use as well as the following name and address: "Talache Land Co, Corp., c/o Ted Wert Jr., 1741 W 11th, Spokane, WA. 99204."

5. Fair Inferences About Charles Kimes' "Protection of His Interests" and Possible Capitalizing Thereon By Others

Ted Wert, Jr. of course is a different son of E. C. Wert from Paul Wert. But from all the foregoing, the following inferences seem reasonable.

1. BY 1974 CHARLES KIMES WAS DISPLAYING A PATTERN OF CARELESSNESS ABOUT HIS TALACHE LANDING INTERESTS.

2. SUCH CIRCUMSTANCE WAS OBVIOUS TO A "LOCAL" FAMILIAR WITH THE SITUATION.

3. A PERSON, RIGHTLY SITUATED, COULD CAPITALIZE ON THIS BY CONVERTING THE NAME TALACHE LAND COMPANY TO HIS OWN USE.

MAR 2 3 1992

An alternative explanation is possible -- that Kimes in fact deeded over the right to use the Talache Land Company name to E. C. Wert, Ted Wert, and/or Paul Wert and to redeem the properties. But neither the diligent searches of two different attorneys employed by Kimes in the 1990s, nor Kimes' (hazy) recollections, nor the failure of any Wert to come forward with such evidence, nor their willingness to quitclaim in 1994 to your client, Robert Goebel, and Carver Kearney -- points in such a direction.

Fortunately, we need not resolve this matter here to deal with the instant situation and Mr. Goebel's current powers. What happened generally from 1974's Redemption of Judgment Lien on as to property sales in the area is now clear. They were made either in E. C. Wert's name to others (as they had to Goebel -- see Part 3, p. 4 above) or in Talache Land Company's name to others (frequently via the agency or assistance of Frances Swanson). Innocent parties purchased recreational properties with written deeds that they reasonably took to be valid. Title companies, local and national, issued insurance policies.

Such might have continued to be the case for good -- with no "noise" from Kimes -- had it not been for a second track of mineral rights business conducted by one or more Werts. On 28 May 1976 Wert (this time with a signature that looks very much like his) deeded both "Imperial Silver Corp., a Washington Corporation" and "Talache Land Co., Corporation, a California Corporation" (Instrument #181568) mineral rights in various patented claims to Silver Butte Mining Company. On the same day the document was notarized in Washington with Wert appearing as president of Imperial and vice president of Talache Land and Sarah Wert (wife or daughter) as secretary of both corporations. On 22 November 1976 the deed was filed for record in Bonner County "at the request of Harlan McConnaughey," an E. C. Wert associate. Twelve years later, on 2 February 1988, Clifford Hohman, acting as President of Silver Butte, quitclaimed various of these mineral rights to Robert A. Privette. Sometime thereafter Privette (I believe because, having no bank account, and paying in cash, he had no cashed check as evidence) became dissatisfied with some of the uncertainties in the quitclaim. Unable to obtain satisfaction from Hohman or the Werts and researching documents in county records, Privette came across Kimes' name, tracked him down in Arizona, and informed him of what had transpired. The rest of the story is familiar and recent.

6. Implications Specifically for Goebel's August 1, 1994 Document and More Generally for His Powers and their Effects Upon the Rights of Other Talache Landing Property Holders

Goebel's 1994 acquisitions of Kimes' and various Werts' interests in Talache area properties suffice, of course, to remedy any defects in Goebel's own titles deriving from Wert or Talache Land. The same applies to situations where there are no 3rd parties in possession with written titles whose provisions potentially conflict and where the only prior conflict pertained to whether Kimes or Wert possessed a parcel or appurtenant right.

Judging from Mr. Goebel's filing of his August 1, 1994 purported-easement document and from brief comments he has made to me in passing concerning his purchases, I am not convinced that he has thoroughly thought through the implications for situations where 3rd party interests and rights are also involved. Let me see if you do not agree with me as to these.

To use the well worn legal cliche -- like water, legal powers can't rise higher than their sources. Wert/Talache Land and Kimes/Talache Land are the relevant sources. I put aside here the unlikely alternative mentioned atop page 6 above and whether there might be other sources than Goebel's 1994 powers (e.g., some pertinent declaration in some other public record) to resolve Ms. Swanson's easement dilemma. The former would abort the instant difference (as Goebel could not take back what Wert had legitimately granted, or give what Wert had not). The latter is irrelevant to limits on Goebel's powers.

Assume the more likely situation -- as characterized in Kimes' above quoted letter to his attorney. Against 3rd parties in titular and actual possession, Goebel cannot derive positive powers of his own just

MAR 2 8

from defects in Wert's powers. For that to happen, something has to come from the powers and rights that Kimes could have exercised, had he chosen to proceed further on his own against Wert and won, rather than quitclaim to Goebel.

Goebel's powers, in other words, are limited both by what Kimes' would have been and by the same Idaho statutes and case decisions that would have limited Kimes -- particularly those pertaining to statutes of limitations, to due diligence in exercising rights (so not to lose them by sleeping on them), and to adverse possession. Most particularly limiting are the relevant provisions of Idaho Code 5-201 to 5-210. As I understand you are licensed to practice in Idaho as well as Washington, and as this letter is already detailed, I shan't burden you or it with a rehearsal of the relevant precedent applying to the Swanson easement question. Rather, let me suggest that the Idaho precedent discussed in the attached letter to Thomas Cooke (and commented upon in the attached letter by Everett Hofmeister) bears here with equal force but in different direction from how it does in the situation described and analyzed in those letters.

There the situation was such that the law winds up for the title holder, against the would be adverse possessor without written contrary deed (i.e., an I.C. 5-209 situation). Here, if [from Kimes' position (now Goebel's)] the adverse possessor be the current Talache-Land/Wert-deriving title holder, one has, at worst from the title-holder's perspective, an I.C. 205-7 & 8 situation.

Moreover, behind lie two generally applicable circumstances that would further weaken any Kimes'-based Goebel claims against such parties. First is that the name used by Wert was the one most plausibly acceptable by property purchasers exercising reasonable prudence -- it was on its face the legally/historically correct name, Talache Land Company. It was precisely Kimes' own carelessness about officer-staffing from 1972-1974 that permitted any such Wert usage. Second is the long passage of time after 1974 before Kimes did anything about it -- and then not because of his own belated diligence, rather because Mr. Privette bopped him on the head with the news. As Mr. Goebel knows, at Mr. Privette's instigation, I conferred extensively during Fall 1993 and early Winter 1994 with Dr. Kimes as to the possibility of my entering into some arrangement in partnership with Kimes to try to produce resolution of all the Talache Landing property doubts and conflicts relating to Wert/Kimes. The more I got into it, however, the more convinced I became that Kimes continued to display similar characteristics. Let me charitably describe them as embodying to a discomforting degree fecklessness in relating one day's discussions to the next and erraticness in timely reponsiveness. Increasingly, it struck me that his case against all except Wert and associates was as weak as it could be. And, I had no interest in coming against innocent bona fide purchasers. Therefore, about the time that in a moment of low comedy (according to Privette) Kime's just-retired-from-military-intelligence son-in-law came here from Salinas to conduct explorations and inadvertently allowed a handgun to drop from his briefcase to the floor of his motel room, I decided this was "no go." I think Mr. Goebel's "easement effort" is "no go" also. As Roger Hanlon (one of Kimes' attorneys) once observed, the greatest value in the Kimes/Wert situation may have been its entertainment value.

The instant situation has the additional irony that, if Mr. Goebel could succeed on behalf of himself or Swanson against Cahn or Nash, it would in turn be against the chain of previous owners of their parcels Cahn or Nash or title insurance companies could come. In this chain, right after Wert/Talache is Frances Swanson. The final irony is that I, at least, had previous to this contretemps given no reason whatsoever to Frances Swanson to think Nashes would not grant an easement, if needed, when formally approached. Now as I observed earlier, by obtaining this Aug. 1 document, she has tied Cahn and Nash hands, making them powerless to help her.

I therefore ask that you persuade your client to adopt what the Bonner County Clerk of the Court indicated would be the least conflictual and most efficacious course, a course that would lessen the damage done. That is to file with that Court a notarized document indicating that the August 1 document

MAR 2 6 1997

was filed there in error. If Mr. Goebel does so, other Talache/Wert-deriving property-owners can be at ease. If he does not, they had best en masse inform their title insurance companies. Presumably, further, Goebel's agreements don't prevent damaged 3rd parties from suing one or more Werts, if appropriate. I shall be happy to discuss the situation with you over the phone. In the meantime I am writing Everett Hofmeister urging him to advance with his client the view that she presents a much more elegant picture of elderly serenity on her rocker than off. Thereon situated, she will be better able to practice the motto on her desk, "Old age and treachery will outwit youth and skill."

Sincerely yours,

A. E. Keir Nash

cc: Robert Goebel
Deborah Cahn
Hofmeister
F. Swanson
Bandelins
D. Featherston
Other Talache Land/Wert title deriving owners
Sandpoint Title
Stewart Title Insurance (Texas)
Kaniksu Realty (att: Sue Moon, seller's agent for our property)
Panhandle Realty (seller's agent for our property)
Coldwell Banker (att: Paul Dukes, seller's agent for Nash/Swanson property)
Marie Scott, Clerk of County Court
Tim Cochran, Bonner County Assessor

MAR 2 8 1997

State of Idaho

Department of State

CERTIFICATE

TALACHE LAND COMPANY CORPORATION
File Number C 44853

I, PETE T. CENARRUSA, Secretary of State of the State of Idaho, hereby certify that I am the custodian of the corporation records of this State.

I FURTHER CERTIFY That the records of this office show that the above-named corporation was incorporated under the laws of the State of California and was issued a certificate of qualification in Idaho on January 12, 1972.

I FURTHER CERTIFY That this corporation forfeited its right to do business on November 30, 1973 for failure to file the required annual statement and pay its annual license tax for the fiscal year ending June 30, 1974 and that said corporation is not now and has not been authorized to transact business as a subsisting corporation in the State of Idaho since the forfeiture date.

Dated: August 19, 1994

GREAT SEAL OF THE STATE OF IDAHO

Pete T. Cenarrusa
SECRETARY OF STATE

By Debbie R. Hanewall

614

162406

RELEASE OF JUDGMENT LIEN

KNOW ALL MEN BY THESE PRESENTS:

That for and in consideration of One ($1.00) Dollars and other valuable considerations paid to TALACHE LAND COMPANY CORPORATION, a corporation, by E. C. WERT and JOCELYN M. WERT, husband and wife, receipt of which is hereby acknowledged, now TALACHE LAND COMPANY CORPORATION does hereby release property in the County of Bonner, State of Idaho a description of which is hereby attached as Exhibit "A" and made a part hereof by this reference as if fully set forth herein: from all claim to or interest in the same, or any part thereof which the said TALACHE LAND COMPANY CORPORATION may have under and by virtue of the Judgment rendered on the 17th day of April, 1970, in The District Court of the First Judicial District in the County of Kootenai against the said E. C. WERT and JOCELYN M. WERT, husband and wife, for the sum of $190,690.50, and from all liens or encumbrances that have attached to the same by reason of the recovery of the Judgment as free and clear, in all respects, as though the Judgment had not been rendered.

DATED this 30 day of September, 1974.

TALACHE LAND COMPANY CORPORATION

BY: _____
Vice President

STATE OF IDAHO)
) ss.
County of Bonner)

On this 30 day of September, 1974, before me the undersigned, a Notary Public, in and for said County and State personally appeared E. C. WERT as Vice President of TALACHE LAND COMPANY CORPORATION, respectively, and known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal the date last above written.

_____
Notary Public in and for the State of Idaho.
Residing at: Sandpoint
My Commission expires: July 26-75

Sam State Title Co.

SANDELIN & ASSOCIATES
ATTORNEYS AT LAW
P.O. BOX 816
SANDPOINT, IDAHO 83864
TEL. (208) 263-3189

RELEASE OF JUDGMENT LIEN

STATEMENT BY DOMESTIC CORPORATION

(THIS STATEMENT MUST BE FILED WITH CALIFORNIA SECRETARY OF STATE (SEC. 3301, CORPORATION CODE)
(PLEASE READ THE INSTRUCTIONS ON THE BACK OF THE FORM BEFORE COMPLETING.

THE CORPORATION NAMED HEREIN, ORGANIZED UNDER THE LAWS OF THE STATE OF CALIFORNIA MAKES THE FOLLOWING STATEMENT:

1. 48 San Miguel Avenue	1A. Salinas, Monterey	1B. CALIF	1C. 93901
2. P.O. Box 577	2A. Salinas, California	2B.	2C. 93901

THE NAMES OF THE FOLLOWING OFFICERS ARE:

3. PRESIDENT: NAME Charles R. Kimes

3. 48 San Miguel Avenue	3A. Salinas, California	3B. 93901

4. VICE-PRESIDENT: NAME

4.	4A.	4B.

5. SECRETARY: NAME Bill C. Comer

5. 48 San Miguel Avenue	5A. Salinas, California	5B. 93901

6. TREASURER: NAME Kenneth E. Comer

6. 48 San Miguel Avenue	6A. Salinas, California	6B. 93901

72 01055

7. Charles R. Kimes
SIGNATURE OF CORPORATE OFFICER

DO NOT WRITE IN THIS SPACE

Date 21 March 1972 Title President

FILED
SACRAMENTO, CALIF.
APR 31972
EDMUND G. BROWN
SECRETARY OF STATE
Edmund G. Brown

SALINAS LAND COMPANY CORPORATION
48 SAN MIGUEL AVENUE
SALINAS, CALIF. 93901

F 02094 JAN 30 72 3.00

FILING FEE - SEE INSTRUCTIONS

A

EVERETT B. COULTER, JR. *
JOSEPH P. GAGLIARDI
MICHAEL C. GERAGHTY
ERNEST D. GRECO

* ALSO ADMITTED IN IDAHO

TURNER, STOEVE, GAGLIARDI & GOSS, P.S.
LAWYERS
301 WEST INDIANA
P.O. BOX 5210
SPOKANE, WASHINGTON 99205-0210

CLARE E. TURNER
(1909-1983)

ROBERT E. STOEVE
(1917-1990)

TELEPHONE
AREA CODE 509
326-1552
FAX: 325-1425

October 14, 1994

Mr. A.E. Keir Nash
P.O. Box 492
Sagle, ID 83860

Re: Talache Landing

Dear Professor Nash:

Enclosed is a true and correct copy of the Revocation of Easement executed by Robert Goebel. I am also enclosing a copy of a document executed by Frances Swanson acknowledging that the easement granted by Robert Goebel under the Talache Land Company name is invalid. The Acknowledgment of Nullity of Instrument executed by Frances Swanson has been sent to the Bonner County Recorder's Office for recording purposes, and I believe that the prior easement granted by Robert Goebel would now be extinguished and considered to be annulled and of no effect. With the recording of these documents, I am of the opinion that any cloud on the title to the various landowners has been cleared up.

Very truly yours,

EVERETT B. COULTER, JR.

EBC:jmw
Enclosure
pc: Robert Goebel

453477

REVOCATION OF EASEMENT ORIGINALLY GRANTED IN ERROR

Robert B. Goebel, individually, and on behalf of Talache Land Company, Inc., a defunct corporation, now revokes and rescinds that certain easement as contained in the easement under Recorder's File No. 449888, recorded in the Bonner County Recorder's Office on August 2, 1994, which describes the following real property:

The existing 10' of Lots 1, 2, 3, 4, 5, 6, 7, and 8 of Block 5, Talache Village, Bonner County, Idaho.

The undersigned revokes the easement for the reason that it was granted in error and that Talache Land Company, Inc., has no power or authority to convey any easement and that Robert B. Goebel does not have the power or authority to convey the easement as granted.

IN WITNESS WHEREOF, Robert B. Goebel has set his hand and seal this 30 day of SEPTEMBER, 1994.

ROBERT B. GOEBEL

STATE OF WASHINGTON)
) ss.
County of SPOKANE)

On this day personally appeared before me Robert Goebel, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 30 day of SEPTEMBER, 1993.

NOTARY PUBLIC in and for the State of WASHINGTON Residing at SPOKANE
Commission Expires 4-1-97

State of Idaho)
) ss
County of Bonner)

I, Marie Scott, County Recorder in and for the County and State aforesaid do hereby certify that the foregoing instrument is a true and correct copy of the same as recorded in my office as Instrument No. 453477

WITNESS my hand and seal this 22 day of DECEMBER 1994

MARIE SCOTT
County Recorder, Bonner County, Idaho

By Deputy

FILED BY L. Caulkins
'94 OCT 5 PM 3 00
RECORDER OF BONNER COUNTY
DEP.

FILED BY E Hufmeister
'94 OCT 18 AM 8 20
MARIE SCOTT
RECORDER OF BONNER
COUNTY BY SH DEP.

454051

ACKNOWLEDGMENT OF NULLITY OF INSTRUMENT

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, that certain instrument purporting to convey an easement was recorded August 2, 1994, as Instrument 449888, records of Bonner County, Idaho, wherein Frances L. Swanson was grantee; and

WHEREAS, the grantor, TALACHE LAND COMPANY, INC., was at said time a corporation that forfeited its right to do business on November 30, 1973, and was and is a defunct corportation; and

WHEREAS, it is acknowledged that said instrument did not convey any right, title or interest, NOW, THEREFORE:

COMES NOW, Frances L. Swanson, a single woman, without relinquishment of any right or claim to a pre-existing easement or easement which may otherwise exist, does hereby acknowledge that said instrument No. 449888 was executed and filed in error and should be deemed a nullity and cancelled.

This acknowledgment shall be binding upon the heirs, successors and assigns of Frances L. Swanson.

DATED this 5th day of October, 1994.

Frances L. Swanson
Frances L. Swanson

454051

A

STATE OF IDAHO)
ss
County of Bonner)

Frances L. Swanson being first duly sworn, deposes and says:

That she is the declarant in the above entitled matter and has read the above and foregoing acknowledgment, knows the contents thereof and that the same is true as affiant verily believes.

Frances L. Swanson
Frances L. Swanson, Affiant.

SUBSCRIBED AND SWORN to before me this 5th day of OCTOBER ~~September~~, 1994.

Notary Public in and for the State of Idaho, residing at [illegible]
My Commission expires 4-16-97

State of Idaho)
ss
County of Bonner)

I, Marie Scott, County Recorder in and for the County and State aforesaid, do hereby certify that the foregoing instrument is a true and correct copy of the original recorded in my office as Instrument No.

454051

In Testimony Whereof I have hereunto set my hand and affixed my official seal this 22 day of December 1994

County Recorder, Bonner County, Idaho

By Deputy

STEWART TITLE GUARANTY COMPANY

2028 East Fort Union Blvd. Suite 202 • Salt Lake City, UT 84121 • (801)943-6246 • FAX(801)943-0858

November 8, 1994

Mr. A.E. Nash
Talache Landing
P.O. Box 492
Sagle, ID 83860

Re: A.E. & Marguerite Nash
Our File No. 940300733
Policy No. 9981-0003766710

Dear Mr. Nash:

We are currently in the process of continuing the investigation inquiring about coverage under a Stewart Title Guaranty Company title insurance Policy. We are not yet ready to respond.

We would like to thank you for your patience in this matter and should you have any concerns, please do not hesitate to call.

Sincerely,

Arlen B. Taylor
Vice President
Sr. Region Underwriter
Mountain States Region

cc: Scott McBee
National Legal Department
Stewart Title Guaranty Company

STEWART TITLE GUARANTY COMPANY

2028 East Fort Union Blvd. Suite 202 • Salt Lake City, UT 84121 • (801)943-6246 • FAX(801)943-0858

December 20, 1994

Mr. A.E. Nash
Talache Landing
P.O. Box 492
Sagle, ID 83860

Dear Mr. Nash:

RE: 940300733 A.E & Marguerite Nash
O-9981-3766710

By way of update, I have caused contact to be made with the individual who purchased all of the land claimed by Charles Kimes, individually, under the Sheriff's Deed. There is some question remaining as of this writing as to whether the conveyance by Charles Kimes includes your land. If it does not, then we only need the conveyance from Kimes, individually, and the last surviviving officers and directors of Talache Land Company Corporation.

In the meantime, if you have continuing concerns feel free to contact me.

Sincerely,

Arlen B. Taylor
Vice-President
Senior Region Underwriter
Mountain States Region

cc:

Scott A. McBee
Stewart Title Guaranty Company
P.O. Box 2029
Houston, TX 77252-2029

A. E. Keir Nash

1033 N. Ontare Road
Santa Barbara, CA. 93105
(805) 687-9315

Talache Landing, P. O. Box 492.
Sagle, ID. 83860
(208) 263-0765

Feb. 7, 1995

Arlen B. Taylor
Vice President
Sr. Region Underwriter
Stewart Title Guaranty Company
2028 East Fort Union Blvd., Suite 202
Salt Lake City, UT. 84121.

Dear Mr. Taylor:

Anent our phone conversation of some weeks ago, I enclose copies of two documents I obtained from the Bonner County (Idaho) Recorder when there over Christmas:

Document #453477, "Revocation of Easement Originally Granted in Error" signed by Robert B. Goebel, dated 30 Sept 1994, and filed 5 Oct 1994 by his attorney, Everett B. Coulter, Jr.;

Document #454051, "Acknowledgment of Nullity of Instrument," signed by Frances L. Swanson, dated 5 Oct. 1994, and filed by her attoney Everett Hofmeister, 18 Oct 1994.

Also enclosed is Coulter's Oct. 14, 1994 letter to me stating, "With the recording of these documents, I am of the opinion that any cloud on the title to the various landowners has been cleared up."

I am wondering whether you agree with Coulter or whether either of the following phrases in the two documents leave the possibility of Goebel giving or Swanson obtaining an easement without my agreeing to it and putting a cloud back on the title, so to speak. Hence, I have two questions.

From #453477, *"...revokes ... for the reason that ... Talache Land Company, Inc., has no power to convey any easement and ... Goebel does not have the power or authority to convey the easement as granted."* **Question 1. Does this imply Goebel has a power to convey a similar easement but not using Talache Land Co.'s name, rather his own?**

From #454051, *"...Swanson ... without relinquishment of any right or claim to a pre-existing easement or easement which may otherwise exist..."* As the attached map of the relevant Block 5, lots 1 to 18 on the lakeshore indicates, my collection of deeds shows only 1 with a deeded easement (Majeski's dating from the 1960s and property still undeveloped). There has been de facto use of a not very well defined driveway along the beachfront lots by persons living respectively in houses on lots 10/11 (Stewart), 4/5 (Swanson), Bandelin (2/3), and by ourselves and our predecessor owners (Andrews, Graves) of our Lot 1 less Tax 1 and of the actual lot where the Andrews-Graves-Nash house is above the county road. [The Lot 1 and above the county road properties have always been sold together but are technically separate parcels.]

No one (I think) would quarrel with the prescriptive rights of these users. The difficulty arose because Swanson wants to sell Lots 7 and 8 (undeveloped) and seems to think that

she can expand her prescriptive use from Lots 4/5 to these other properties and make two prescriptive uses out of one, so to speak. Her realtors (Coldwell Banker) seem to be telling prospective purchasers that she can do this. I thought that prescriptive easements attached in consequence of adverse use of a particular property to get to another particular property--that the servient estate became servient so to speak just to that other particular property. The situation has been further complicated by the fact that, seemingly in order to expand the lakefrontage of saleable property, Swanson has brought suit to toss one set of her neighbors (Bandelins on lots 2/3) off the sewage system on Lot 6 that since the middle 1970s has served these 2 houses and the Lee Stewarts' (10/11). Were that to work she would then seek to relocate her and Stewart drainfields on property the two own above the county road, clean up lot 6, attach it to 7/8, and thus have 120' rather than 80' to sell. As property values have shot up enormously on Lake Pend Oreille (to about $2000/front foot) in recent years. Stewart has become increasingly hostile to this. And Bandelins have countersued claiming each party owns 1/3rd of Lot 6. In the early 1970s Bandelin, living largely in Cost Rica, gave power of attorney to Swanson, then his employee. The suit and counterclaims have turned up some trails of checks that without going into specifics are quite interesting. Having not come to Talache until 1992, I am not involved in this litigation, just concerned about its implications for our Lot 1 title that Stewart Title is insuring . Arbitration/medition failed and a court hearing is scheduled for March 28.

Hence arises my **Question 2. Am I right concerning (non)expandability of the above-discussed prescriptive easement; and should I, or Stewart Title Guaranty, say or write something to Coldwell Banker about what they should/shouldn't be saying to prospective purchasers of Lots 7/8? Relatedly, have you come across any other written easement than the one to the undeveloped Majeski property?**

I hope this is of some use, and wonder if you have gotten further with Robert Goebel concerning the quitclaim you said you were endeavoring to obtain.

Sincerely yours,

A. E. Keir Nash
Professor Emeritus (Legal History and Constitutional Politics)

Sandpoint Title Insurance, Inc.

120 South Second Avenue
Post Office Box 1767
Sandpoint, Idaho 83864
(208) 263-2222
1-800-299-0925
Fax (208) 265-4040

RECEIVED
JAN 16 1995
STEWART TITLE GUARANTY CO
SALT LAKE CITY, UTAH

January 10, 1995

Terry J. Goebel
Robert B. Goebel
General Contractor, Inc.
P.O. Box 3086 TA
Spokane, WA 99220

Re: The Nash Property at Talache
Our File No. 8245

Dear Terry,

Thank you for taking time out of your busy schedule to see me the other day. I appreciate the opportunity to explain in person the nature of my request.

I have enclosed a Quit Claim Deed for your mother and father to execute in the presence of a notary public. The deed describes real property owned by Mr. A. E. Keir Nash and Mrs. Marguerite Bouraad Nash.

The reason we are requesting your parents to execute this deed, is because of the interests they acquired under that certain deed executed by Carver Kearny which recorded in the records of Bonner County, Idaho on May 9, 1994.

Sandpoint Title Insurance Inc. insured the title to the property Mr. and Mrs. Nash acquired from Eldon Graves in October of 1992. Since then the Mr. and Mrs. Nash have filed a claim against their title insurance policy claiming we failed to disclose the interest of Charles R. Kimes and subsequently Talache Land Company Corporation, which raises the question of their interests and creates a cloud on their title.

The interest if any of Mr. Kimes or Talache Land Company Corporation in the property of Mr. and Mrs. Nash is now held by Robert B. Goebel and Harriet M. Goebel successors in interest to Kimes and Talache Land Company Corporation via Carver Kearney.

The title to the Nash property derives from four different deeds, each from Talache Land Company Corporation. I have enclosed copies of these deeds with a map attached to each deed and marked them 1, 2, 3, 4 & 5. The interesting thing about these deeds is that each deed is executed by E. C. Wert as Vice President of Talache Land Company Corporation.

The Articles for Talache Land Company Corporation were filed in the state of California by Charles R. Kimes sometime in 1972. Charles Kimes had acquired a Judgment from the First Judicial District Court of the State of Idaho against E.C. Wert for $204,039.00 and subsequently had the sheriff execute against the interest of E. C. Wert in the Circle R, the Mexico Lode and the St. Reca patented mining claims. I have enclosed copies of the Sheriff's certificate of Sale of Real Estate on Execution and the quit claim deed executed by Kimes in favor of Talache Land Company Corporation recorded in the public records of Bonner County, Idaho and marked 5 & 6.

A Release of Lien was recorded on December 12, 1974 recorded in the records of Bonner County, Idaho. The release was executed by E.C. Wert as Vice President of Talache Land Company Corporation whose signature was notarized by Glen Bandelin. This release may have been mistaken to release the judgement of Mr. Kimes. I have also enclosed a copy and marked it 7.

On May 18, 1994 the Sheriffs office recorded a Sheriff's Deed in favor of Charles R. Kimes and Gloria Kimes conveying the interest of E. C. Wert and Jocelyn Wert in the Circle R, St. Reca and Mining Claims at Talache. This deed should have been recorded 1 year after the Certificate of Sale was issued to Mr. Kimes, which would have been February of 1973. For whatever reasons it was not. I have enclosed a copy of this deed and marked it 8.

Despite the interest of Mr. Kimes or Talache Land Company Corporation the property has been possessed openly and notoriously at least since sometime in 1977 when Lloyd J. Andrews and Winnie May Andrews built a summer home on the property in question. I have enclosed copies of the deeds under which the Andrews acquired their interests in the property and marked them 9, 10, 11, 12, 13, 14, & 15. Mr. and Mrs. Andrews conveyed the property to Eldon Graves on October 30, 1987. Subsequently Mr. Graves conveyed the property to Mr. and Mrs. Nash on October 23, 1992. The real estate taxes have never been assessed to Mr. Kimes.

The interest of Mr. Kimes has been completely overlooked. The reasons are unknown to me, it may have been the release of lien was mistakenly interpreted to have satisfied the judgment Mr. Kimes held against E. C. Wert. Or it may have been the confusion about whom Talache Land Company Corporation was and the failure of an adequate search to determine the status of the entity and its officers in the corporate records of the secretary of states offices in California, Idaho or Washington. Or the fact that Sheriffs office did not record its deed in favor of Mr. Kimes for some 20 years does not help us understand what has happened.

I hope I have presented an objective presentation of the circumstances underlining my request. Please let me know how Mr. and Mrs. Goebel intend to respond to our request.

Sincerely,
Best Regards,

Terry W. Gonzales

STEWART TITLE GUARANTY COMPANY

2028 East Fort Union Blvd. Suite 202 • Salt Lake City, UT 84121 • (801)943-6246 • FAX(801)943-0858

March 2, 1995

A.E. Keir Nash
Talache Land
P.O. Box 492
Sagle, ID 83860

Dear Mr. Nash

Re: 940300733 A.E. & Marguerite Nash
O-9981-3766710

Please find enclosed a copy of the Deed, from Sandpoint Title, which was recorded February 13, 1995.

If you need anything further please don't hesitate to call.

Sincerely,

Arlen B. Taylor
Vice President
Sr. Region Underwriter
Mountain States Region

A

INSTRUMENT NO.

QUITCLAIM DEED 460397

For Value Received Robert B. Goebel and Harriet M. Goebel, Husband and Wife

do hereby convey, release, remise and forever quit claim unto A. E. Keir Nash and Marguerite Bouraad Nash, Husband and Wife

the following described premises, to-wit:

See Exhibit A Attached hereto and made a part hereof.

Sandpoint Title Insurance
FILED BY
'95 FEB 13 PM 12 50
MARIE SCOTT
RECORDER OF BONNER COUNTY
BY DEP.

together with their appurtances.

Dated January 11th, 1995

Robert B. Goebel

Harriet M. Goebel

STATE OF Washington)
) ss.
COUNTY OF Spokane)

On this 30th day of January, 19 95, before me, the undersigned, a Notary Public in and for said State, personally appeared Robert B. Goebel

known or identified to me to be the person(s) whose names is/are subscribed to the within instrument and acknowledged to me that he executed the same.

Notary Public in and for said County and State

Residing at: Spokane
Commission Exp: 5/18/98

RECORDING DATA:

A

QUIT CLAIM DEED (CONTINUED)

DATED this 8 day of February, 1995.

Harriet M. Goebel
HARRIET M. GOEBEL

STATE OF WASHINGTON)
) ss.
County of Spokane)

On this day personally appeared before Harriet M. Goebel, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that she signed the same as her free and voluntary act and dead, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 8 day of February, 1995.

M. M. WHEELER NOTARY PUBLIC STATE OF WASHINGTON NOV. 1, 1998

Lisa M Wheeler
NOTARY PUBLIC in and for the State of Washington, Residing at Spokane
Commission Expires 11-1-98

[redacted]

A

EXHIBIT "A"

IN THE STATE OF IDAHO, COUNTY OF BONNER

PARCEL 1:

A portion of Government Lot 2 in Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho, more particularly described as follows:

From the Northwesterly most corner of Lot 3, Block 5 of Talache Village Plat, which point is on the Southerly right of way line of Lakeside Drive; thence North 48 degrees 24' 30" East along said right of way line 15.25 feet; thence North 41 degrees 35' 30" West 50 feet to a point on the Northerly right of way line of said Lakeside Drive; thence Northeasterly along said right of way line, along a curve to the right whose radius is 393.45 feet, a distance of 59.21 feet to the true point of beginning; thence North 46 degrees 34' West 135.0 feet; thence South 84 degrees 25' 24" East 218.82 feet to a point on the North line of said Lakeside Drive; thence South 59 degrees 15' 39" West along said right of way line 124.16 feet; thence along said right of way line, along a curve to the left whose radius is 393.45 feet a distance of 15.31 feet to the true point of beginning.

LESS a tract of land in Government Lot 2 of Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho, more specifically described as follows:

From the Northwesterly corner of Lot 1 of Block 5 of Talache Village, a plat recorded in the records of Bonner County in Book 2 of Plats, page 76; thence North 30 degrees 44' 21" West a distance of 50.00 feet to the Northerly right of way line of Lakeside Drive of said Talache Village; thence North 59 degrees 15' 39" East along said Lakeside Drive a distance of 63.68 feet to the true point of beginning; thence continuing North 59 degrees 15' 39" East a distance of 60.48 feet; thence leaving said Lakeside Drive, North 84 degrees 25' 24" West a distance of 93.82 feet; thence South 46 degrees 34' 40" East a distance of 57.58 feet to the true point of beginning.

PARCEL 2:

A tract of land in the Mexico Mineral Survey No. 2059, in Government Lot 2 of Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho, more specifically described as follows:

A

From the witness corner to corner Number 4 of said Mexico claim, which point is North 79 degrees 44' West a distance of 104.28 feet from said corner Number 4; thence North 79 degrees 44' West along the North line of said Mexico claim a distance of 93.21 feet to the true point of beginning; thence continuing North 79 degrees 44' West a distance of 223.23 feet; thence leaving said North line, South 33 degrees 14' 36" East a distance of 46.65 feet to the Northerly right of way line of the existing 30.0 foot public access road; thence South 62 degrees 39' 16" East across said access road a distance of 32.99 feet; thence South 84 degrees 25' 24" East a distance of 125.0 feet; thence North 56 degrees 41' 23" East a distance of 48.30 feet to the true point of beginning. EXCEPT any portion of the above-described tract lying within the 30.0 foot public access road as deeded in Document No. 98895, in Book 115 of Deeds, page 305, in the records of Bonner County, Idaho.

LESS a tract of land in the Mexico Mineral Survey No. 2559, in Government Lot 2 of Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho, more specifically described as follows:

From the witness corner to corner No. 4 of said Mexico claim, which point is North 79 degrees 44' West a distance of 104.28 feet from said corner No. 4; thence North 79 degrees 44' West along the North line of said Mexico claim a distance of 316.44 feet to the true point of beginning; thence leaving said North line, South 33 degrees 14' 36" East a distance of 46.65 feet to the Northerly right of way line of the existing 30.0 foot public access road; thence along the Northerly access road to a point that is South 79 degrees 44' East from the point of beginning; thence North 79 degrees 44' West to a point of beginning.

PARCEL 3:

Lot 1, Block 5, Talache Village, according to the plat thereof recorded in Book 2 of Plats, page 78, records of Bonner County, Idaho, except that portion described as follows:

Beginning at the most Easterly corner of said Lot 1; thence Southwesterly along the Southeasterly line thereof 100 feet; thence Northwesterly at right angles to said Southeasterly line to the Northwesterly line of said Lot 1; thence Northeasterly along said Northwesterly line to the point of beginning.

TV LEGALIZING - AUTHORIZING 1995

A. E. Keir Nash
1033 North Ontare Road, Santa Barbara, California. 93105. (805) 687-9315

Feb. 17, 1995

RECEIVED
MAY 11 1995
IDWR

Timothy J. Harkins, Attorney-at-Law
West 1304 College
Spokane, WA. 99201-2013

Dear Tim:

This is in tardy reply to your 13 July 94 request that I come up with suggestions about how to organize the water-system and also to explain my suggestion to wait for 1995 "dues" until the March 28 Swanson-Bandelin trial as it may clarify certain problems. I atone for tardiness with burdensome detail. More seriously, delay has been caused by answering time-consuming legal initiatives of others relating to the old Talache Land Company title chain peculiarities. These have brought both Cahns' and Nashes' title insurance companies in to oppose "weird bites" out of the titles. [Enclosure A.] From these "pestilences," among Talache Landing houses, only yours and Mays' (with title chains going back to Gabel) have the good fortune to be immune. That difference explains most occasions when "you all" see Talache affairs differently, and particularly why I tend to be legalistic, hyper-rule-oriented and get surveys done, etc. We "naive purchasers" in the Talache LC chain (as distinct from the engenderers of the mess) may deserve a little pity. Why counsel caution now?

1. Partially doing your bidding (to the extent of obtaining and reading the needed government agency forms for legalizing the system, and learning more about pumps and water system capacities) shows that two technical factors put us closer to the points of substantial marginal-cost boosts to satisfy the various laws or accommodate new hookups than we thought we were. 1A. The Goulds pump now in the lake (contrary to earlier prevailing assumptions) has less rated-pumping-capacity, despite nominally equivalent horsepower (5), than the 1980 original Red Jacket pump. Assuming that I can now decipher pump model-number codes properly and interpolate a missing 5th digit '0' in an old list of 1987 repairs ["entry 11/17/87 - 1 *4500 5412* Goulde [sic] [$] 1620.00"], the replacement pump now in the lake is a Goulds 45 gallons per minute, 00 pumpseries, 5 horsepower, 4 inch diameter, single-phase 3-wire, 230 volt pump. *[There, that saved the users a $225 winter diving bill from Tom's Diving of C d'A to find out.--courtesy yours truly, ye olde newe england skinflinte.]* On the Welch Associates system plans the original equipment was a Red Jacket *[with a different coding system I won't bother thou busy attorney with]* LB series, which is rated at 55 gallons per minute. If everything else were average (particularly that the pump weren't lifting very far, and the pipe friction was not above normal), the Red Jacket would have been adequate by FHA housing standards [5 gallons per house] for 11 homes whereas the Goulds would be adequate for 9.

However, other things are not average -- especially the system pressure, the pipe friction, and the height above the lake intake [or needed "head"]. These 3 are all higher than average, and depress the instantaneous gpm capability. The system discharge pressure is 55 lbs. – very near the top of, e.g., the Red Jacket 55 GPM Series chart of real performance capability (running 0 lbs., 20lbs., 40lbs., to a max 60 lbs) and right at the limit, perhaps beyond, its recommended operating range, 0 to 120 feet above water level. For the next higher elevation on the chart, 160 feet, an 8 horsepower pump is recommended (more $). According to the Welch Associates System plans the upper pump (Well-X-Trol pressure tank) house is 2157 feet above sealevel. Lake level can go down to 2048' in winter. So the system has a head of 2157-2048 = 109' to that point -- and more like 109' + 30' = circa 140' to get to the top-floor bathroom outlets in the Penttila house. Here is how pressure and head affect a 55 GPM Red Jacket in pumping capacity with 120' head and various discharge pressures:

@ 0 lb = 80 GPM @ 20 lb = 71 GPM @ 40 lb = 60 GPM @ 60 lb = 45 GPM

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In terms of FHA 5 GPM/house standards on our system the 55GPM Red Jacket original would seem to drop from a theoretical (55/5=) 11 hookup capacity to a real (45/5=) 9 house capacity, or (45/55=) 82% of the theoretical. If (and I say if because the Goulds charts don't give exactly the same information) **the system's head and pressure affect a 45 GPM Goulds the same way, then what looks like (45/5=) 9 is probably more like 82% x 9 = 7.4 houses.**

Moreover, none of this, so far, allows for length and diameter of piping – "Performances shown do not include the pipe friction." But at its extremities we have a long as well as high system. *Note I'm not saying it can't be done. A 25 GPM 3 hp Goulds can, e.g., with very low discharge pressure pump to 457 feet vertically. But it will be putting out 2 gallons a minute rather than the 37 gallons a minute it would put out at 50 vertical feet. And would be operating way outside its recommended rate per minute.* **What I am saying is that it makes a great deal of difference where a new hook-up is proposed.** I can, for example, say right off from the figures that if Cahns were to ask to put 1 outlet on their shoreline Tax 1 of Lot 1 coming right off the existing outlet on Nashes Lot 1 less Tax 1 and have, e.g, a bathroom there, it would have no perceptible effect on the system. But if they want the water pumped up by the existing pump to their lot way above Penttila's, it would affect the system substantially. What I'm also saying is that where deduction shows a "prima facie substantial effect," working out by a professional what needs to be done has to be part of the costs of any new hookup.

1B. The other technical matter can be dealt with briefly. It's just that all our thinking so far has been in terms of "households," "cabins," and "houses" – so we have been speaking of 6 (you all, Mayses, Johnsons, Sosses, Penttilas, Nashes). This has seemed natural to us since it's consistent with amount of use and the fact that Andrews used and deeded to Graves as did Graves to Nash as the property was advertised (all in 1). Technically however, the county road means there are in zoning terms 2 lots. The applications and maps required speak variously both of "households" and of "lots" where there is a water outlet. Technically, then, there are at least 7 lots on which there are outlets. Similarly, if Sosses never combined Soss-Soss lot with Privette-Soss lot, and if there are outlets on both lots, then there are 8 lots. Now this doesn't make any difference to the current users. But this may affect the N of new lots with outlets that can be added without having higher water-treatment EPA/DEQ requirements. Again, the costs of ascertaining this should be upon any new hookups.

2. The overall legal situation has become more complex, rather than less (as seemed the trend a year ago). *Cahns' and Nashes' title insurance companies have come into the act, because of the bizarre easement Goebel acting as president of forfeited Talache Land Co., in August 1994, purported to give to Swanson over three third parties' properties (Cahn, Nash, Bandelin). [I secured an easement nullification, but the title insurance company is still pursuing more.] Bandelin-Swanson litigation [Enclosure B] has broadened from arguing Lot #6 ownership and sewage to include Stewart interests and challenges affecting the future of 2 properties on our upper tier owned (on the books) by Swanson, including the hairpin bend one which Bandelins tell me they owned and sold to a 3rd party.* I shall say only that for years Swanson had power of attorney for Bandelin while he was in Costa Rica and that Bandelins, as part of their Lot #6 suit counter-claims, have been obtaining cheque microfiches, of joint accounts. I have no idea whether there is merit in this counter-claim. [Signator of Encl. C = Bandelin's then law partner.] Panhandle Health is now questioning permits on the hairpin bend [Encl. D].

3. Re-staffing of North Idaho government offices with planning/environment rule-oriented employees. Marguerite's and my extensive talking with county and State officials about the water-system and in carrying out Cahns' request that we explore ways of Cahns' and Nashes' dealing with seawall problems has made us keenly aware that re-staffing of North Idaho planning and environmental agencies has ended old Panhandle "anything-goes" days. Hiring of transplanted California planners and promotion of younger Pacific Northwesterners have shifted the local

MAR 2 8 1997

governmental mood in a much more regulatory direction. When Margo and I first visited the planning department, we were greeted by a planning official recently hired from Sun Valley, whom we had never met, with: "What law are you trying to get around today?" I doubt Panhandle Health would have gotten active 5 years ago re the hairpin bend permits. It's a new North Idaho.

4. <u>Trying to accommodate non-users' water claims, before having any legal structure of de facto users, is so far an experiment in generosity failing for lack of reciprocity</u>. If you look back over the correspondence and "polling" of Spring and early Summer 1994 about Swanson's hook-up and compare what has happened since, you'll see:

(1) All but 1 user answering the June 28 poll by July 8 "strongly agreed" with setting 2 conditions for a Swanson hook-up ["(d) = committing hairpin bend property purchaser in sale to sharing costs of system upgrades needed now;" "(e) = paying for upgrades required by the hairpin bend hook up due to strain (if any) on the system ... and for additional costs (if any) because of stiffening of environmental regulations between 1980 and 1994"].

(2) Your July 13, 1994 letter to Margo and myself on your return from vacation showed you and Sanger in accord with attaching those conditions; and taking a position very close to Margo's and mine re helping pay-for-1980-1994 capital improvements and repairs condition ["...further agree that we do not expect that past charges or repairs to the system are necessarily the obligation of non-users" *—(nicely hedged!)*].

(3) Mark Mays, by 11 July letter to me [Enclosure E], took an even stronger position: [*"..Swanson has no legal right to access to the water system. She purchased shares in a corporation which you've proven is now dead. Since she has no right and only the corporation owed her a duty, there seems to be no legal duty and thus no legal liability on any of us individually or collectively." (p.1) and see rest of his p. 1 over onto p.2 re feeling "wronged by her.....poor behavior ....[but]...right thing to do would be to allow her access...regardless of the legalities....[and] I think some pro-rated contribution for what has happened with the system should occur."*].

(4) Both Mays and Penttila expressly conditioned support for her hooking up on adequate evidence of her having paid at the system's outset [Penttila return: "I assume Frances paid her share in the establishment..."], which others appeared to assume without saying. [See enclosure C again.]

(5) In accord are also Margo's 6-16-94 letter to you (not realizing you were on vacation) and my detailed June 8, 1994 letter to Hofmeister (with which it seems Mays was concurring).

(6) Because you, Sanger, and Mays had not yet replied, my July 8 letter explicitly said Hofmeister "would do well to call the owners of the 2 non-responding cabins." [Did he?]

(7) You, apprised of the foregoing, cashed the $240 Hofmeister cheque. That seems a plausible thing to do in expectation that Swanson would comply with the conditions and would thereafter make arrangements with system users to get the hook-up completed by the professionally licensed individual envisaged as good practice in Idaho regulations and to sufficient depth.

(8) However, if I am not utterly mistaken, Swanson disregarded all this and -- either shortly before or after you cashed Hofmeister's cheque – (a) obtained a pumphouse key from a source still unknown to me; (b) hooked up employing no such licensed person; and (c) in Fall 1994 sold the hairpin bend property to an Oregon Coast couple for $40,000 [!] [1] without making any of the commitments voted for by the de facto users. Please let me know if you have contrary info.

If (8) is accurate, this boils down to Swanson acting in a fashion foreign to creating any mutual commitment. I don't think 1995 dues should be solicited, or checks cashed, of her or the new

---

[1] Compare these recent lot purchases and sales.

Early 1994, Swanson purchase of **Gibbs' lot** just this side of Johnson cabin = $4,500.

O'Higgins Lot: Late '93, Swanson/Nash purchase for **$5,000**

June '94 Swanson secures tax assessment reduction from $8280 to **$5520**

Sept '94 Swanson sells 50% share to Mays for $9250 [= **$18500 for 100%**].

* Thinking this a practice more sharp than fair, doesn't require agreeing with Mark re his seemingly abandoned adverse possession claim or knowing that **if his lawyer Cooke had bothered** to answer early July mail from Nash before Labor Day even to the extent of a phone call, **there would have been 2 far cheaper solutions for Cooke's client suggested by Nash—(1) swapping the 12' x 30' portion Mark was claiming for an equal portion at the bottom of Mark's property and so not violating the grandfathered lot size provisions of either property; (2) bringing Mark in as a tenant in common for a nominal sum and letting him use the area he wanted.**

* Having looked at prices in April, this phrase seems wrong now. HKN

RECD 2 5 1997

owner, until we have a system legal structure that can "speak officially" and all appropriate conditions have been agreed to. After what I've learned of Idaho law researching certain adverse possession and easement matters, I believe Mays was (on the matter of Swanson's "legal no-right") correct. *I am strengthened in this view if the real owner of the property was not the 85-year-old not-so-well-off image of a lady I was led to characterize but rather someone else, very well off.* The purpose of user-generosity and lengthy vacation meetings was not to pay costs of multimillionaires, names hidden for tax or other reasons. March 28 may clarify whether any of this is so.

5. A Recent Idaho Appeals Case (Chen v. Conway, a rural driveway use case) and related Idaho L. Rev. Article ["The law of prescriptive easements was fairly clear in ... Idaho until a recent decision by the Idaho Supreme Court," 29 Ida. L. Rev. 439] **about the consequent state of easement law in Idaho show why we should proceed expeditiously re getting a water permit.** [They were brought up by Hofmeister with Bandelins' lawyer to rebut their sewage prescriptive easement counter-claim.] The article had 2 main verdicts – first, *"by addressing the wild, unenclosed, unimproved land exception the court performed an important task .. [and] foreclosed any further attempt by Conway to rebut the presumption of permissiveness,"* [id 454, an encomium I selfishly like since, without having the article before me, I inadvertently tracked the court's analytic path in my letter to Cooke re the O'Higgins adverse possession matter]. *However, second, of more concern here, the article argued the court handled evidence poorly and expanded confusingly another Idaho exception -- the joint use demonstrates permissive use exception first advanced in a 1941 case at 63 Ida. 136.* Hofmeister argues what fits a rural driveway, fits the Lot #6 sewage system. Swanson permitted use of a system established by her for her. So, H argues, Bandelins' claim to a prescriptive use easement fails: They are thrust back on trying to prove co-ownership. Stewarts and Bandelins say they paid for 1/3rd ownership each and are surprised belatedly to find she recorded Lot #6 as if she were sole owner. Stewarts have a written easement. *But why a written easement if they were 1/3rd owners?* Bandelins are having trouble finding the probative checks given the power of attorney mentioned earlier. *Doesn't the Stewart easement proof undercut the idea of outright Bandelin 1/3rd ownership?* It will be intriguing to see which path the court takes – if only because the supreme court's position in Chen augurs problems with finding prescriptive-easement-claims valid re the Andrews' built water-system. *I'd like to avoid a hassle over that and get the de facto users on a solid legal basis so to cabin their rights securely against unreasonable incursions and cost-shifting.* Once that's done we can entertain reasonable non-user claims, if any.

6. The 1995 Conditions of Getting a Lawful System. Perusing the application forms and talking with government agencies indicates the following points & prerequisites are the chief considerations. It is no joke getting all this done.

6a. Permits from 3 different agencies are required: (1) Idaho Dept of Water Resources (for water withdrawal right), (2) Idaho Dept of Lands & (3) U.S. Army Corps of Engineers (both for encroachment on Lake Pend Oreille).

6b. As the old TSUWA is legally as dead as Talache Land Corp [cp. Enc. F and A], and as there is always the possibility that some reviewing agency will cavil at an application post 15-years unlawful withdrawal, the least peculiar-looking application triggering the least nitpicking scrutiny will fare best. The Water Withdrawal Permit assumes the littoral property owner(s) are making the application and otherwise requires evidence of littoral property owner consent and non-littoral property owners' legal rights to make the application. Given Chen and related cases, the latter will be hard to sustain.[2] Consequently, the following path appears the most likely to succeed.

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[2]Relatedly, going over the records again in light of Bandelin comments does not make it clear that one of the houses' owners (Nordeen, predecessor of Mays) ever paid any money for a hook-up -- and appears to have been treated by Andrews more like Privette's claimed membership (as a return for work, past or prospective). If so, that's another can of worms it would be nice to avoid opening.

First, as a precaution, so we know the likely points of making a nitpicking-trigger mistake, Margo and I are applying for a small and wholly separate new single-household system -- the least problematic case in terms of anti-pollution requirements – which can serve as a backup, akin to your house's upper TWA alternative. [As I got into the question of water system design, it turns out that a small system is in fact very cheap, because of de minimis single-household water treatment requirements, the relative cheapness of a single ultraviolet (in lieu of chlorination) apparatus and of a 3/4ths to 1 hp pump. The 1979-80 costs of the larger system, allowing for inflation = 220% x 14705 = $32350 in 1995 dollars, seem excessive – too much having gone on interest, and payments to other than actual builders, that should have gone on a holding tank.] We have already made one minor attention-triggering mistake that we can avoid next round.

Second, we need to say to any other than the 6 "households" and 7 or 8 lot-outlets that have at least de facto use for 5+ years that we can't process any requests until we are properly constituted.

Third, we need to get the information as to existing alternative systems supplying these households required on the application forms and maps. [I think this is only yours and Mays' lots, isn't it?]

Fourth, Margo and I need to make the 3 water withdrawal and encroachment applications to the required agencies mentioned earlier (which are probably best co-ordinated with Cahn/Nash seawall repair and design change encroachment permits) after the 6 user households have made clear what they want incorporated in the non-profit corporation's charter and by-laws.

Fifth, we need to write the by-laws and incorporation papers and set up the non-profit corporation so it can "receive" the permits' powers, and act. I suggest we get the by-laws done and agreed to by the time we seek the incorporation, so we don't repeat the half-baked 1980-82 situation.

Sixth, I think we should at the outset restrict the incorporators to the de facto user households and their lots because of inclarity in the applications by Idaho agencies of federal standards. And we should be fairly quick about it. That's to say, Idaho (in I think 1989) changed its statutes to incorporate in principle changing (and ever stiffening) EPA federal water quality standards and N-user provisions. On the upside, however, there may be a gap as to the N of users at which point equipment and monitoring requirements become impossibly expensive. **The clear point is it gets very expensive when you get to "Either X households/hookups or 25 persons for 60+ days per year." The unclear point is whether X is 10 or 14 or 15.** Different officials seem to think different Xs. Really, and they act accordingly. On the downside, and again a reason for expediting matters, counties seem to have some latitude as to how big X is before they start imposing an intermediate standard level of their own. I am told, e.g., that Kootenai County wants to limit the simplest, least treated, unmonitored water permits to single family ones, whereas in Bonner you can still do somewhat better than that.

7. Next Step: Drafting Incorporation Papers and By-Laws -- Checklist of What Needs to Be In. Unless I hear from you soon to the contrary, I'll assume that you think this manner and order of proceeding is sensible and go ahead with permit applications. Respecting incorporation articles,I've almost finished a first draft which I'll send you in a couple of days, and to other users with a note seeking comments, modifications. Their suggestions I'll forward to you as they come. Perhaps you could redraft. I'll try proceeding with Cahns on the seawall and their very serious erosion problem to the north of their dock. As the just recorded Kiebert Survey [Enclosure G] shows [orange], about 1/4 of their lot is underwater in summer. It would be nice to get a redesign of the Nash/Cahn seawall with a boat ramp that we could let Loop "householders" rent access to for a nominal sum. But I fear Swanson's and Mays' moves have chilled Cahns' views further. I'll just have to do the best I can – & fill out umpteen forms. *It's harder to "Pareto-optimize Talache layouts" than to chair a Univ of Calif Academic Senate with 800 professors, I've learned.* Ah well.

Sincerely yours,

MAR 2 8 1997

March 16, 1995

A. E. Keir Nash
1033 North Ontare Road
Santa Barbara, California 93105

RE: Talache Landing Water Association

Dear Keir:

Thank you for your recent correspondence to me. Also let me suggest to you that the proposals for legitimizing our system with respect to a lawful system as well as obtaining the appropriate permits in my judgment are appropriate.

It's in everyone's best interest to legitimize the corporation and if that takes By-laws and Articles of Incorporation and you have already commenced such a proposal, I would suggest that that continue.

I understand your other duties and also recognize that you will occasionally have your attention diverted from this matter to other matters. Such has been the case with me and others and thus it has never been accomplished. If it is necessary to have the corporation in tact prior to the application for permits so be it.

The only other issue is that I am not quite sure how the lawsuit referenced in your February 17th letter affects the application of future assessments but am attempting to await the end of March before sending out assessment notices. Although I have not done final calculations based on past years usage I would anticipate with several repairs as well as increasing electrical rates that it may go up somewhat.

I hope this letter is what you need for purposes of moving forward. Your efforts do not go unappreciated.

Very truly yours,

TIMOTHY J. HARKINS

TJH:th

A. E. Keir Nash

P. O. Box 492
Sagle, Idaho. 83860.
(208) 263-0765

Political Science Dept., University of California
Santa Barbara, CA. 93106.
(805) 687-9315

12 April 1995

Timothy Harkins & Matt Sanger
Attorneys at Law, Spokane, WA.

Dear Tim and Matt:

Thanks for your (Tim's) 16 Mar 95 letter, which Santa Barbara and Sagle postoffices have been forwarding & reforwarding in circles. Your letter is, as you say, "what... [I] need for purposes of moving forward"-- your letter and Enclosure A, the quitclaim from Goebel that my title insurance company has now secured on our waterfront and uphill properties. That at last permits Nashes to join the select company of Sanger/Harkins/Fouts and Mays in having clear Talache titles defensible against all, and to move ahead more freely.

In light of: your letter; our Apr 5 phone conversation; where the Swanson-Bandelin trial is (put over, after 4 days of plaintiff, to May 16, with judge shying like a nervous jumping horse at finding a constructive trust or easement for reasons relevant to our water system's legal situation); visits with officials; new-owner-realtor disinclination to heed counsels of caution (see Encl. B, Featherston letter to Coldwell Banker); escrow delay of Penttila sale to new owners; discovery how Swanson obtained the key and hooked up her hairpin property to our system [in a fashion disregarding both our conditions and, as it turns out, Idaho regulations]; and Soss' preferring others than him to work on clearing the situation -- in light of all that, **as well as a logger's unexpected appearance even while I write,** I concur in your desire for speeding legalizing the system. I so act. Having just spent 2 hours with Dan Featherston (by now one of the 2 Sandpoint attorneys most familiar with Talache problems, and with considerable litigation experience re various Bonner water systems), I have asked him to write you once he has gone over the proposed draft of Articles of Incorporation re their consonance with the laws of Idaho. I'm sending them to you now so you both have a chance to look them over beforehand. If I don't hear from you to the contrary, I shall file them with the Secretary of State next week. I expected to hear a dud.

May I first urge that the pace you attribute to my academic inclinations to theory (vs. your practicality) is more because I alone [among the 5 owners who for occupational reasons should be more readily able to deal with the problem] am doing the work (putting research aside), one of you is so far free-riding [your turn -- *the presidency* -- is at hand near the end of this letter!], Mays remains angry, and my spouse has 2 jobs. **It is still more that the problem's scope is broader than incorporating the system. There's also the water main's problematic uphill routing near your/Mays' boundary, the present-day probable unlawfulness of your and Mays' drainfields, a space-bind if either fails, how many of the lots on this tier are going to be mercilessly clearcut-logged (a question suddenly re-emergent), and the imminent collision of the old Talache Water system you have a passive membership in with Idaho-adopted [IDAPA 16, Title 01, Chapter 8-002] 1992 national [CFR] regulations.** I don't think that system's board yet realizes Idaho regulators are prepared to pounce [as I understand Mike Nelson] on that system *if they determine it has reached 25 users [persons. not hook-ups] for 60 days per year*. I think you'll find reliance on this alternative hasn't been viable since 1992.

The pace has also been due to the untheoretical legwork visiting officials in C d'A and Sandpoint to build credibility in order to proceed. Others have so roiled Talache's reputation that one official, about to testify in court, announced that going to Talache on business was like entering "the twilight zone." Better was that he next said he wished Nash was around (at court) to straighten things. To that Swanson, I'm told, took exception.

Other delay has been: (a) the time for Alan Kiebert to finish surveying shoreside Lots 1-10 [Encl. C, now recorded] and locate where uphill lots touch the county-dedicated, owner-maintained 30' road above your and our houses [for the old pin, look under, when next here, the corner of a boulder now atop Sanger/Harkins-Nash-road juncture; and see, notation 27 1/2 on cedar just north of utility pole = 27 1/2' above lower edge of right of way,

which hence has upper boundary running from red/blue stake near utility pole almost along top of bank];

(b) grading said road in its correct boundaries [you and Mays have about 10' above your railroad ties, it turns out, which you or Mays may need for sewage-problem reasons discussed below]; and

(c) getting the permit and having installed and approved [now done -- see Enclosure D] the new drainfield needed in our front garden to deal with the shorefront property's unlawful condition of having a water outlet but no proper place to put, e.g., the chlorine/water mix when cleaning the chlorinating system.

It was also necessary to apply for water rights before incorporating, so to frame the "geography of distribution." **The water rights application was filled out by Margo and I in the office of the Idaho Dept. of Water Resources' person in charge, with his help -- so should be okay. As long as we follow through with the rest promptly, it should satisfy his 31 Mar 95 Notice of "Illegal diversion of water."** [Enc. E.]

Item	Stage of Applications							
	Water Resources Dept	Dept of Lands	Public Comment	Army Corps	Sec of State	Panhandle Health	Planning & Building	Construction
Small Water System	$+okay	$+okay	okay	okay	na	na	na	
Drainfield	na	na	na	na	na	$+okay	na	built
Main Water System	$+okay	prelim discn okay			in works			
Dock	na	prelim						
Fix seawallna	disc okay							

The above table shows where matters are. The chief additional considerations since my Feb letter are:

1. The all-determining Idaho adoption of the federal "25 persons for 60 days/year" standard for turning a private into a public, highly regulated, very expensive, daily-monitoring, water system. Forget the N of connections variations in agencies' standards earlier discussed --e.g., 10 vs. 15 hook-ups. *The test that bites first now is this "25 persons/60 days per year" one. It makes 1995 utterly unlike 1980.* We have now 7 service lines -- fortunately 2 on lots owned outright by one 3-person family. Imagine 4 houses with Harkins' size families = 24 of the 25 persons to propel us into what George Worst says is more like $100,000 than $10,000 upgrading expenses, not to mention daily monitoring. Lou Meigs [of Welch Engineering, that designed our system] stresses the same point. This forecloses system expansion without extraordinary expense-levies for new owner hookups [something like $25,000 per new house for each of the defunct 1980 corp member dead-rights]. Expansion without $ would reduce the market value of existing homes *[how do you sell if you tell the buyer he can occupy for, e.g., only 59 days/year?]* [Parenthetically, all this suggests why I have taken out rights on a new small separate water system, so that *in extremis* one or both Nash lots can leave the system.] These observations show the untenability of your upper system alternative. Present users can't add passive rights-holders without being way over into federally-mandated high-$ territory. Some experts predict that the government may reduce the N (more likely of hook-ups than persons) triggering regulation.

2. Meigs' $ estimates for engineering appraisal; Idaho flow-capacity standards; Idaho pipe depth requirements; dangers of repairing/not repairing leaking old TWA watersystem lines above our houses.
2a. Examining Welch system plans (the "as-built" is lost), Meigs chortled at his predecessor's design, especially the absence of any holding tank or filtration, warned against expansion given the 25 N limit, said he could do a capacity estimate ($300 if we furnish him with various data so he doesn't have to visit) but the system seems obviously too weak (since 1987 pump and **1991 main size downgrading**[1]), said he'd also for $1000 calculate what's now needed to meet environmental regs -- but to do so we need a new system, not minor re-design.

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[1]**Which I've noted since my Feb letter's disputation on pump GPM. The 1991 downsizing of lakeside pipe from 3" to 1 1/2" diameter —> 25% of original pipe capacity. Why don't you tell me these things?**

2b. Idaho Instantaneous Waterflow Guidelines. Previously I've used Wash. State and FHA recommendations re pump/pipe capabilities for N houses -- given me by DEQ as rough guidelines. *However, enclosure F [Fig. 1. "Maximum Instantaneous Water Requirements for Domestic Use"] was attached to the Dept of Water Resources "Illegal diversion" memo by the official who shepherded our water rights application.* [See his penultimate sentence.] We should go by these Idaho guidelines. To the right of the little table "Houses Served - Rate of Flow in cubic feet per second" I have converted Idaho cfs figures into the gallons per minute we usually discuss. [GPM = 7.5 x 60 x CFS.] **Just taking hookups in use the past 5 years we are already above optimum gpm for our pump -- without allowing for head or pipe friction.** Please add these points to my Feb. letter's (pp. 1-2). Please note also two points about Enclosure G, the water rights application. **#1.** The application is, after discussion with the official, for 0.12 cfs [=54 gpm]. The application, if approved, grants an "up-to-0.12 cfs" water allocation and a 3 year license to build up to, not a requirement [though to complicate matters the Lands/Army Corps encroachment, if granted, may read 2 years]. **#2.** Please see the required map of lots *to or through* which water has been distributed done in his office. Note it has a spur onto the O'Higgins [Nash/Mays] lot. This copes with the eventuality of sewage system breakdown, particularly on your or Mays lots, *via system-main relocation*; and (b) possible well-drilling . [See 3 infra.] Note also where no spur is.

Allen How big an N 4 houses can we have?

2c. Idaho Pipe Depth Requirements and Swanson's 32-inch Self-Help Hook-up. Please re-read my 8 June 1994 letter to Hofmeister [spelling out a careful position Swanson has ignored] and 8 July 1994 memo to our system users [ditto]. *Note my concerns about her idea of a spur-pipe buried only 32" and my asking Soss to find out -- who came back with a fuzzy answer. The correct answer is posted at eye-level right next to where one talks to the Panhandle Health receptionist and is in Enclosure H = **at least 4 ft.*** Redoing the service line to our house and re-connecting with the main 62' uphill from our house's foundation (which main ends its northward traverse at our connection, consistent with Terry Nordeen's statement that it comes up from the county road below near your/Mays boundary) found the main at least at the 5 foot depth in the plans (as also our service line). It is a bad idea to permit a shallower line. So say Nordeen, Meigs, and Ron Kohal (excavator for Block 5 systems).

2d. The dangers of repairing vs. of not repairing the old TWA 2" line and frostfrees near our houses. During excavations, after the appearance of Mr. Privette, Cal Kelley (the watermaster of the old system) turned from being very co-operative about our enterprise -- even to the point of helping dig and of phoning the places for us to rent a metal detector and buy piping, and saying we could relocate the old system's pipe if needed so to obtain the now-required drainfield distance from both house foundation [20'] and water main [25'] -- to concerned and angry. He talked about ripping the 2 frostfrees out and fining you all and Mays for violating your passive membership conditions in his system. That change of demeanour, seemingly encouraged by Privette, arose from Cal's finding the water still flowing in these frostfrees and Mays' hose nearby. He also found the frostfree between Nash and Harkins/Sanger is on Nash land, by an inch or two, though the piping to it seemingly runs across your land, and seems to have a longterm leak under or near it. This led him and later the system's veep to as-yet-unsuccessful efforts to cut off the frostfree at its connection with their main spur down from the top, and [after considerable digging at the top having "borrowed" our excavator and backhoe unknownst to me till later] to turn off the entire spur at the top. The valve seems to close only partially [Kohal attributes this to excessive head] and is ancient. The only thing they have succeeded so far in doing is putting a stake in the middle of "our" road.

So the leak continues, if they are right about it. I think there may be 2 or more leaks. I also think that given Kohal's view as to excessive head and the ancientness of their piping which seems to be 2" galvanized steel, probably 40 years old [though Privette confuses the watermaster further by conjuring up an even older, silver-mining era pipe continuing down toward Johnson's and may or may not be joking] an early order of business for our new corporation should be exploring the possibility of our relaying their system with new, stronger pipe above our 3 houses and closer to the upper edge of "our" road. **There is far too much downhill waterpressure in their piping to accommodate an explosion when none of us is here for a few weeks. Possibly this ancient leak, if it exists, is contributing to the footing cracks I note on your home.** Does your house have a curtain drain?
In any event we have now seen that their pipe is buried only about 2' to 2 1/2' below the road surface, consistent with Nordeen's account of its shallowness by his (now Mays') cabin and its freezing solid for 4 months (Jan - Apr 1979) when he lived here. All seem to agree that the only reason it doesn't freeze when full of water in the winter

is that the pipe is leaking. **If we or they don't fix it, we have 4-season leaking near our houses. If we or they do fix it, without burying the pipe deeper, we will have winter-freeze, and spring-burst.**

3. Incipient clash between system main routing and Harkins & Mays drainfields -- and relevance of O'Higgins property. Considering together Enclosure I [your house's 1973 Panhandle-Health "vacation home only" permit, okayed then by Bob Camp whose local reputation is one of being much stricter these days] **and Enclosure J** [composite map of comparative lot distances from Lake made when negotiating with Panhandle about the drainfield now installed] **shows a dual watersystem piping/Sanger-Harkins sewage layout problem** [and suggests a similar watersystem/Mays sewage layout problem, "suggests" because there's no record of a septic permit for that house in Panhandle files (spotty before 1970)]. *This warrants your close attention because it and analagous circumstances springing from Talache Landing's too small lot sizes account for a distinctive aspect of the Articles of Incorporation -- permitting lot owners to move around parts of the system at their own expense provided that the result is not detrimental to, or improves, the system's functioning, and relatedly obligating the system board of directors to aid, in non-financial ways (e.g., writing supportive letters where the request is reasonable), relocations of other systems so to overcome layout problems of the sort I now describe.*

First, please add the distances across your 70' property width shown in your permit map, starting with the actual 5' setback of your house from our joint property line. You get 5' + 32' (house) + (assuming 0 distance between house and drainfield) 35' (drainfield) = 72'. This is impossible.

Second, superimpose 1995 Bonner County setback requirements for drainfields = principally, 5' from boundaries; 20' from house foundation; 25' from system main.

Third, consider my composite map's Lake setback lines. [The lowest line of each line-set is the foot equivalent, erring if anything by slightly understating distance.] Without going into soil-type and height-above-lake-offset details, Panhandle is comfortable about A or B soil type above the higher lineset, gets uncomfy with certain A types (sandy/gravelly) much below the upper line, and with B types (somewhat clayey) much below the 200' line. If your soil type is the same as mine [A], they are happy from about the footprint of your house uphill.

That's insufficient room above your house, if your current septic fails, for any part of a replacement -- without moving both mains uphill, or the house downhill. Even without failure, you are now barred from any expansion of the home -- e.g., a clothes-washer if it doesn't have one, or a new bedroom. [Because our house is 21' lower, our drainfield fitted.] *Beside your house*, if our system's main is just on your/Mays boundary, you have [70 - 5 (the Nash/Harkins 5' property setback) - 32 (house) - 20 (house to drainfield) - 25 (drainfield to main) = 70 - 82 =] *a negative 12 feet. Here Euclidean geometry is at a loss to find room. Below your house* you need to come down 20' to about 235'-245' -- getting hairy unless you have B type soil. As the Mays house is about 10' wider and the property only 60' wide, it seems that his situation re a replacement is worse. **Moreover, both layouts seem too close to the system main (under 25' away) to pass muster today.**

Here is where the O'Higgins property figured in my thinking about purchasing, and may have to enter water system planning in future -- e.g., rerouting the main or providing space for someone's replacement drainfield. It is about the only place (except Danyow's property) on the second tier that has points for a well the required 100' from a contamination source. The more I talk to experts, public and private, the more I hear the days of Lake withdrawal are fading and that it's far less expensive to meet purity regulations with a well. I know you don't like discussing my firm reactions to Mays' starting matters off with his Penttila letter of Jan 94 re me the evil California developer, then following up with his adverse possession claim. And I understand why Frances opposed my conservationist aims even before we jointly bought. But to this day I do not understand why the two of you would have objected to such a modest set-aside entirely costless to you -- the more so as I had been told that at least one of you liked the wilderness. Maybe someday one of you will explain. Till you explain why I'm wrong, I think O'Higgins should be held in reserve for a bad day of septic or watersystem location problems.

4. More clearcutting between Johnson's and your/Mays' places?? As you know, I could not influence Frances against, with the cutting skills of the other Kiebert [Kermit, not surveyor Alan], turning the hairpin-bend property into an example of what the Sierra Club hates. My joint O'Higgins purchase [incidentally Mays never

had a chance to buy then, as I later learned, because Frances made the offer before it ever reached a multiple-listing, or virtually in the hour that...] at least prevented an O'Higgins clearcutting. To my consternation, today there appeared a logger going over the Gibbs lot [a good Gabel&Gabel title chain property, purchased Dec 94 on a warranty deed by Frances who in turn six months later sold 1/2 interest via quitclaim (!) to Stewarts who are unaware of the difference] with Stewart. The logger said there's 4000 board feet there. So we have another Frances plan [Stewart's uncertain] to produce another devastation @ $400/1000ft for $1600 profit. I'm not at all sure that either of you care, so won't bother you with proposals to avert that unless you ask me. I've put in enough time and $ on this sort of public-good enterprise on my own, with just brickbats hurled at me in return.

5. The our-water-system-relevant, anti-easement doctrines being peddled at the Swanson-Bandelin trial, and the seeming strong views of the judge about attorneys' duties to be very good people, with very clean hands when in business relationship with laypersons, if equity is to be invoked to overcome absence of a written easement or title. See first my Feb. letter's reference to Hofmeister's trying the Chen wildlands exception to defeat a prescriptive easement claim by Bandelin. The trial is more intriguing because whenever Bandelin's attorney, Featherston, develops prescriptive easement, actual use, easement by estoppel, or constructive trust arguments against Hofmeister's revocable license position, the judge keeps coming back to whether an attorney [Bandelin] in a business relationship with a layperson can so use equity at all -- even if the latter has fooled the former by taking money for the land/system and not recording title or easement, etc. The practical result of a Swanson win would be 5 more septic drainfields on "our" tier. The doctrinal result would be interesting. Compare the 2 situations. See Box Questions below. If Bandelins have no easement, if Swanson can at will revoke their license to use, and send them wee-weeing in the wilderness, couldn't any watersystem user through whose property this system passes say, "Sorry, but I just revoked your license." Weird? Should we want this? *All these considerations seem to urge "double-bottoming" our system -- in Idaho 5-years' easement doctrines and in the "lapse into the individual owners' position " so that one or the other will do against "pirates."*

Who Has Cleaner Hands? How (Ir)revocable the Licenses?	**Swanson-Band. sewage/water**	**Our water system**
Are practising or non-practising J.D.s involved in the system?	yes	yes
Are "innocent" non-lawyers involved?	yes	yes
Did former intimidate latter re rights in system or property ownership?	no	perhaps
Were water rights obtained for owners' related water withdrawal?	yes	no
Was there an encroachment permit for related water withdrawal?	yes	no
Were Idaho Corporation laws flouted?	no	yes
Were $ Payments for land where system located made by all parties?	yes, seemingly	no
Have $ Property tax payments for such land been made by all parties?	yes	no
Were there $ Investments in watersystem's building by all parties?	yes	no
Have $ Upkeep costs been paid by all parties?	yes	yes
Is the Title in all parties' names?	no	no
Are there Written Easements?	no (Band.); yes (Stewart)	no
Have authorities objected to an "illegal diversion"?	no	yes

6. Articles of Incorporation To Be Filed with Sec. of State? IC 30-3 (Non-profit Corporations Act) permits building into the Incorporation Articles [Enclosure K] protections that should satisfy owners of what would become servient estates and others in the system. I've put this line-up for temporaries: SANGER [Pres.--it's time for him to 'input']; K. NASH [Vice-Pres. -- I'll do much watermaster-like donkey-work, but an attorney seems needed at the top]; HARKINS [Secretary]; M. NASH [Treasurer]. It might be desirable to have Mays, but any officer is going to have to stipulate willingness to discuss system matters civilly with any user. Perhaps you can bring this about. Let me know of any changes you think needed. I agree we should proceed additively with other current users -- and soon, so I can turn attention to the academic enterprise in Enclosure L [letter from Idaho L. Rev. editor], in which, I'm happy to report, Dan Featherston is going to join me as an author.

Sincerely yours,

A. E. Keir Nash

Marguerite Bouraad Nash
1033 North Ontare Rd.
Santa Barbara, CA 93105

April 26, 1995

Dear Matt:

I have just finished reading your two contradictory letters of April 18 and 19, 1995 written to two different people (Ms. Frances Swanson and my spouse), on the same subject. They were faxed to me by my spouse en route back to Santa Barbara because of my impending shoulder operation.

I am appalled. It is hard for me to believe that an attorney at law who often engages in mediation and arbitration (you mentioned that to me Labor Day 1993), would write the letter to Swanson having just written a conciliatory letter to my spouse a day earlier.

In your April 18, 1995 letter to my spouse and the subsequent discussions with him during the April 22, 1995 meeting, discussions that took place in the presence of our son, you depicted yourself as the honest broker seeking an equitable solution to the problems of the water system and offering to redraft articles of incorporation that are legal and fair. I must admit that during that meeting you did a credible job of convincing them of your honorable intentions, and that your dealings were above board. Even I, having heard the details of your discussions, was willing to let myself be persuaded by your arguments. Unfortunately your letter to Swanson, given to my son by Mr. Privette, told a different story. It spoke volumes regarding your intent and your role.

Unlike my spouse, I am not given to lengthy letters or extensive discussions of issues. I will, therefore, state my position clearly and bluntly lest there be any mistake of my stand. I am now putting you on notice that any articles of incorporation, drafted by you or other parties, that do not meet our needs and protect our rights, and that are not in complete compliance with Idaho and Federal laws, will not be acceptable to me. Should the articles of incorporation and the by-laws be less than I have suggested, you may find yourself needing more than charm and smooth talk to put them into effect.

Due to my operation, I expect to be out of commission for a short period of time. After recovery, I shall be delighted to discuss with you possible solutions to the water system and related issues.

With kindest regards.

Sincerely,

Marguerite Bouraad Nash, Ph.D.

cc: Harkins, Johnson, Mays, Penttila, Soss

Matthew K. Sanger
E. 2503 38th
Spokane, Washington 99203

April 19, 1995

Ms. Frances Swanson
P.O. Box 174
Sagle, Idaho 83860

Dear Frances:

Enclosed please find a letter and a copy of proposed Articles of Incorporation that Tim Harkins and I received from Keir Nash. I showed them to Mark Mays, and he suggested that I should send them on to you because of the obvious effect it has on your rights.

I am also enclosing a copy of the letter I sent to the Nashes in response.

I am trying to keep on good terms with him. His cabin and his deck are only a few feet away from ours. I feel that I want and need to stay on good terms with him for as long as possible. If, for any reason, you would like to get hold of me during the day, my work number is 509-838-2700.

Cordially,

MATTHEW K. SANGER

MKS/ccm
Enclosures

Matthew K. Sanger
E 2305 38th
Spokane, Washington 99203

April 18, 1995

Mr. and Mrs. Keir Nash
P.O. Box 492
Sagle, Idaho 83860

Dear Keir and Margo:

Thank you for all of your work in trying to get us incorporated. Your industry is impressive.

I know I have not participated in this necessary process, and probably have no right to make demands. But, I do have some suggestions. I fear that if I do not speak up now, you may further hold my non-involvement against me. I know I have to do my fair share, but please remember, Talache is my refuge from legalistic demands. I find it hard to have to deal with these problems when I go up to the cabin to get away from similar ones.

My suggestion is that you simply file Articles with the minimum generic requirements allowed by Idaho law, or hold off filing them until we can have all the cabins review and approve them. Your work is not wasted. In my experience, the provisions you want in the Articles are more appropriate to the bylaws. Aren't we going to have to get agreement of all cabin owners currently served by the system? If not, we might find ourselves subject to a lawsuit from those excluded or from those who do not agree to terms. The most important thing would seem to be to have all the cabins agree to being incorporated. I think we should get that done first, and then try to find consensus to the governing provisions of the corporation in the bylaws. Personally, I am hesitant to enter into any organization of property owners that requires unanimity. I also think that we

p. 2

should stick to the subject of water, not scenery. We have already had a hard enough time trying to regulate ourselves regarding the necessity of water. I, for one, do not have the energy to try to legislate the aesthetics of scenery.

I will be coming up this weekend for a couple of days with a sick friend. Hopefully, we can take a little time, at your convenience, to discuss this further.

Again, thank you for all your work.

Cordially,

MATTHEW K. SANGER

MKS/ccm
cc: Tim Harkins

APR-26-1995 10:50 FROM 4TH ST LAUNDRY 7026026790 TO 18088811109 P.04

UNIVERSITY OF CALIFORNIA, SANTA BARBARA

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DEPARTMENT OF POLITICAL SCIENCE SANTA BARBARA, CALIFORNIA 93106

30 April 1995

To: Johnsons, Penttilas, Sosses as Owners of Properties Using Talache Water System
From: A. E. Keir Nash

Re: **LEGAL WARNING?;** ATTORNEY FEATHERSTON WORRY;
PROGRESS AND MONKEY WRENCH EN ROUTE TO LEGALIZING THE WATER SYSTEM;
FORTHCOMING 2ND DRAFT OF INCORPORATION ARTICLES?; &
A POSSIBLE SOLOMON-LIKE, BROADER TALACHE SOLUTION

FIRST, I should bring you abreast of considerable progress toward legalizing the watersystem jolted by an unexpected recent problem. [Compare Sanger letters of 18 & 19 April 95.]

SECOND, you should think through carefully the implications of a legal liability issue raised just before those letters by Sandpoint attorney Dan Featherston, and passed on by me to Sanger and Harkins.

THIRD, you should consider whether a joint solution proposed to several intertwined Talache problems appeals. I begin by clarifying why my wife took indignant exception to Attorney Sanger's procedures while we thought Sanger and Nashes were jointly working in good faith on drafting incorporation articles and while Nashes obtained permits as riparian owners in order to pass the water withdrawal and lake encroachment rights on to you all.

Please understand that, to legalize, 3 kinds of rights [1= right from Idaho to withdraw water; 2=right from Idaho and U.S. to encroach on Lake Pend Oreille; 3=reciprocal rights among system users] need to be obtained or recognized and distributed or transferred [presumably via written easements or equitable servitudes] while a 4th is convenient, but optional [membership in a watersystem corporation]. Considerable confusion seems to arise from forgetting the need to dovetail the 1st three with the 4th, and proceeding as if the 4th is all that's needed.

A. A PUZZLE. Perhaps our chief puzzle is the disjunction between Mays' preferences in his July 1994 response to the users survey re additional hook-ups and Mays' April 1995 concern that Sanger should send a particular draft of Articles "on to [Swanson]... because of the obvious effect it has on your [Swanson's] rights." My wife was angered by his friend Sanger's decision to send it outside the user group *prior to letting other water system users* see it, *after its drafter had asked* Harkins "and Matt to let me know if I've succeeded" [15 Apr 95] *and agreed to shelve it, and because at no time during extensive discussions between Nash and Sanger, did Sanger ask or inform Nash about so circulating outside the system-user group.* The sending was the more puzzling because the draft's "Swanson-rights-affecting" content sought to approximate, and to actualize the implications of, what seem to have been Mays' July 94 preferences.

B. PROGRESS SINCE SUMMER 1994 SURVEY. To remind, my wife and I began pursuing legalization after:

(a) the June/July 1994 survey of system-user preferences [see my 8 July 94 memo to you];

(b) Tim Harkins' 13 July 94 letter to Margo and myself stating the related views of him and Talache cabin "co-non-owner of record"[1] Matt Sanger and indicating that as there was "apparent consensus" re the desirability of legalizing, as neither Harkins nor Sanger "have had the time" to" take the needed steps..," and "because you have spearheaded most of this organization to date, I ... ask that you have the opportunity to give your ... proposals;"

(c) Mark Mays' 11 July 94 letter to me *taking the strongest position of any user against easy new hook-ups*, specifically by Frances Swanson. See Mays' pages 1 & 2 (enclosed), saying in part:

[1] **I use this awkward phrase as Sanger says he and Harkins are not Talache cabin titleholders of record.**

"... Swanson has no legal right to access ... purchased shares in a corporation ... proven ... dead. ... some of us feel wronged by her... feel .. she has treated some of us unfairly...." "regardless of .. legalities....we should let her in if it is also fair to others" [but] "in a way that doesn't cost other people.... any cost of improvements to ... fall on her... some pro-rated contribution for what... happened with the system...." -- Mays, 1994.

C. TEMPORARY SUSPENSION DUE TO CLAIMS BEYOND OUR IMMEDIATE CONTROL. My wife's and my pursuit of watersystem legalization was aborted for 6 months in summer and fall 1994 while dealing with 2 pre-emptive attempts still puzzling to us. One was Mays' adverse possession claim on a small part of the O'Higgins parcel [abandoned by his purchase of Swanson's co-tenancy in September 1994]. The other was Swanson's unusual driveway easement claim across Nashes,' Bandelins,' and Cahns' waterfront properties [rescinded Oct 1994; quitclaim recorded Feb 1995, after title insurance company intervention].

My wife and I could not proceed on watersystem legalization so long as a [temporary] cloud remained on the shorefront property through which the systemwater flows en route to you. We have been expecting, since the rescissions and quitclaim, inquiries from Everett Hofmeister, Swanson's att'y, whether we might take up again where matters left off respecting driveway easements, etc. But no inquiry has yet come.

D. RESUMPTION IN FEB. 1995. As easement matters cleared, we consulted with Harkins about suggested procedures [see especially #6 & #7 of my 17 Feb 1995 letter to Harkins,. & see his 16 March 95 letter -- ***"I hope this letter is what you need for purposes of moving forward. Your efforts do not go unappreciated."***] My wife and I, visiting Coeur d'Alene and Sandpoint government officials, proceeded to make the rights permit applications in the order suggested in my 17 Feb letter. As attachments show, permits have been awarded for the "new system" and are in the works respecting legalizing the old system. As of April 18 & 19, my wife and I thought we were advancing well and that our efforts *were* appreciated. Seemingly, now, not so.

E. FEATHERSTON CONCERN AND MONKEY WRENCH? In mid-April, Dan Featherston raised a matter that I promptly relayed by phone and in writing to Harkins and Sanger even as I urged that at least one simply had to take time, at last, to stop looking at the watersystem matter in isolation from other Talache matters under litigation and "get on top of a complex tangle generated by permanent Talache residents." I put the Featherston concern first to them to find out whether we should worry about it and whether they, as practising Washington State attorneys, would take it seriously. Though I was led to think they thought Featherston in error, later events suggest they were more worried than they wanted to let me know.

F. SANGER'S SATURDAY APRIL 21-23 VISIT TO TALACHE, BUT NOT WISHING TO TALK WITH FEATHERSTON; APPARENT DISJUNCTION BETWEEN CHIEF REASON FOR SENDING TO SWANSON (EFFECTS ON SWANSON PROPERTY RIGHTS) AND CHIEF OBJECTION PUT TO MY SON AND MYSELF DURING VISIT (LETTING OTHER WATERSYSTEM USERS KNOW BEFORE WE FORM A CORPORATION WHAT NEW-HOOKUP POLICY WE REALLY INTEND TO VOTE FOR ONCE WE DO). At a Saturday, April 22 meeting with my son and myself, fortunately otherwise productive re some basics that should be in the Articles, Matt Sanger seemed to think that a primary problem with my draft was not the hookup policy itself but rather that so spelling out a user-admission policy in the Articles meant we wouldn't get consent. Therefore, as my son and I understood his position, we should leave the policy vague until after Incorporation, when other users would be bound by the majority under Idaho law. *He seemed to like something close to the policy I had drafted and to be certain that if Nashes voted for it after incorporation, at least half the cabins would favor it [counting, as my son and I also understood, Harkins/Sanger and his friend Mays].*

I preferred an explicit agreement as to policy before incorporation. However, I left matters there since the policy seemed to approximate a majority view of the June/July 1994 survey, and his forthcoming redraft (supposedly to arrive this past week, but not yet here) would provide opportunity to redebate.

Still assuming we were proceeding in mutual good faith with a common legalize-the-system along-Mays'-preferred-lines purpose and unaware of Sanger's April 19 letter (or that he had cc'd Swanson his letter to me, but not vice versa), I was puzzled that, saying he couldn't stay to see Featherston (a

Seventh Day Adventist with Saturdays set aside, who was planning to boat over to chat from Glengary early Sunday morning), Sanger remained at Talache Sunday later than Featherston's planned visit. Later, a highly irate Bob Privette appeared on the shorefront, visited Frances Swanson, and displayed to our son William a large envelope addressed to her with Sanger's as the return name and address. I phoned Sanger about that, but he still did not tell me of the content of his letter. That came from Privette, whom I thank.

G. RESULTANT COMPLICATION #1. THE DIFFERENCE BETWEEN (1) JUST RECONFIRMING A POLICY AND (2) DOING SO WHILE LEADING AN ELDERLY LADY TO THINK YOU ARE GOING TO RECONSIDER AND CHANGE THE POLICY BUT NOT REALLY SO INTENDING. Matt Sanger, if I've got it right, sees no difference. Both can be said to be manipulating people's opinions for a good purpose. But I do see a considerable difference as to the manipulation & purpose. May I put the difference I see? If one is just reconfirming a July 1994 majority, one can take the posture that's all we are doing and if anyone wants to change, they can raise the issue in timely fashion (before incorporation). *That seems like "Let the Incorporation Voter Beware."*

Please, by contrast, consider carefully the likely effect upon Ms. Swanson's anticipations of Sanger's April 19 letter to her. A different manipulation of opinon is involved. If you were she and reading that letter, wouldn't you think you had at least one and probably two system-users opposed to the policy in my draft? Assume she knows Dan and Dee Sosses' views. Wouldn't you anticipate a new majority? **If Mr. Sanger had told me about the letter when we were discussing the Articles, then I would have said to him: "How can I possibly vote for that policy after that letter. You can't lead an elderly lady on that way. No!"** *That seems to me more like "Let's Fool the Lady & the Incorporation Voter."* The letter almost precludes voting for the policy by anyone aware of the letter -- just in fairness. The April 19 letter contains the boomerang effect of limiting system-user options.

H. RESULTANT COMPLICATION #2. Consider what happened -- as familiarity with Talache can anticipate. Swanson informs Privette, who gets understandably furious at the wrong person. Then he rethinks and delivers to my son. In the meantime, Privette has given information in my Apr 12 letter [not the Articles draft] about another water system to its Board. That information was meant just to explain a complication about a fallback presumed in the past by my letter's recipients (Harkins and Sanger) for their benefit. The Board entirely misconstrues the purpose. The net effect is we get looked at as "baddies." Another boomerang. *Good procedures yield good results; bad yield bad. We should proceed more carefully.*

I. A BETTER "SOLOMONIC" ALTERNATIVE? -- SOLVING SEVERAL TALACHE PROBLEMS AT ONCE BY CHOPPING THE WATERSYSTEM BABY IN TWO. There is an entirely different possible reading of Mr. Mays' position than what I have so far proceeded on the basis of. It is that Mr. Mays' has in fact changed his position sharply from that of last July and has not let his friend Sanger know. That would be fortunate indeed because I have a plan that would, I think, settle considerably more Talache problems and more serious ones than our water system all at once. It only requires Nashes and Mays/Dillon be a little generous with some third parties. I have discussed it with Featherston who takes it seriously and expect he may take it up with Hofmeister. It tries to be responsive to Sosses' concerns, with whom I have been speaking throughout. I put the details in an appendix and map. Suffice it here to say that its main features seek, via a series of easements and related agreements:

(1) to minimize the additional costs of more hook-ups by splitting the system in two and so sidestepping the effects of the principal stumbling block [the 25 persons for 60+ days per year regulation] -- so providing hookups for Kites (Swanson) and Privette;

(2) to settle the Swanson-Bandelin suit [which is running up far too much by way of attorneys' fees en route to a "lose-lose" overall result] out of court by spatial reallocation that has the effect of costlessly injecting about another $60,000-$70,000 into the waterfront economy; and

(3) to permit Mays to do what he wishes with the O'Higgins property parts nearest his boundary and avoid a partition by sale even as it frees up Swanson's selling beachlots #7 and #8 [and #6].

cc: Harkins/Sanger/Mays; Featherston; Privette; Hofmeister

5 May 95

TURNING SEVERAL 2-PARTY TALACHE CONFLICTS INTO MULTI-PARTY TALACHE CONSENSUS

Mr. Soss' note, with whose sentiments I entirely agree if he will include a 3rd longtime Talache family (Bandelins), prompts me to see if those sentiments can yield specific courses of action. Suppose we look at 6 Talache problems, together more readily solvable than separately. *Key is Dr. Mays' new concern for Ms. Swanson's property rights as well as where the Swanson-Bandelin trial* over the shoreside Lot 6 Armon sewage system has gotten to. *Key also is that Lot 6 is* overutilized from a health official's point-of-view, but *underutilized (at least by $60,000) from an economist's point-of-view.*

The 6 problems are:

1. **How to enable Ms. Swanson & "related" property-owners of Shoreline Lots 7, 8 (Deshon) and hairpin-bend parcel (Kites) to proceed** while satisfying legitimate Bandelin concerns.
2. **How to improve various sewage/drainfield layouts relative to Lake Pend Oreille** so to alleviate Panhandle Health concerns.
3. **How to bring both Privette and Swanson (Kites) into the current Lot 1 less Tax 1 water system while:** (a) legalizing it on a readily defensible basis; and (b) providing adequate mutual guarantees for property owners currently on the system that protect both dominant estates in their water flow and servient estates in their quiet enjoyment; but (c) without incurring ruinous costs because of Idaho's adoption of federal water-purifying/monitoring regulations between 1980 and 1995.
4. **How to restore some confidence as to the governance of that water system.**
5. [Less important in itself, but crucial to solving problems] how to get Mays/Dillon and Nashes to agree on uses/non-uses of the O'Higgins parcel given Idaho's non-exclusive use requirement of tenants-in-common--*short of a partition by sale, whose cost would almost require the winner to develop it.*
6. **How to expedite sale of Talache properties that current owners now or soon may plan to sell.**

I refer hereafter to realizing desirable goals as Sossian solutions [he has best captured the right spirit] and to Featherstonian means [my generalizing from his Solomonic "cut the baby in 2" idea for the future is just my derivative idea] and to $-freeing means [another means available]. I try to lower transaction [imperfect communication] costs. These have become high due to misperceptions and unilateral refusals to discuss.

A. Problems #1 and #2 are intertwined in the Swanson-Bandelin suit. *From a practical standpoint,* Panhandle Health officials would prefer to see the sewage from the 3 houses on the Armon system [Stewarts, Swanson, Bandelin] further from the Lake. But having okayed it in the 1970s and unable to find leakage, they have no power to order their preferences. Swanson has found places uphill for 3 of the 4 houses involved if Lots 7&8 are sold and a new house built on Lot 6 [1 drainfield to hairpin bend; 2 to Gibbs]. Bandelins have no place to go even were they willing to see the system closed down.

From a doctrinal standpoint, Hofmeister's "the system is a Swanson revocable license system" argument lacks a chief rationale propelling courts who buy the argument. That minority rationale is that it's unfair to saddle permanently with an easement propertyowner A who may have let property owner B do something on his land which turns out to have unforeseen debilitative consequences for property owner A's use of his land, just because B has invested $. Here, however, there has been joint investment, and/or taxpaying, and/or upkeep from the start by A, B, and C. *Second, because of the dates of various lots' subdividing, chain of title complications, and Idaho caselaw, Hofmeister's earlier [Sept 1994] arguments underpinning a 7&8 driveway easement aren't strong.* The easements need to come *ex gratia,* not *ex necessitate legis,* from the Lot 1, 2, 3 owners. I think they could well be.

From a human standpoint, this case between once-close octogenerians shouldn't have gotten to court at all. Grinding on for 4 days through various financial transactions is mainly helping attorneys' billings. If Bandelins have somewhat the better of the merits so far on the substance of the issue, Swanson's defense on cross-examination has been vigorous. This case needs to come out of court before appeal.

Suggested Sossian solution I via $-freeing means: (1) 40' Lot #6 is currently "fallow," but if sold together in whole or in part with Lots #7 & #8 [(@ $1500/front foot] would yield in total up to $180000, rather than $120000. (2) If Swanson would concede sub silentio that Stewarts and Bandelins have 1/3rd interests in #6, each party would gain $20,000 on sale -- or the two abutting property-owners, Stewart on one end and Swanson on the other, could separately elect [by "sliding" the total #6,#7,#8 footage for sale] instead to retain all or part of 13.3' each as "buffer." (3) Realizing such a prospect would require Bandelins to give a driveway easement to the new owner of #7,#8 (and part of #6). (4) For remaining prerequisites (Kite watersystem access and Bandelin sewage disposal site) see Sossian solutions II and III below.

B. Problem #3 presents an insoluble problem unless the water system is split into 2 (which is easy to do). Andrews (in selling 2 memberships to Cahns) gave/sold too many memberships in the dead corporation [10]. Privette wants "in" understandably. But de facto Soss has had 2 service lines in use these past 5 years [his original + what he bought from Privette]. He is now, I think, selling for "1 1/2 houses worth" [house + guesthouse or trailer]. Then there's the Lot 1 less Tax 1 chlorinator house outlet. Given system-downsizing in 1987 and 1991, it is impossible both to recognize, out of grace, all the defunct memberships & de facto uses and be on a sound legal basis. Putting 9, 10, or 11 hook-ups is much too close to the 25 user/60 day rule.

Sossian solution II via Featherston/Solomon division. Since $ infusion is necessary anyhow to bring the system's power back up to handling additional hook-ups [pipe friction, and head -- see Feb. 17 and Apr. 12 letters], **why not spend those dollars in a fashion that solves the 25/60 rule? I.e., split the system -- keeping the present one at its reduced power and flow; and put a 2nd system in [coming up either right below Kites from Privette's #15 beachlot [and so reducing pipe length] or from #7/#8?** On this system would go Kites, a new Privette #15 outlet [with easement], #7/#8 house, Johnsons, and Mays and/or Soss [=6 or max of 7 hookups]. By splitting and adding to the new, one would then on the old have 5 of the lots using the current system these past 5 years, and one could add a Privette hook-up for his triangle parcel + Cahns [=max of 8]. Each system would be clear of $100,000 purification requirements and monitoring.

C. Finding a place for Bandelins' sewage drainfield and an O'Higgins tenants-in-common solution [#5] need to, and can readily, go hand in hand. Please examine the attached map [used in negotiating with Panhandle the recently installed drainfield in Nash front garden]. There is only 1 available location on the upper tier [other than Danyow's lot which isn't available and is the only place where still another upper tier house would make good-planning sense] where Bandelin sewage can have a drainfield. Note how much further from the Lake the O'Higgins [Mays/Nash] property is in its upper half than Swanson hairpin [Kites] or Gibbs [Swanson/Stewart]. Dr. Mays wants to use part of this property abutting his cabin's lot. Easy.

Sossian solution III: Why not just have Nashes and Mayses sign an agreement that informally allocates use/non-use [so avoiding partition by sale] with the following provisions: [1] Mayses so to use that portion as long as they choose -- they can later use it or somewhere nearby on what would be tacitly "the Mays' half" for a drainfield if needed; [2] (if Panhandle Health okays this, as I think they would since they will agree to any reasonable improvement in respect to an existing subpar situation), one drainfield [technically new construction standards] in the southwest highest lawful portions of the O'Higgins "informally Nashes half" for Lot 1 less Tax 1 and one right below in the same half for Bandelin drainfield. Given new Infiltrator drainfield techniques, the area needed is 40% reduced. Both should fit comfortably, and the pipes' coming up together from Bandelins in one trench would halve digging costs. Careful cutting of trees and bushes, would leave aesthetically attractive flora and leave the O'Higgins lot unbuilt-on more or less in perpetuity.

D. Problem 4 would probably become self-righting if we could all agree on such a consensual approach to Talache matters. There remains only putting in writing appropriate reciprocal shoreline driveway easements, equitable servitudes, covenants, whatever for all the beachfront lots and similarly for the water system(s) -- which, once done, should solve the rest of #4. Then #6 is solved too.

---A. E. K. Nash

Composite Map of Old Platting Survey and of Draft of 1994-95 Kiebert Survey

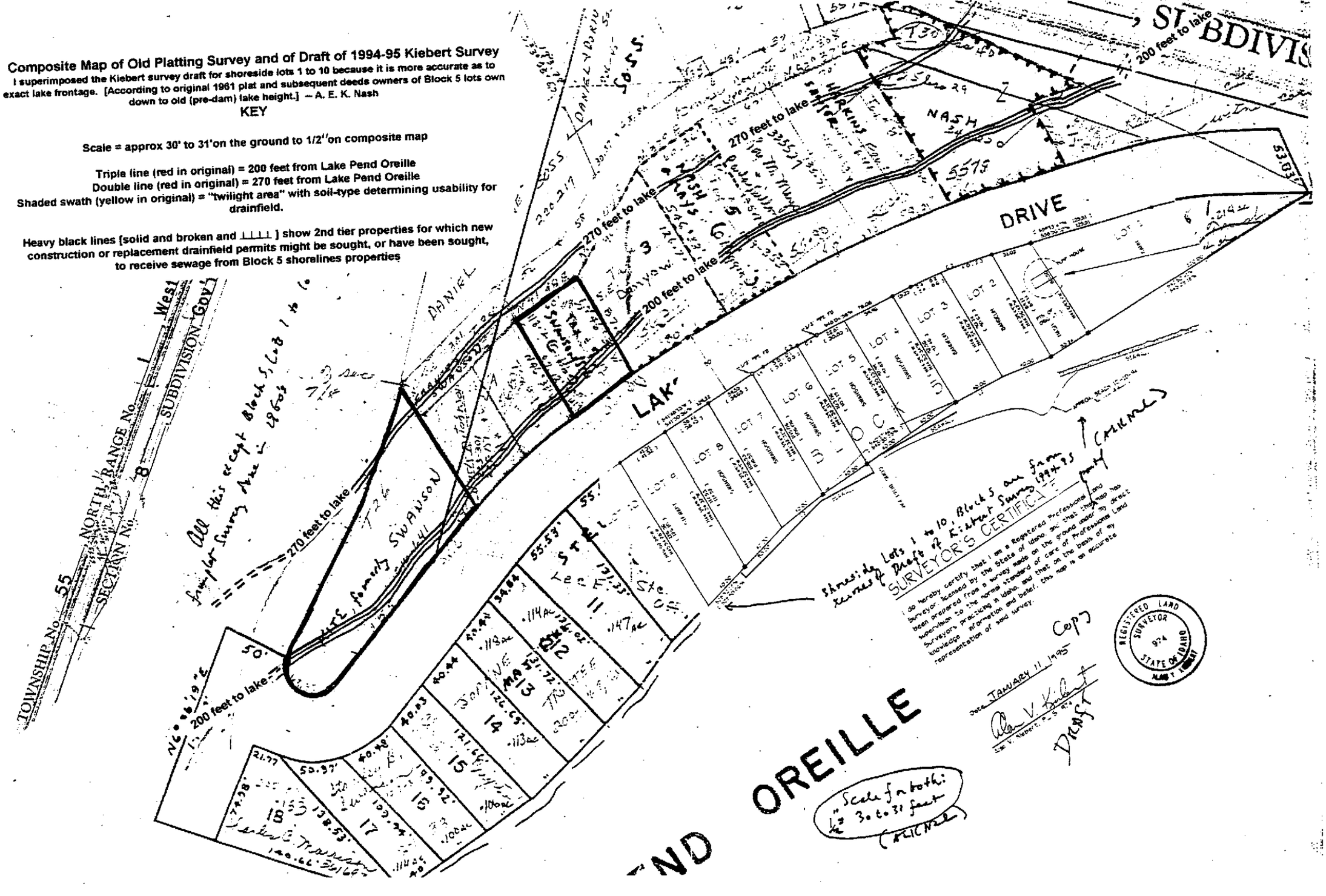
I superimposed the Kiebert survey draft for shoreside lots 1 to 10 because it is more accurate as to exact lake frontage. [According to original 1961 plat and subsequent deeds owners of Block 5 lots own down to old (pre-dam) lake height.] — A. E. K. Nash

KEY

Scale = approx 30' to 31'on the ground to 1/2"on composite map

Triple line (red in original) = 200 feet from Lake Pend Oreille
Double line (red in original) = 270 feet from Lake Pend Oreille
Shaded swath (yellow in original) = "twilight area" with soil-type determining usability for drainfield.

Heavy black lines [solid and broken and ⊥⊥⊥⊥] show 2nd tier properties for which new construction or replacement drainfield permits might be sought, or have been sought, to receive sewage from Block 5 shorelines properties



SENDER:

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1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

SPOKANE, WA 99 24 MAY

3. Article Addressed to:

MR. DAN DESHON
517 S. 1ST AVE
SANDPOINT ID 83864

RECEIVED
MAY 26 1995
IDWR

4a. Article Number
48343

4b. Service Type
☐ Registered ☐ Insured
XX Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery
MAY 5-25-95

5. Signature (Addressee)
Ann Markham

6. Signature (Agent)

8. Addressee's Address (Only if requested and fee is paid)

MAY 26 1995

PS Form **3811**, December 1991 ☆U.S. GPO: 1993—352-714 **DOMESTIC RETURN RECEIPT**

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Thank you for using Return Receipt Service.

UNITED STATES POSTAL SERVICE

Official Business

SPOKANE, WA 99
PM
25 MAY
1995

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

U.S MAIL

MAR 2 6 1997

Print your name, address and ZIP Code here

DEPARTMENT OF WATER RESOURCES
1910 NORTHWEST BLVD. E 210
COEUR D'ALENE, IDAHO 83814

Is your RETURN ADDRESS completed on the reverse side?

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- Complete items [illegible]d 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
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1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

JACK R. & RACHELL L. JOHNSON
P O BOX 97
NEWMAN LAKE WA 990[illegible]

4a. Article Number
48347

MAR 26 1997

4b. Service Type
☐ Registered ☐ Insured
XX Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery
5/25/95

RECEIVED
MAY 26 1995
IDWR

5. Signature (Addressee)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Agent)

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1910 NORTHWEST BLVD. - SUITE 210
COEUR D'ALENE, IDAHO 83814

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I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

MS. FRANCES L. SWANSON
P O BOX 104
TALACHE BEACH
SAGLE, ID 83860

4a. Article Number

48344

4b. Service Type

- ☐ Registered
- ☐ Insured
- ☒ Certified
- ☐ COD
- ☐ Express Mail
- ☐ Return Receipt for Merchandise

7. Date of Delivery

5-25-95

8. Addressee's Address (Only if requested and fee is paid)

RECEIVED
MAY 30 1995
INVESTIGATION REGION
IDWR

5. Signature (Addressee)

Nash [redacted]

6. Signature (Agent)

Donna Alderman

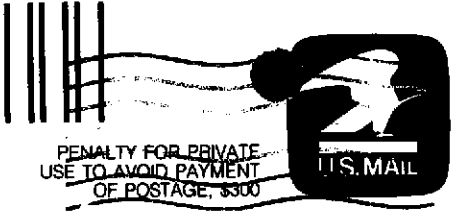
PS Form 3811, December 1991 ☆U.S. GPO: 1993—352-714 **DOMESTIC RETURN RECEIPT**

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UNITED STATES POSTAL SERVICE

Official Business





MAR 2 6 1995

Print your name, address and ZIP Code here

DEPARTMENT OF WATER RESOURCES
1910 NORTHWEST BLVD. S[illegible] 210
COEUR D'ALENE, IDAHO 83814

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

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- Complete items 3, an[redacted] b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also [redacted] to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

ARNOLD EDMUND KEIR NASH AND
MARGUERITE B.R. NASH
P O BOX 492
SAGLE ID 83860

4a. Article Number

48348

4b. Service Type

☐ Registered ☐ Insured
XX ☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery

8. Addressee's Address (Only if requested and fees paid)

5. Signature (Addressee)

6. Signature (Agent)

RECEIVED JUN 0 1995 IDWR

SANDPOINT IDAHO POST OFFICE STA. USPS SANTA BARBARA CA

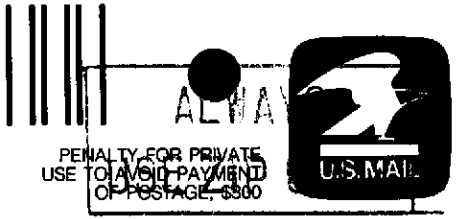
PS Form **3811**, December 1991 ★U.S. GPO: 1993—352-714 **DOMESTIC RETURN RECEIPT**

Thank you for using Return Receipt Service.

UNITED STATES [redacted]AL SERVICE

Official Business





Print your name, address and ZIP Code here

DEPARTMENT OF WATER RESOURCES
1910 NORTHWEST BLVD. - SUITE 210
COEUR D'ALENE, IDAHO 83814

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or [redacted] for additional services.
- Complete items 3, and [redacted].
- Print your name and addr[redacted] on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also [redacted] receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

SPOKANE, WA 24 MAY 995

3. Article Addressed to:

ARNOLD EDMUND KEIR NASH AND
MARGUERITE B.R. NASH
1033 NORTH ONTARE ROAD
SANTA BARBARA, CA [redacted]105

4a. Article Number

48349

4b. Service Type

☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

RECEIVED MAY 31 1995 [illegible] IDWR

5. Signature (Addressee)

7. Date of Delivery

6. Signature (Agent)

8. Addressee's Address (Only if requested and fee is paid)

PS Form **3811**, December 1991 ☆U.S. GPO: 1993—352-714 **DOMESTIC RETURN RECEIPT**

Thank you for using Return Receipt Service.

UNITED STATES [redacted] TAL SERVICE

Official Business

PENALTY FOR PRIVATE
USE TO AVOID PAYMENT
OF POSTAGE, $300

U.S MAIL

Print your name, address and ZIP Code here

DEPARTMENT OF WATER RESOURCES
1910 NORTHWEST BLVD. - SUITE 210
COEUR D'ALENE, IDAHO 83814

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and [redacted].
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
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I also [redacted] to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

MR. SIDNEY DANYOW
P O BOX 4095
COOS BAY OR 97420

RECEIVED JUN 01 1995 [illegible] DWR

4a. Article Number

48345

4b. Service Type

☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery

5/26/95

5. Signature (Addressee)

S. E. Danyow

6. Signature (Agent)

Patricia Station

8. Addressee's Address (Only if requested and fee is paid)

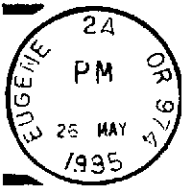
PS Form 3811, December 1991 ☆U.S. GPO: 1993—352-714 **DOMESTIC RETURN RECEIPT**

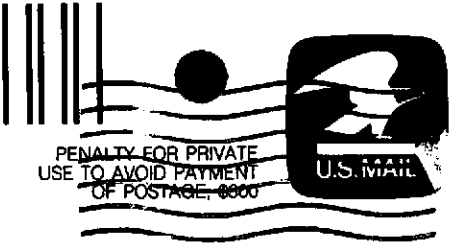
Thank you for using Return Receipt Service.

BOITR2

UNITED STATES POSTAL SERVICE

Official Business





Print your name, address and ZIP Code here

DEPARTMENT OF WATER RESOURCES
1910 NORTHWEST BLVD [illegible] 210
COEUR D'ALENE, IDAHO 83814

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or [redacted] additional services.
- Complete items 3, and [redacted].
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2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

DEBORAH S. & ROBERT S. CAHN
P O BOX 47
PHILO CA 95466

4a. Article Number

48346

4b. Service Type

☐ Registered ☐ Insured
XX Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery

5/26/95

8. Addressee's Address (Only if requested and fee is paid)

5. Signature (Addressee)

6. Signature (Agent)

RECEIVED
JUN 05 1995
[illegible] DIVISION
ID WR

PS Form **3811**, December 1991 ☆U.S. GPO: 1993—352-714 **DOMESTIC RETURN RECEIPT**

Thank you for using Return Receipt Service.

UNITED STATES [illegible]TAL SERVICE

Official Business

NORTH BAY, CA 949
PM
1A
26 MAY
1995

[illegible]WAY

USE ZIP

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

U.S. MAIL

Print your name, address and ZIP Code here

DEPARTMENT OF WATER RESOURCES
1910 NORTHWEST BLVD. - SUITE 210
COEUR D'ALENE, IDAHO 83814

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 96-08857 IN THE NAME OF ARNOLD EDMUND KEIR NASH AND MARGUERITE B. R. NASH	)	NOTICE OF CONFERENCE AND/OR HEARING

On March 31, 1995, ARNOLD EDMUND KEIR NASH AND MARGUERITE B. R. NASH, filed with the Department of Water Resources (department) application for permit no. 96-08857. The application was protested by DAN DESHON, FRANCES L. SWANSON, SIDNEY DANYOW, DEBORAH S. & ROBERT S. CAHN, AND JACK R. & RACHELL L. JOHNSON.

The department has scheduled the matter for conference &/or hearing on JUNE 14, 1995 at 9:00 A.M., at 1910 NORTHWEST BLVD., SUITE 210, COEUR D ALENE, IDAHO, 83814. The conference &/or hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, the adopted Rules of Procedure of the department and Water Appropriation Rules 40 and 45. A copy of the rules may be obtained from the department upon request. The presiding officer at the conference &/or hearing will be ROBERT G. HAYNES, P.E., REGIONAL MANAGER.

The conference &/or hearing will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference &/or hearing, please advise the department within ten (10) days prior to the conference &/or hearing.

All parties to the matter will have the opportunity to respond and present information and argument on all issues involved.

Dated this 24TH day of MAY, 1995.

Robert G. Haynes
Regional Supervisor

I hereby certify that on the 24th day of May, 1995, I mailed a true and correct copy, postage prepaid, of this document to the applicants(s) and protestant(s) listed below:

Dianne Bell
Secretary

Certified Mail
- ✓ MR. DAN DESHON
- ✓ MS. FRANCES L. SWANSON
- ✓ MR. SIDNEY DANYOW
- 6/6 ✓ DEBORAH S. & ROBERT S. CAHN
- ✓ JACK R. & RACHELL L. JOHNSON
- (2) ✓ ARNOLD EDMUND KEIR NASH & MARGUERITE B. R. NASH - 1 copy to Sagle Address - 1 copy to Santa Barbara address

CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR PERMIT

ISSUES

Section 42-203A, Idaho Code, requires the department to consider the following issues in connection with an application for permit:

1. Will the proposed appropriation injure other water rights?

2. Is the water supply sufficient for the purpose for which it is sought to be appropriated?

3. Was the application made in good faith or for delay or speculative purposes?

4. Does the applicant have sufficient financial resources with which to complete the proposed project?

5. Will the proposed use conflict with the local public interest, where local public interest is defined as the affairs of the people in the area directly affected by the proposed use?

6. Will the proposed use be contrary to the conservation of water resources within the State of Idaho?

BURDEN OF PROOF

The applicant has the initial burden of proof for issues 1, 2, 3, 4, and 6 above and must provide evidence for the department to evaluate these criteria.

The initial burden of proof on issue 5 above lies with both the applicant and protestant as to factors of which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion, however, for this issue.

PROCEDURE

The department generally conducts an informal conference with the parties to determine the issues and to try to settle a protested matter before a hearing is scheduled. If a hearing is held, the department will issue a written decision based on the hearing record.

CONFERENCE

The purpose of a prehearing conference is to provide the opportunity for the parties and the department to familiarize themselves with a contested matter and to attempt to resolve the matter. At the conference, the department may also formulate and simplify the issues, identify documents to avoid unnecessary proof, exchange proposed exhibits or prepared testimony, limit witnesses, discuss settlement or make settlement offers, schedule hearings, establish procedure at hearing and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement.

HEARING

The department will tape record the hearing. Copies of a hearing are available upon request and the payment of the cost of reproducing the tape.

The hearing likely will be conducted by a hearing officer appointed by the Director rather than by the Director himself. If so, the hearing officer will prepare a recommended order for the Director's consideration. Parties can file exceptions to a recommended order, briefs in support of the exceptions or may request oral argument. Parties may seek judicial review of any final order issued by the director.

Parties may by written stipulation waive the right to a recommended order, particularly when a shortened decision process is desirable or necessary. Such a waiver does not eliminate any rights of the parties in connection with the final order and judicial review of the order.

EXHIBITS

A party who plans to offer an exhibit as part of the hearing record must provide a copy of the proposed exhibit to the parties and to the hearing officer.

AMERICANS WITH DISABILITIES ACT

Any hearing scheduled will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within ten (120) days prior to the hearing.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 96-08857 IN THE NAME OF ARNOLD EDMUND KEIR NASH AND MARGUERITE B. R. NASH	)))))	NOTICE OF CONFERENCE AND/OR HEARING

On March 31, 1995, ARNOLD EDMUND KEIR NASH AND MARGUERITE B. R. NASH, filed with the Department of Water Resources (department) application for permit no. 96-08857. The application was protested by DAN DESHON, FRANCES L. SWANSON, SIDNEY DANYOW, DEBORAH S. & ROBERT S. CAHN, AND JACK R. & RACHELL L. JOHNSON.

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Dated this 24TH day of MAY, 1995.

Robert G. Haynes
Regional Supervisor

I hereby certify that on the 24th day of May, 1995, I mailed a true and correct copy, postage prepaid, of this document to the applicants(s) and protestant(s) listed below:

Deanne Ball
Secretary

Certified Mail
MR. DAN DESHON
MS. FRANCES L. SWANSON
MR. SIDNEY DANYOW
DEBORAH S. & ROBERT S. CAHN
JACK R. & RACHELL L. JOHNSON
ARNOLD EDMUND KEIR NASH & MARGUERITE B. R. NASH

MAR 2 8 1997

CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR PERMIT

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RECEIVED
MAR 26 1997

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May 16, 1995

Mr. Dan Deshon
517 S. 1st Ave.
Sandpoint, ID 83864

Ms. Frances L. Swanson
P. O. Box 104
Talache Beach
Sagle, ID 83860

Mr. Sidney Danyow
P. O. Box 4095
Coos Bay, OR 97420

Deborah S. & Robert S. Cahn
P. O. Box 47
Philo, CA 95466

Jack R. & Rachell L. Johnson
P. O. Box 97
Newman Lake, WA 99025

RE: Application for Permit Number 96-08857 - NASH

Dear Protestants:

This letter is being written to help clarify a mistake that was made on my part when Mr. and Mrs. Nash filed their Application for Permit.

While assisting Mr. and Mrs. Nash fill out the above Application for Permit, I inadvertently advised them to list "APPLICANTS" under Item 11.b., which describes who owns the land to be irrigated or place of use. This has been corrected to "LAND OWNERS", (as described on Item 6.a.) to more correctly describe ownership of the property where the water will be delivered.

I apologize for any misconceptions this error may have caused and assure you that Mr. and Mrs. Nash's intentions were not to erroneously file to claim ownership of your property. Their intention was to file for water rights to comply with Idaho State Law.

We will assist in any way possible to help settle issues concerning your protest to this filing.

If you have further questions, please feel free to contact me at this office.

Sincerely,

Allen Beardslee
Sr. Water Resource Agent

cc: Arnold Edmund Keir Nash & Marguerite B. R. Nash at both addresses Sagle & Santa Barbara

RECEIVED
MAY 26 1995

No. a
4/87-06/92n

O DEPARTMENT OF WATER RESOUR
APP[redacted]RIATION APPLICATION ANALYSIS [redacted]

APPLICATION # 96-08857

********** INITIAL REVIEW **********

APPLICANT: NASA BY: AS DATE: 3/31/95

ITEM	REQUIRED INFORMATION
1.	(✓) Name and Address
2.	(✓) Source
3.	(✓) Point of Diversion & County
4.	(X) Quantity
	(X) Nature of Proposed Use
	(X) Period of Use
5.	(X) Total Quantity
6.	(X) Description of diverting works
7.	(X) Time required for b/u
8.	(X) Proposed use
9.	(X) Place of use or acres irrigated
10.	(X) Other Water Rights
11.	(X) Ownership
13.	(X) Map
	(X) Signature
	(X) Fee (Amt, recpt, acknowlegment)

*** Send info sheet Y( ) N( )

PROCESSING

Yes No PRIORITY DATE: 3/31/95

__ X (Include Moratorium Remark)

__ X Statewide Avertising: (Diversion rate greater than 10 cfs or 1,000 af).

SB 2hrs.

ADVERTISE IN: BONNER County.

LETTERS SENT REQUESTING:

( ) Dam Information ( ) Fish Information

( ) Power Information ( ) Other: N/A

ADDITIONAL INFORMATION

Yes No

__ X Field check: by _____

__ __ Field report attached

__ __ Analysis Supp. attached (>5cfs/500af)

__ X Water delivered by water master?

Water District # _____

INFORMATION RECEIVED:

( ) Dam Information ( ) Fish Information

( ) Power Information ( ) Other: N/A

********** GROUNDWATER SECTION **********

(Yes)(No) Checked by: _____ Date: __/__/____

__ X Groundwater management area Remarks: _____

__ X Critical ground water area

__ __ Well Drilling Permit required

__ __ Well Drilling Application and Fees received

__ __ Well Drilling Application approved?

Well Drilling Application Number ____-____-_____

********** FINAL REGIONAL PROCESSING/REVIEW **********

(Yes)(No)

__ __ Notice of pending void order issued. Final order response date: __/__/____

__ __ Further information required from applicant

5/10/95 __ Affidavit of publication received

5/11/95 __ Application published correctly, If not, record action taken: _____

4/12/95 __ Publication dates and paper recorded on application ✓ | Sr. Agent initial____

5/21/95 __ Protests received. Final protest date: 5/8/95

__ __ Measuring device required

__ __ Measuring port required

__ __ Special conditions: _____

__ __ Special conditions of approval supplement and/or cover letter attached:

Approval Recommended by: _____ Date: __/__/____

May 11, 1995

Arnold Edmund Keir Nash and
Marguerite B. R. Nash
P. O. Box 492
Sagle, ID 83860

Re: Application to Appropriate Public Waters No. 96-08857

Dear Mr. and Mrs. Nash:

Enclosed is a copy of a protest filed against the approval of the above referenced application for permit to appropriate the public waters of the State of Idaho. The Department suggests you contact the protestants directly in an effort to determine the nature of the protest and attempt to resolve the protest.

If you do not advise us within twenty (20) days that the protest has been resolved, the matter will be scheduled for conference and/or hearing. At such a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying the Application for Permit (Section 42-203, Idaho Code):

1. Will the proposed use reduce the quantity of water under existing water rights?

2. Is the proposed water supply insufficient for the purpose intended?

3. Is the application made in good faith or for delay or speculation?

4. Has the applicant sufficient financial resources with which to complete the project?

5. Will the proposed use conflict with the local public interest?

6. Will the proposed use be contrary to the conservation of water resources within the State of Idaho?

You will be notified at a later date of the time and place of the conference and/or hearing. If we can be of any assistance, please contact us.

Sincerely,

ROBERT G. HAYNES, P.E.
Regional Manager
RGH:db

Enclosure

RECEIVED
MAY 26 1995

May 11, 1995

Jack R. and Rachell L. Johnson
P. O. Box 97
Newman Lake, WA 99025

Re: Application to Appropriate Public Waters No. 96-08857

Dear Mr. and Mrs. Johnson:

Your protest against the approval of the above referenced application has been received and a copy has been sent to the applicant. The Department suggests that you contact the applicant directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

If you do not advise us within twenty (20) days that the protest has been resolved, the matter will be scheduled for conference and/or hearing. At such a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying the Application for Permit (Section 42-203, Idaho Code):

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Sincerely,

ROBERT G. HAYNES, P.E.
Regional Manager

RGH/db

Enc. Receipt No. N008898

RECEIVED
MAY 0 8 1995
IDWR

May 3, 1995

Director, State of Idaho
Department of Water Resources
Northern Region
1910 NW Boulevard - Suite 210
Coeur d'Alene, ID 83814

Dear Director,

RE: Application #96-08857
A.E. Keir and Marguerite B. Nash

We are enclosing our check in the amount of $25.00 for protest of the above application. We have property at Bonner County, Government Lot 2, Sec. 8, Township 55N RD1W. We believe this application affects our property at Talache. We need more information regarding this matter. We do not want A.E. Keir and Marguerite B. Nash to have control of the water rights.

We would like to have the original Talache Shoreside Water Users Association, Inc. go back into effect, as they were incorporated in December of 1980. We, as owners of property at Talache, have put money into the water system for many years.

Thank you for your consideration in this matter.

Sincerely,

Jack R. Johnson

Jack R. Johnson

Rachell L. Johnson

Rachell L. Johnson
P.O. Box 97
Newman Lake, WA 99025

cc: A.E. Keir and Marguerite Nash

Enclosure: Check $25.00 Rec No0 88 98

May 11, 1995

Arnold Edmund Keir Nash and
Marguerite B. R. Nash
P. O. Box 492
Sagle, ID 83860

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Sincerely,

ROBERT G. HAYNES, P.E.
Regional Manager
RGH:db

Enclosure

MICROFILMED
MAR 2 6 1997

May 11, 1995

Deborah S. and Robert S. Cahn
P. O. Box 47
Philo, CA 95466

Re: Application to Appropriate Public Waters No. 96-08857

Dear Ms. and Mr. Cahn:

Your protest against the approval of the above referenced application has been received and a copy has been sent to the applicant. The Department suggests that you contact the applicant directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

If you do not advise us within twenty (20) days that the protest has been resolved, the matter will be scheduled for conference and/or hearing. At such a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying the Application for Permit (Section 42-203, Idaho Code):

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Sincerely,

ROBERT G. HAYNES, P.E.
Regional Manager

RGH/db

Enc. Receipt No. N008901

MICROFILMED
MAR 2 6 1997

To: State of Idaho
Department of Water Resources
Northern Region Office
1910 Northwest Blvd, Suite 210
Coeur d'Alene, ID 83814-2615
208 769-1450
208 769-1454(fax)

RECEIVED
MAY 0 8 1995
IDWR

From: Deborah Cahn and Robert Cahn
POB 47
Philo, California 95466
707 895-3686
707 895-3647(fax)

Re: Applications for permit to appropriate water 96-08857(Nash)

Dear Sirs:

Enclosed is my check for $25.00 to file a protest for the above permit. We are adjacent property owners owning real property as described by the tax collector of Bonner County as :7/8-55N-1W, Talache Village, Bock 5, Tax 1 of lot 1.

Our protest is based upon the following issues:
1.) Mr. Nash will not be able to establish his described water right without trespassing upon our land. Granting of an easement would be contingent upon our lot being one of the seven described beneficial users of the system.

2.) Mr. Nash may not be filing his application for a permit in good faith. Three of the original members of the water users group have been excluded and an additional user has been named. A water permit should not be a vehicle by which the permittee picks and chooses which of his neighbors will be able to sell or build upon there property.

3.) Mr. Nash and the water users' group have not demonstrated the financial resources to maintain the water system in a state which will deliver clean and drinkable water to the users. We Have included an "Attachment E" which was written by Mr. Nash in June 8, 1994 to a Everett D. Hofmeister, a copy of which he sent to us about the about the same time.

Sincerely,

Deborah Cahn R. Cahn

Deborah S. Cahn and Robert S. Cahn

cc: Keir Nash

Rec# N00890/
5/8/95 b
$25 cd

MICROFILMED
MAR 2 6 1997

Attachment E.

Water Quality and Expanding The Water System to 7 - 10 Hookups. From Discussions with Idaho government agencies (Div of Environmental Quality; Panhandle Health; Dept. of Lands)

E1. Quantity & System Capacity. If the new system pump has the pumping ability of the original (5 hp), and if the hookups are no higher above the lake level than existing hookups, expansion to 7 is not problematic re the quantity side. Expansion to 10 is nearing FHA limit.

E2. Quality of Water Supply. This is the 1st main problem, *and is intensified by any expansion*. **The system is probably not effective re coliform bacteria by midmorning when more than two hookups are functioning.** Whether the operation of the current sewage mechanism on waterfront lot #6 (serving Bandelin, Swanson, and Stewart houses) poses any particular threat is unclear. The water-system has no monitoring capacity. [Panhandle Health would like to see the lot #6 sewage piped uphill, but absent clear evidence of pollution has no power to require such. Dye tests in the Lake have been inconclusive. *Panhandle Health would certainly not approve* the lot #6 sewage mechanism were it being put in now. Hence the Bandelin/Swanson lawsuit.] **The water system is minimally protective against giardia and cryptosporidium. The former disease is already nearby; there are several dozen giardia cases a year in the Lake Pend Oreille area.**

Our system lacks 2 items to begin with--a particulate filter between the lake intake and the chlorinator; and a holding tank past the chlorinator. Absent the particulate filter, too much organic matter enters with the water and "uses up" the chlorine. That difficulty aside, there is no proper holding-tank for the chlorine to have time to function. Only the water standing in the piping going up the hill (e.g., overnight) is affected by the chlorine--i.e., is purified relative to coliform bacteria.. The time required to purify (and hence the volume of needed "standing capacity) is a function of water temperature, pH (acidity/alkalinity), and chlorine concentration.

The formula for the volume of water (in gallons) held by each 100 foot-length of piping between the chlorinator and its outlets in the various houses is of course just a version of the standard one for a cylinder [area of base times height or length]. It is thus: (100) times (Pi x the square of half the internal diameter in feet) times the number of gallons in a cubic foot (=7.5). If the plans are correct in showing 4" (=0.333') pipe, and if we assume that the volume-affecting difference between its internal and external diameters is just about offset by the piping from the main to each individual house (1" or 1 1/2"), then for each 100 feet of main piping there are roughly: 100 x (3.14 0.333/2 x 0.333/2) x 7.5 gallons = 100 x (0.087) x 7.5 gallons = 65.28 gallons. If the main's length is 300 feet, then it contains (3) (65.28) = 195.84 gallons. Call it 200 gallons in round numbers.

Overnight, then, with no water running, the chlorinator "gets the opportunity" (or it would were there a particulate filter) to purify 200 gallons.

What happens in the morning if, say, there are 4 persons in each of 3 cabins? 12 persons arise and go the bathroom @ 5 gallons per flush = 60 gallons. They next take fairly quick showers at 15 gallons each = 180 gallons--or 240 so far. What happens when they next make coffee, drink a glass of water, wash vegetables? They use what is essentially untreated, raw Lake Pend Oreille water. And so it continues through day until night.

Now this is only talking about coliform--the easiest to kill. What of giardia? Without boring you with the details of the calculations, the Division of Environmental Quality official with whom I spoke calculated that, chlorinating at the maximum concentration before the taste becomes extreme, the system needs a "CT" (contact time) number = 139, and currently has a CT of between 4 and 5. (!) He thinks we need a 6000 gallon holding tank--not to mention a 3rd item--a slow sand-bed filtation unit about 60' x 3' (different from the particulate filter, and unlike it, uphill from the chlorinator). The alternative is for each house separately to install, as the bank required Duncan/Adam in selling to Penttilas, particulate filter cartridge units and ultraviolet disinfector (in lieu of chlorinator holding tank) and points of use giardia filters (under kitchen and bathroom sinks). Quaere, as to relative capital and running costs per house of the 2 solutions?

E3. Compliance with Idaho Regulations/Lawful Withdrawal. At 10 users the system has to have temperature- and ph-monitoring capacities but you don't have actually to monitor. [!] At 15 hook-ups--or an average of 25 persons using it for 60 days or more per year--the requirements jump (turbidity and filtration and effective chlorination standards come in, and you do have actually to monitor).

May 5, 1995

Arnold Edmund Keir Nash and
Marguerite B.R. Nash
P. O. Box 492
Sagle, ID 83860

Re: Application to Appropriate Public Waters No. 96-08857

Dear Mr. and Mrs. Nash:

Enclosed is a copy of a protest filed against the approval of the above referenced application for permit to appropriate the public waters of the State of Idaho. The Department suggests you contact the protestants directly in an effort to determine the nature of the protest and attempt to resolve the protest.

If you do not advise us within twenty (20) days that the protest has been resolved, the matter will be scheduled for conference and/or hearing. At such a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying the Application for Permit (Section 42-203, Idaho Code):

1. Will the proposed use reduce the quantity of water under existing water rights?

2. Is the proposed water supply insufficient for the purpose intended?

3. Is the application made in good faith or for delay or speculation?

4. Has the applicant sufficient financial resources with which to complete the project?

5. Will the proposed use conflict with the local public interest?

6. Will the proposed use be contrary to the conservation of water resources within the State of Idaho?

You will be notified at a later date of the time and place of the conference and/or hearing. If we can be of any assistance, please contact us.

Sincerely,

ROBERT G. HAYNES, P.E.
Regional Manager
RGH:db

Enclosure

May 5, 1995

Sidney Danyow
P. O. Box 4095
Coos Bay, OR 97420

Re: Application to Appropriate Public Waters No. 96-08857

Dear Mr. Danyow:

Your protest against the approval of the above referenced application has been received and a copy has been sent to the applicant. Enclosed is receipt No. N008887. The Department suggests that you contact the applicant directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

If you do not advise us within twenty (20) days that the protest has been resolved, the matter will be scheduled for conference and/or hearing. At such a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying the Application for Permit (Section 42-203, Idaho Code):

1. Will the proposed use reduce the quantity of water under existing water rights?

2. Is the proposed water supply insufficient for the purpose intended?

3. Is the application made in good faith or for delay or speculation?

4. Has the applicant sufficient financial resources with which to complete the project?

5. Will the proposed use conflict with the local public interest?

6. Will the proposed use be contrary to the conservation of water resources within the State of Idaho?

You will be notified at a later date of the time and place of the conference and/or hearing. If we can be of any assistance, please contact us.

Sincerely,

ROBERT G. HAYNES, P.E.
Regional Manager

RGH/db

May 03, 1995

P.O. Box 4095
Coos Bay, OR 97420

RECEIVED
MAY 05 1995
NORTHERN REGION
IDWR

State of Idaho
Department of Water Resources
Northern Region, Suite No. 210
1910 N.W. Boulevard
Coeur d'Alene, Idaho 83814-2615

Re: Application for Permit #96-08857 by
A.E. Keir Nash and Marguerite B.R. Nash the Applicants.

Dear Mr. Director:

My wife and I own property which may be within the four acre parcel which is the subject of this application. Because of lack of information at this time we must object and with this letter present our protest to the referenced application.

Upon receipt of more information we will be able to make a decision.

We have enclosed our check number 499 for $25.00 dated May 03, 1995 which we understand is to be included with this protest.

Yours truly,

S.E. Danyow

Sidney E. Danyow

Enc: One

cc: A.E. Keir Nash

Rec# N00 8887
25.00 5/5/95

May 4, 1995

ARNOLD EDMUND KEIR NASH AND
MARGUERITE B.R. NASH
P O BOX 492
SAGLE, ID 83860

Re: Application to Appropriate Public Waters No. 96-08857

Dear Mr. and Mrs. Nash:

Enclosed is a copy of a protest filed against the approval of the above referenced application for permit to appropriate the public waters of the State of Idaho. The Department suggests you contact the protestants directly in an effort to determine the nature of the protest and attempt to resolve the protest.

If you do not advise us within twenty (20) days that the protest has been resolved, the matter will be scheduled for conference and/or hearing. At such a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying the Application for Permit (Section 42-203, Idaho Code):

1. Will the proposed use reduce the quantity of water under existing water rights?

2. Is the proposed water supply insufficient for the purpose intended?

3. Is the application made in good faith or for delay or speculation?

4. Has the applicant sufficient financial resources with which to complete the project?

5. Will the proposed use conflict with the local public interest?

6. Will the proposed use be contrary to the conservation of water resources within the State of Idaho?

You will be notified at a later date of the time and place of the conference and/or hearing. If we can be of any assistance, please contact us.

Sincerely,

ROBERT G. HAYNES, P.E.
Regional Manager
RGH:db

Enclosure

May 3, 1995

Frances L. Swanson
Talache Beach
P. O. Box 104
Sagle, ID 83860

Re: Application to Appropriate Public Waters No. 96-08857

Dear Ms. Swanson:

Your protest against the approval of the above referenced application has been received and a copy has been sent to the applicant. Enclosed is receipt No. N008875. To assist you in your decision regarding further action, we have also enclosed a copy of the above referenced Application for Permit.

The Department suggests that you contact the applicant directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

If you do not advise us within twenty (20) days that the protest has been resolved, the matter will be scheduled for conference and/or hearing. At such a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying the Application for Permit (Section 42-203, Idaho Code):

1. Will the proposed use reduce the quantity of water under existing water rights?

2. Is the proposed water supply insufficient for the purpose intended?

3. Is the application made in good faith or for delay or speculation?

4. Has the applicant sufficient financial resources with which to complete the project?

5. Will the proposed use conflict with the local public interest?

6. Will the proposed use be contrary to the conservation of water resources within the State of Idaho?

You will be notified at a later date of the time and place of the conference and/or hearing. If we can be of any assistance, please contact us.

Sincerely,

ROBERT G. HAYNES, P.E.
Regional Manager

RGH/db

Sagle, Idaho 93960
P.O.Box 104 Talache Beach
May 1, 1995



Director:
State of Idaho
Department of Water Resources
Northern Region
1910 Northeast Blvd. - Suite 210
Coeur d'Alene, Idaho 83814

Dear Mr. Director:

Re: Application # 96-08857
A. E. Keir Nash and
Marguerite B. R. Nash

Enclosed please find a check in the amount of twenty-five dollars ($25.00) for protest to the above application.

I have property in Bonner County - Government Lot 2, (Sec. 8 twp 55 N-R01 W.). I believe this application affects my property. I need more information and need to know if my property is included or not included. Upon receipt of all necessary information I will make a decision regarding further protest of application # 96-08857.

Sincerely,

Frances L. Swanson

Frances L. Swanson
Talache Beach
P.O. Box 104
Sagle ID 83860
(208) 263-7451

cc A.E. Keir Nash

Re #N8875

MAY 2 3 1995

May 3, 1995

Arnold Edmund Keir Nash and
Marguerite B.R. Nash
P. O. Box 492
Sagle, ID 83860

Re: Application to Appropriate Public Waters No. 96-08857

Dear Mr. and Ms. Nash:

Enclosed is a copy of a protest filed against the approval of the above referenced application for permit to appropriate the public waters of the State of Idaho. The Department suggests you contact the protestants directly in an effort to determine the nature of the protest and attempt to resolve the protest.

If you do not advise us within twenty (20) days that the protest has been resolved, the matter will be scheduled for conference and/or hearing. At such a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying the Application for Permit (Section 42-203, Idaho Code):

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2. Is the proposed water supply insufficient for the purpose intended?

3. Is the application made in good faith or for delay or speculation?

4. Has the applicant sufficient financial resources with which to complete the project?

5. Will the proposed use conflict with the local public interest?

6. Will the proposed use be contrary to the conservation of water resources within the State of Idaho?

You will be notified at a later date of the time and place of the conference and/or hearing. If we can be of any assistance, please contact us.

Sincerely,

ROBERT G. HAYNES, P.E.
Regional Manager
RGH:db

Enclosure

May 3, 1995

Dan Deshon
517 S. 1st Ave.
Sandpoint, ID 83864

Re: Application to Appropriate Public Waters No. 96-08857

Dear Mr. Deshon:

Your protest against the approval of the above referenced application has been received and a copy has been sent to the applicant. The Department suggests that you contact the applicant directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

If you do not advise us within twenty (20) days that the protest has been resolved, the matter will be scheduled for conference and/or hearing. At such a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying the Application for Permit (Section 42-203, Idaho Code):

1. Will the proposed use reduce the quantity of water under existing water rights?

2. Is the proposed water supply insufficient for the purpose intended?

3. Is the application made in good faith or for delay or speculation?

4. Has the applicant sufficient financial resources with which to complete the project?

5. Will the proposed use conflict with the local public interest?

6. Will the proposed use be contrary to the conservation of water resources within the State of Idaho?

You will be notified at a later date of the time and place of the conference and/or hearing. If we can be of any assistance, please contact us.

Sincerely,

ROBERT G. HAYNES, P.E.
Regional Manager

RGH/db

May 1, 1995

Dear Jim Hanes,

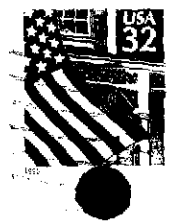
This is in regard to Protest Claim on Nash — 96-08857 and here is my #25.00 dollar fee.

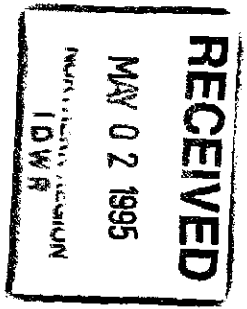
So my reason for this protest is my invested interest in this property.

MAR 2 6 1997

RECEIVED
MAY 02 1995
NORTHERN REGION
IDWR

DAN DESHON
517 S 1ST AVE
SANDPOINT, ID 83864





Water Resources
Attn: Jim Hanes
1910 Northwest Blvd.
Coeur d'Alene, ID. 83814

May 1, 1995

Dear Jim Hanes,

This is in regard to Protest Claim on Nash — 96-08857 and here is my $25.00 dollar fee.

So my reason for this protest is my invested interest in this property.

RECEIVED
MAY 02 1995
NORTHERN REGION
IDWR

RECEIVED
MAY 02 1995
NORTHERN REGION
IDWR

DAN DESHON
517 S 1ST AVE
SANDPOINT, ID 83864

Water Resources
Attn: Jim Hanes
1910 Northwest Blvd.
Coeur d'Alene, ID. 83814

Sandpoint Bee - April 27 1995

Would You Send me
Copies of Application
I'm Assuming The H_2O
To Be withdrawn must
Be pumped piped etc.
Is there Anything In the
Paperwork Filed By Nash
Describing How H_2O will
Be transmitted

Thank You

Robt Privette
1040 TALACHE RD
Sagle - IDAHO
83860

NOTICE OF APPLICATION FOR WATER RIGHT

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

96-08857
NASH, ARNOLD EDMUND KEIR
NASH, MARGUERITE B.R.
P O BOX 492
SAGLE, ID 83860
Source: LAKE PEND OREILLE
Tributary: PEND OREILLE RIVER
Diversion Pt: LOT 2 (NWSW) Sec 8 T 55N R 01W in BONNER County.
Use: IRRIGATION (0.120 CFS)
DOMESTIC (0.120 CFS)
Total Diversion: (0.120 CFS)
Date Filed: 3/31/1995
In: BONNER County
T55N R01W S08 Lot 2 (NWSW)
4.0 ACRES TOTAL

96-08858
ROBBINS, EDWIN H.
1870 LAKESHORE DRIVE
SAGLE, ID 83860
Source: PEND OREILLE RIVER
Tributary: COLUMBIA RIVER
Diversion Pt: LOT 2 (SWSE) Sec 34 T 57N R 02W in BONNER Coun-

RECEIVED
APR 28 1995
IDWR

4.0 ACRES TOTAL
For additional information concerning the property location, call the Northern Regional Office at (208) 769-1450.

The permit(s) will be subject to all prior water rights. Protests must be filed with the applicant and with the Director, Dept. of Water Resources, Northern Region, 1910 Northwest Blvd., Suite 210, Coeur d'Alene, Idaho 83814, together with a protest fee of $25.00 on or before MAY 8, 1995

R. KEITH HIGGINSON,
Director

SNP#6842 Apr 20, 27, 1995

TO: CLAIMI... INTERE...
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Sent 4/28/95

MAY 2 5 1995

April 13, 1995

Arnold Edmund Keir Nash and
Marguerite B.R. Nash
P O. Box 492
Sagle, ID 883860

Re: Water Appropriation Application No. 96-08857

Dear Mr. and Mrs. Nash:

The Idaho Department of Water Resources hereby acknowledges receipt of the above referenced Application for Permit to Appropriate the Public Waters of the State of Idaho. To assist us in providing you with prompt, accurate service, please refer to the above referenced number in all future matters concerning this water right application.

Your appropriation application is currently being prepared for advertising in the county newspaper. This advertisement will be published for two consecutive weeks followed by a waiting period of ten days to allow for the submittal of protests. Normal processing time is approximately 3 to 4 months, if the application is not protested.

If the application is not protested, it will be forwarded to Boise to be considered for approval by the Director. However, if the application is protested during this waiting period, you will be sent a copy of the protest and instructions to aid you in resolving the protest without a hearing. However all protests must be resolved before approval of the application can be made, so if the protestant does not voluntarily withdraw the protest, this department will conduct a conference and/or hearing on the matter.

If your application is for groundwater and unless you are using a well that was constructed prior to July 1, 1987, it will be necessary for you to apply for a well drilling permit upon approval of the appropriation application. Well drilling permits can be issued by this office only to holders of approved appropriation permits.

If you have any questions or if I can be of any assistance please feel free to contact me at this office.

Sincerely,

ALLEN BEARDSLEE
Senior Water Resources Agent

AB:db

AFFIDAVIT OF PUBLICATION

State of Idaho

ss.

County of Bonner,

Pamela D Johnson being first duly sworn on oath deposes and says that he/she is Bookkeeper of the Bonner County Daily Bee, a newspaper printed and published at Sandpoint, Bonner County, Idaho; that the said newspaper has been continuously and uninterruptedly published in said Bonner County during a period of 12 months prior to the first publication of the hereto attached notice of publication in the case of:

NOTICE OF APPLICATION

FOR WATER RIGHT

as it was published in the regular and entire issue of the said paper for a period of 2 consecutive weeks, commencing on 20 day of April, 19 95 and ending on the 27 day of April, 19 95 and that said notice was published in said newspaper.

On this 1 day of May in the year of 1995, before me, a Notary Public, personally appeared Pamela D. Johnson, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.

Carolyn K Inge
Notary Public for Idaho

Residing at Sandpoint

My commission expires: 6/2000

RECEIVED
MAY 10 1995
IDWR

NOTICE OF APPLICATION FOR WATER RIGHT

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

— 96-08857
NASH, ARNOLD EDMUND KEIR
NASH, MARGUERITE B.R.
P O BOX 492
SAGLE, ID 83860
Source: LAKE PEND OREILLE
Tributary: PEND OREILLE RIVER
Diversion Pt: LOT 2 (NWSW) Sec 8 T 55N R 01W in BONNER County.
Use: IRRIGATION (0.120 CFS)
DOMESTIC (0.120 CFS)
Total Diversion: (0.120 CFS)
Date Filed: 3/31/1995
In: BONNER County
T55N R01W S08 Lot 2 (NWSW)
4.0 ACRES TOTAL

— 96-08858
ROBBINS, EDWIN H.
1870 LAKESHORE DRIVE
SAGLE, ID 83860
Source: PEND OREILLE RIVER
Tributary: COLUMBIA RIVER
Diversion Pt: LOT 2 (SWSE) Sec 34 T 57N R 02W in BONNER County.
Use: FIRE PROTECTION (2.000 CFS)
Total Diversion: (2.000 CFS)
Date Filed: 4/ 3/1995
T R S00
Place of use is within Sagle Fire District.

— 96-08859
ROBBINS, EDWIN H
1870 LAKESHORE DRIVE
SAGLE, ID 83860
Source: PEND OREILLE RIVER
Tributary: COLUMBIA RIVER
Diversion Pt: LOT 2 (SWSE) Sec 34 T 57N R 02W in BONNER County.
Use: IRRIGATION (0.040 CFS)
FIRE PROTECTION (.040 CFS)
Total Diversion: (0.080 CFS)
Date Filed: 4/ 3/1995
In: BONNER County
T57N R02W S34 Lot 2 (SWSE)
1.0 ACRES TOTAL

— 96-08860
SUNRISE TERRACE HOMEOWNER'S ASSOC. INC
C/O DAVID TATE
8867 SUNRISE CIRCLE
SAGLE, ID 83860
Source: GROUNDWATER
Diversion Pt: SWSESE Sec 3 T 56N R 02W in BONNER County.
Use: DOMESTIC (0.058 CFS)
Total Diversion: (0.058 CFS)
Date Filed: 3/29/1995
In: BONNER County
T56N R02W S03 SESE

— 96-08861
VAN OOYEN, JERRY L
7370 HIGHWAY 95 S
SANDPOINT, ID 83864
Source: GROUNDWATER
Diversion Pt: SWSW Sec 2 T 56N R 02W in BONNER County.
SESW Sec 2 T 56N R 02W in BONNER County.
Use: IRRIGATION (0.060 CFS)
DOMESTIC (0.040 CFS)
Total Diversion: (0.100 CFS)
Date Filed: 4/ 7/1995
In: BONNER County
T56N R 02W S02 SWSW SESW
4.0 ACRES TOTAL

For additional information concerning the property location, call the Northern Regional Office at (208) 769-1450.

The permit(s) will be subject to all prior water rights. Protests must be filed with the applicant and with the Director, Dept. of Water Resources, Northern Region, 1910 Northwest Blvd., Suite 210, Coeur d'Alene, Idaho 83814, together with a protest fee of $25.00 on or before MAY 8, 1995

R. KEITH HIGGINSON,
Director

SNP#6842 Apr 20, 27, 1995

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

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

November 20, 2002

TIM HARKINS
TALACHE SHORESIDE COMMUNITY
WATER USERS ASSN INC
4620 S MYRTLE
SPOKANE WA 99223

RE: Water Right 96-8857

Dear Mr. Harkins:

In October of 2001, you filed a Notice of Change in Water Right Ownership and supplemental documentation for the above referenced water right. The documentation you submitted relates to easements, the diversion system and delivery system. There is nothing contained in the documents that specifically addresses the water right and the ownership of it.

A copy of the water right license is enclosed for your information. If you can prepare a document that all owners of the 7 homes listed in remark no. 3 can sign, stating their agreement to placing the water right ownership into the name of the water users association, we will accept that document as the means by which we will change the water right record. In that document, please indicate which lot number each user owns.

If you have any questions, please give me a call.

Sincerely,

Sharla Curtis

Sharla Curtis
Sr. Water Resource Agent

SRC:klt

Enclosure

WATER RIGHT NO.	NAME	OWNER	PRIORITY DATE	STG/STS	SOURCE	USE DESC	SYSTEM
96-08857	NASH, ARNOLD EDMUND KEIR	C	03/31/1995	L/	PEND OREILLE LAKE	IRR	WR
	NASH, MARGUERITE B R	C				DOMEST	

Fee Paid.
Agent review needed.
Kari Lupro
12.6.01

Idaho Department of Water Resources Receipt

Receipt ID N014693

Payment Amount $25.00 **Date Received** 10/5/2001 2:16:31 PM **Region** Northern **Status**

Payment Type Check **Check Number** 134

Payer TIMOTHY J HARKINS

Comment Ownership change re 96-08857

Fee Detail

Amount	Description	Fund	FD	PCA	SO
$25.00	OWNERSHIP CHANGES/SECURITY INTERESTS	0229	21	65140	1155

Signature Line (Dept. Representative)

Form 42-248/42-1404(n) July, 2000

RECEIVED
OCT 12 2001
DEPARTMENT OF WATER RESOURCES

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

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

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

Water Right No(s).	Adjudication Claim No(s).	Split	Water Right No(s).	Adjudication Claim No(s).	Split
96-08857		n/a			

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

   A. The appropriate **FILING FEE**. See instructions for fee amounts.

   B. A copy of the most recent **DEED, TITLE POLICY, CONTRACT OF SALE** or other legal document indicating your ownership of the property and water right(s) or claim(s) in question, **WITH ATTACHED LEGAL DESCRIPTION**.

   C. Either of the following (if necessary to clarify division of water rights or other complex property descriptions):
   PLAT OF PROPERTY or SURVEY MAP clearly showing the location of the point(s) of diversion and place of use of your water right(s) and/or adjudication claim(s) (these are usually attached to your deed or on file with the county).

   OR

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

3. Name and Address of Former Owner/Claimant(s): A.E. Keir and Marguerite Nash
   P.O. Box 492
   Sagle, Idaho 83860

4. New Owner/Claimant(s): Talache ShoresideCommunity Water Users Association Inc.
   Name Connector (Check one): [ ] and / or, [ ] and/or
   New Mailing Address: Attn: Tim Harkins, Secretary
   ~~4620 S. Myrtle, Spokane, WA. 99223~~
   City, State and ZIP Code:
   New Telephone Number: (509) 448-3702 Evening; (509) 325-5466 days

5. Date you acquired the property: Aug. 27, 1999

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

DESCRIPTION OF YOUR PORTION OF WATER RIGHT
(If the right(s) will not be split, skip this area and proceed to item 7)

Water Right and/or Adjudication Claim Number _____

Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation		
Stock		
Domestic		
Other _____		
Total		

DESCRIPTION OF YOUR PORTION OF WATER RIGHT
(If the right(s) will not be split, skip this area and proceed to item 7)

Water Right and/or Adjudication Claim Number _____

Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation		
Stock		
Domestic		
Other _____		
Total		

7. Signature of New Owner(s) or Claimant(s) (include title if applicable) Timothy J Harkins, Secretary
Talache Shoreside Community Users Association Inc. by Tim Harkins Secretary

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

For Office Use Only
Received by AJ Date 10.5.01 Fee $25.00
Receipted by AJ Date 10.5.01 Receipt No. NJ 04693
Processed by _____ AJ Date _____ WR _____ Date _____

SETTLEMENT AGREEMENT

RAMSDEN & LYONS
700 Ironwood Drive, Suite 301
PO Box 1336
Coeur d'Alene, ID 83816-1336
Telephone: 664-5818
Brian T. Watkins, ISB No. 4263

Attorneys for Defendant - Rachell L. Johnson

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF BONNER

A.E. KEIR NASH and MARGUERITE NASH, husband and wife, Plaintiffs, vs. STEPHEN R. VIRNIG and CYNTHIA J. VIRNIG, husband and wife, et al., Defendants.	Case No. CV-96-00578 SETTLEMENT STIPULATION

The plaintiffs and defendants stipulate to the terms and conditions set forth herein. This stipulation is intended as a resolution of plaintiffs' claim to quiet title regarding water line easements and to the defendants' counterclaims alleging easement to draw water from Lake Pend Oreille across plaintiffs' lakefront property. The following conditions and terms are agreed:

1. The claims identified by paragraph 25 of the Third Amended Complaint will be dismissed on the merits and each to bear their own costs and fees.

2. Membership in the Talache Shoreside Community Water Users Association, Inc., shall be limited to property owners presently served by the existing water lines. Membership shall be tied to ownership of specific parcels.

The right to delivery of water from the system shall be limited to members of the Talache Shoreside Community Water Users Association, Inc.

3. The pump house components currently located on Lot 2A, Block 5, Talache Village, according to the re-plat of Lots 2 and 3, and a portion of Lot 1, Block 5, Talache Village Subdivision, said re-plat recorded as Instrument No. 490033, Bonner County, Idaho, (Nash lakefront property), will be relocated by November 1, 1999, to the lower half of the Harkins/Sanger property, more particularly described as:

> **That part of Government Lot 2 in Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho, described as follows:**
>
> **FROM the Northwesterly most corner of Lot 3 in Block 5, Talache Village Plat, which point is on the Southerly right of way line of Lakeside Drive; thence North 48° 24' 30" East, along said right of way line, 15.25 feet; thence North 41° 35' 30" West, 50 feet to a point on the Northerly right of way line of said Lakeshore Drive and the true point of beginning; thence South 48° 24' 30" West, 10.82 feet; thence North 46° 33' West 135.71 feet; thence North 52° 37' 30" East, 70.0 feet; thence South 46° 34' 40" East, 135.0 feet to the Northerly right of way line of Lakeside Drive; thence Southwesterly along said right of way line to a curve to the left whose radius is 393.45 feet, a distance of 59.21 feet to the TRUE POINT OF BEGINNING.**
>
> **SUBJECT TO reservations and restrictions of record.**

or to the Talache Shoreside Community Water Users Association, Inc. property, more particularly described as:

> **A tract of land in the Mexico mineral survey number 2559, in Government Lot 2 of Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho, more specifically described as follows: From corner number 1 of said Mexico claim; thence South 34° 41' 12" East a Distance of 164.14 feet to the TRUE POINT OF**

BEGINNING; thence, continuing South 34° 41' 12" East a distance of 15.0 feet to the Northwesterly right-of-way line of the existing public access road; thence North 48° 13" East along said road a distance of 20.75 feet, (North 48° 24' 30" East by original deed); thence leaving said right-of-way line, North 34° 41' 12" West a distance of 15.0 feet; thence South 48° 13' West a distance of 20.75 feet to the TRUE POINT OF BEGINNING.

4. All costs of moving the pump house components and utilities from Lot 2A, Block 5, Talache Village, to the lower half of the Harkins/Sanger property or the corporate property shall be shared by the members of the Talache Shoreside Community Water Users Association, Inc. equally. All costs of extending the existing encroachment pipe deeper into Lake Pend Oreille for health purposes shall be shared by the members equally.

5. All parties will grant reciprocal easements for the use and maintenance of the existing water lines for the benefit of each member appurtenant to the properties currently served by the existing water system. These easements shall be prepared and recorded prior to September 15, 1999.

6. The plaintiffs shall complete the process of obtaining a water license from the State of Idaho, Department of Water Resources. This shall include providing an accurate property description of the Johnson parcel to the State of Idaho, Department of Water Resources.

7. Talache Shoreside Community Water Users Association, Inc., will independently obtain and/or the Nashes will transfer existing encroachment permits to the corporation from the State of Idaho, Department of Lands, and the United States Army Corps of Engineers.

8. There will be no expansion of the existing water system without the unanimous vote of the members of the Talache Shoreside Community Water Users Association, Inc. The condition that expansion of the water system shall only be had by a unanimous vote shall be incorporated in the bylaws and/or amended Articles of Incorporation as may be necessary to effectuate the purpose of these paragraphs. The amended Articles and bylaws, as to the expansion requirement, shall not be modified unless by unanimous member vote.

9. Water usage among the members shall be monitored through the installation of separate water meters on each property. The cost of installation of the separate water meters shall be borne by each member separately.

10. Water purification shall be handled by separately installed units on each property. The cost of installation of water purification systems shall be borne by each member separately.

11. Each member expressly reserves the right to relocate the system's water lines on the member's own property. The cost of relocating a water line shall be borne by the member separately.

12. The parties are bound by obligations of good faith and full disclosure to implement the terms of this agreement.

Rachell Johnson 8/24/99
Rachell Johnson Date

A.E. Keir Nash 8/26/99
A.E. Keir Nash Date

Marguerite Nash 8-26-99
Marguerite Nash Date

Mark Mays 8/24/99
Mark Mays Date

Paula K. Mays 8/27/99
Paula K. Mays Date

Elizabeth Gay Date

Tim Harkins 8/24/99
Tim Harkins Date

Patricia D. Harkins 8/24/99
Patricia D. Harkins Date

Matthew Sanger 8/24/99
Matthew Sanger Date

Jill Sanger 8/24/99
Jill Sanger Date

David Gay Date

9/7/99 SETTLEMENT

JUDGMENT & ORDER

RAMSDEN & LYONS
700 Ironwood Drive, Suite 301
PO Box 1336
Coeur d'Alene, ID 83816-1336
Telephone: 664-5818
Brian T. Watkins, ISB No. 4263

Attorneys for Defendant - Rachell L. Johnson

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT

1999 SEP -7 A 11: 23

MARIE SCOTT
CLERK DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE

STATE OF IDAHO IN AND FOR THE COUNTY OF BONNER

A.E. KEIR NASH and MARGUERITE NASH, husband and wife, Plaintiffs, vs. STEPHEN R. VIRNIG and CYNTHIA J. VIRNIG, husband and wife, et al., Defendants.	Case No. CV-96-00578 JUDGMENT and ORDER

The parties to this action stipulate to the entry of judgment in this action regarding plaintiffs' claim to quiet title regarding water line easements and to the defendants' counterclaims alleging easement to draw water from Lake Pend Oreille across plaintiffs' lakefront property. The parties stipulate to the entry of judgment in this action which provides as follows:

1. The claims identified by paragraph 25 of the Third Amended Complaint will be dismissed on the merits and each to bear their own costs and fees.

2. Membership in the Talache Shoreside Community Water Users Association, Inc., shall be limited to property owners presently served by the

existing water lines. Membership shall be tied to ownership of specific parcels. The right to delivery of water from the system shall be limited to members of the Talache Shoreside Community Water Users Association, Inc.

3. The pump house components currently located on Lot 2A, Block 5, Talache Village, according to the re-plat of Lots 2 and 3, and a portion of Lot 1, Block 5, Talache Village Subdivision, said re-plat recorded as Instrument No. 490033, Bonner County, Idaho, (Nash lakefront property), will be relocated by November 1, 1999, to the lower half of the Harkins/Sanger property, more particularly described as:

> **That part of Government Lot 2 in Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho, described as follows:**
>
> **FROM the Northwesterly most corner of Lot 3 in Block 5, Talache Village Plat, which point is on the Southerly right of way line of Lakeside Drive; thence North 48° 24' 30" East, along said right of way line, 15.25 feet; thence North 41° 35' 30" West, 50 feet to a point on the Northerly right of way line of said Lakeshore Drive and the true point of beginning; thence South 48° 24' 30" West, 10.82 feet; thence North 46° 33' West 135.71 feet; thence North 52° 37' 30" East, 70.0 feet; thence South 46° 34' 40" East, 135.0 feet to the Northerly right of way line of Lakeside Drive; thence Southwesterly along said right of way line to a curve to the left whose radius is 393.45 feet, a distance of 59.21 feet to the TRUE POINT OF BEGINNING.**
>
> **SUBJECT TO reservations and restrictions of record.**

or to the Talache Shoreside Community Water Users Association, Inc. property, more particularly described as:

> **A tract of land in the Mexico mineral survey number 2559, in Government Lot 2 of Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho, more specifically described as follows: From corner number 1 of said Mexico claim; thence South 34° 41' 12" East a Distance of 164.14 feet to the TRUE POINT OF BEGINNING; thence, continuing South 34° 41' 12" East a distance of 15.0 feet to the Northwesterly right-of-way line of the existing public access road; thence North 48° 13" East along said road a distance of 20.75 feet, (North 48° 24' 30" East by original deed); thence leaving said right-of-way line, North 34° 41' 12" West a distance of 15.0 feet; thence South 48° 13' West a distance of 20.75 feet to the TRUE POINT OF BEGINNING.**

4. All costs of moving the pump house components and utilities from Lot 2A, Block 5, Talache Village, to the lower half of the Harkins/Sanger property or the corporate property shall be shared by the members of the Talache Shoreside Community Water Users Association, Inc. equally. All costs of extending the existing encroachment pipe deeper into Lake Pend Oreille for health purposes shall be shared by the members equally.

5. All parties will grant reciprocal easements for the use and maintenance of the existing water lines for the benefit of each member appurtenant to the properties currently served by the existing water system. These easements shall be prepared and recorded prior to September 15, 1999.

6. The plaintiffs shall complete the process of obtaining a water license from the State of Idaho, Department of Water Resources. This shall include providing an accurate property description of the Johnson parcel to the State of Idaho, Department of Water Resources.

7. Talache Shoreside Community Water Users Association, Inc., will independently obtain and/or the Nashes will transfer existing encroachment permits to the corporation from the State of Idaho, Department of Lands, and the United States Army Corps of Engineers.

8. There will be no expansion of the existing water system without the unanimous vote of the members of the Talache Shoreside Community Water Users Association, Inc. The condition that expansion of the water system shall only be had by a unanimous vote shall be incorporated in the bylaws and/or amended Articles of Incorporation as may be necessary to effectuate the purpose of these paragraphs. The amended Articles and bylaws, as to the expansion requirement, shall not be modified unless by unanimous member vote.

9. Water usage among the members shall be monitored through the installation of separate water meters on each property. The cost of installation of the separate water meters shall be borne by each member separately.

10. Water purification shall be handled by separately installed units on each property. The cost of installation of water purification systems shall be borne by each member separately.

11. Each member expressly reserves the right to relocate the system's water lines on the member's own property. The cost of relocating a water line shall be borne by the member separately.

12. The parties are bound by obligations of good faith and full disclosure to implement the terms of this agreement.

JUDGMENT AND ORDER

Based on the stipulation of the parties as set forth above, and the Court being fully advised in the premises, the stipulation is in all respects adopted and approved. The Court Orders that the parties are bound by the obligations of good faith to abide by the terms of the stipulation and the Court Expressly Orders that the stipulation shall be enforced by all powers legal and equitable available to the Court for the enforcement of court orders. NOW, THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, and this does Order, that the above stipulation is the order and judgment of this Court.

DATED this 1 day of September, 1999.

/s/ Gary M. Haman
Gary M. Haman, District Judge

Presented by:
RAMSDEN & LYONS
Brian T. Watkins
Attorney for Defendant Johnson

CLERK'S CERTIFICATE OF MAILING

I hereby certify that on the 7 day of September, 1999, I caused to be served a true and correct copy of the foregoing by U.S. Mail, postage prepaid, and addressed to the following:

Rachell Johnson
PO Box 0097
Newman Lake WA 99025

Timothy J. Harkins, Esq.
1301 W. College Avenue
Spokane WA 99201

Mark Mays
W. 105 Eight Avenue, Ste 7035
Spokane WA 99204-2318

Michael Black, Esq.
717 W. Sprague, Ste 1600
Spokane WA 99201

Thomas E. Cooke, Esq.
PO Box 789
Priest River ID 83856

Matthew K. Sanger, Esq.
422 W. Riverside, Ste 824
Spokane WA 99201

R. Wayne Sweney
Lukins & Annis, P.S.
250 Northwest Blvd., Suite 102
Coeur d'Alene, ID 83814

Brian T. Watkins
RAMSDEN & LYONS
P.O. Box 1336
Coeur d'Alene, ID 83816-1336

Keir and Marguerite Nash
P.O. Box 492
Sagle, ID 83860

CLERK OF THE DISTRICT COURT

Denise M Rawlins
Deputy Clerk

EASEMENT AGREEMENT 12/10/99

A E Keir Nash
1033 N. Ontare Rd.
Santa Barbara, Ca. 93105

FILED BY
A.E. Keir Nash
2000 MAY -2 A 9:04
RECORDER

563142 SR

Recorder's Use Only

EASEMENT AGREEMENT

This Agreement is made this 10th day of December 1999 by and between A.E. Keir and Marguerite Nash, Rachell L. Johnson, Mark and Paula Mays, Timothy J. and Patricia D. Harkins, and Matthew and Jill Sanger.

RECITALS

A. The parties to this agreement are the owners of lands located in Talache Village, Township 55 North, Range 1 West, Boise Meridian, Bonner County, State of Idaho.

B. A.E. Keir and Marguerite Nash are the owners of property consisting of three parcels legally described in Attachment A to this Agreement.

C. Rachell L. Johnson is the owner of two parcels of property legally described in Attachment B.

D. Mark and Paula Mays are the owners of property legally described in Attachment C.

E. Timothy J. and Patricia D. Harkins and Matthew and Jill Sanger are owners of property legally described in attachment D.

F. The above-referenced property owners (parties) intend that the existing water system, water lines, and the system's related components servicing each parcel of land will be utilized by the property owners described above. Each of the parties shall maintain the water system, water lines and the related components and each of the property owners shall contribute to the maintenance of the system as set forth in the Articles of Incorporation and Bylaws of the Talache Shoreside Community Water Users Association, Inc.

THEREFORE, in consideration of the mutual covenants of the parties as set forth in this instrument and in consideration of the Settlement Agreement between plaintiffs and defendants in Bonner County Case No. CV-96-00578, memorialized in the Judgment and Order entered September 7, 1999, and other good and valuable consideration, they agree as follows:

SECTION ONE. CREATION OF EASEMENTS

1.1 A. E. Keir and Marguerite Nash grant to Rachell L. Johnson, Mark and Paula Mays, Timothy J. and Patricia D. Harkins, and Matthew and Jill Sanger, for their benefit and that of their successors and assigns, a water line easement for the purposes of operating, diverting and pumping water from Lake Pend Oreille, inspecting, maintaining, repairing, replacing, substituting, and for the transportation of water through the existing pipeline on, in, over, and through the following described land in Bonner County, State of Idaho:

Lot 2A, Block 5, Talache Village, according to the replat of Lots 2 and 3, and a portion of Lot 1, Block 5, Talache Village Subdivision, said replat recorded as Instrument No. 490033, records of Bonner County, Idaho, Recorder.

1.2 A. E. Keir and Marguerite Nash grant to Rachell L. Johnson, Mark and Paula Mays, Timothy J. and Patricia D. Harkins, and Matthew and Jill Sanger the right of ingress and egress to and from Lot 2A, Block 5, Talache Village, as described above, solely for purposes necessary to inspect, maintain, repair, or replace the water distribution system.

1.3 A.E. Keir and Marguerite Nash reserve the right to use and enjoy their property to the fullest possible extent without unusual interference with the exercise by the other parties of the rights granted in this agreement.

1.4 Timothy J. and Patricia D. Harkins and Matthew and Jill Harkins grant to A.E. Keir and Marguerite Nash, Rachell L. Johnson, and Mark and Paula Mays for their benefit and that of their successors and assigns, a water line easement for the purposes of operating, diverting and pumping water from Lake Pend Oreille, inspecting, maintaining, repairing, replacing, substituting, and for the transportation of water through the existing pipeline on, in, over, and through the following described land in Bonner County, State of Idaho:

That part of Government Lot 2 in Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho, described as follows: From the Northwesterly most corner of Lot 3, Block 5 of Talache Village Plat, which point is on the Southerly right of way line of Lakeside Drive; thence North 48° 24' 30" East along said right of way line, 15.25 feet; thence North 41° 35' 30" West, 50 feet to a point on the Northerly right of way line of said Lakeside Drive and the true point of beginning; thence South 48° 24' 30" West, 10.82 feet; thence North 46° 33' West 135.71 feet; thence North 52° 37' 30" East 70.0 feet; thence South 46° 34' 40" East, 135.0 feet to the Northerly right of way line of Lakeside Drive; thence Southwesterly along said right of way line along a curve to the left whose radius is 393.45 feet, a distance of 59.21 feet to the true point of beginning.

1.5 Timothy J. and Patricia D. Harkins and Matthew and Jill Sanger grant to A.E. Keir and Marguerite Nash, Rachell L. Johnson, and Mark and Paula Mays the right of ingress and egress to and from the property described immediately above in paragraph 1.4, solely for purposes necessary to inspect, maintain, repair, or replace the water distribution system.

1.6 Timothy J. and Patricia D. Harkins and Matthew and Jill Sanger reserve the right to use and enjoy their property to the fullest possible extent without unusual interference with the exercise by the other parties of the rights granted in this agreement.

1.7 Mark and Paula Mays grant to Timothy J. and Patricia D. Harkins and Matthew and Jill Harkins, and A.E. Keir and Marguerite Nash, and Rachell L. Johnson for their benefit and that of their successors and assigns, a water line easement for the purposes of operating, diverting and pumping water from Lake Pend Oreille, inspecting, maintaining, repairing, replacing, substituting, and for the transportation of water through the existing pipeline on, in, over, and through the following described land in Bonner County, State of Idaho:

That part of Government Lot 2 in Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho, described as follows, and recorded June 2, 1987 in Bonner County Instrument No. 335527:
From a point on the Southerly right of way line of Lakeside Drive as shown on the plat of Talache Village as recorded in Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho, which point is the Northerly most corner of Lot 5, Block 5 of said Talache Village Plat; THENCE Southwesterly along said Southerly right of way line 22.87 feet to the end of a curve on the right of way line of said Lakeside Drive; THENCE North 41° 35½' West 50 feet to a point

on the Northerly right of way line of said Lakeside Drive; THENCE North 48° 24½' East 7.26 feet along said right of way line to the TRUE POINT OF BEGINNING; THENCE continuing along said right of way line North 48° 24½' East 60 feet; THENCE North 46° 33' West 135.71 feet; THENCE South 48° 24½' West 60 feet; THENCE South 46° 33' East 135.71 feet to the TRUE POINT OF BEGINNING.

1.8 Mark and Paula Mays grant to Timothy J. and Patricia D. Harkins and Matthew and Jill Sanger, and A.E. Keir and Marguerite Nash, and Rachell L. Johnson the right of ingress and egress to and from the property described immediately above in paragraph 1.7, solely for purposes necessary to inspect, maintain, repair, or replace the water distribution system.

1.9 Mark and Paula Mays reserve the right to use and enjoy their property to the fullest possible extent without unusual interference with the exercise by the other parties of the rights granted in this agreement.

1.10 The rights granted in Section One of this Agreement shall be appurtenant to the real property more particularly described in Attachments A, B, C, and D.

1.11 This Agreement shall be binding on the heirs, legal representatives, successors and assigns of the parties.

SECTION TWO. CROSS-EASEMENTS FOR USE AND MAINTENANCE

2.1 The parties understand and agree that the water system, its pipelines, pumps, pressure tank(s), and all other necessary apparatus from the source of water supply, Lake Pend Oreille, and service lines from the main distribution pipeline or lines to the property of each of the parties are to be mutually enjoyed and shared by the parties and their successors and assigns.

2.2 The parties grant to one another, for their benefit and that of their successors and assigns, an easement for the purposes of operating, pumping, inspecting, maintaining, repairing, replacing, substituting, and for the transportation of water through its pipelines, service lines and main distribution line on, in, over, and through the real property described in Attachments A through D.

2.3 Each party shall have the right of ingress and egress to and from the properties solely for purposes necessary to inspect, maintain, repair, or replace the water system and its water lines.

2.4 Each party reserves the right to use and enjoy their property to the fullest possible extent without unusual interference with the exercise by the other parties of the rights granted in this agreement.

2.5 The rights granted in this agreement by each party shall be appurtenant to each party's property described in Attachments A through D.

IN WITNESS WHEREOF, the parties hereto have executed this agreement.

A.E. Keir Nash	4/12/2000 Date	Rachell L. Johnson	3-31-00 Date	Marguerite Nash	4-12-00 Date
Mark Mays	3/20/00 Date	Matthew Sanger	3/1/00 Date	Jill Sanger	3/1/00 Date
Paula Mays	3/20/00 Date	Timothy J. Harkins	1/14/2000 Date	Patricia D. Harkins	1/14/2000 Date

STATE OF ~~IDAHO~~ California)
)ss.
County of ~~Bonner~~ Santa Barbara)

On this 12th day of ~~December 1999,~~ April 2000 before me personally appeared A.E. KEIR NASH, known or identified to me to be the person whose name is subscribed to the within and foregoing Easement Agreement, and acknowledged to me that ~~he/she~~ voluntarily executed the same.

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

ELLEN K. BURNS
Commission # 1168230
Notary Public - California
Santa Barbara County
My Comm. Expires Jan 9, 2002

Notary Public for ~~Idaho~~ California
Residing at Santa Barbara
Commission expires 1-9-02

STATE OF CALIFORNIA)
)ss.
County of Santa Barbara)

On this 12th day of ~~December 1999~~ April 2000, before me personally appeared MARGUERITE NASH, known or identified to me to be the person whose name is subscribed to the within and foregoing Easement Agreement, and acknowledged to me that ~~he/she~~ voluntarily executed the same.

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

ELLEN K. BURNS
Commission # 1168230
Notary Public - California
Santa Barbara County
My Comm. Expires Jan 9, 2002

Notary Public for California
Residing at Santa Barbara
Commission expires 1-9-02

STATE OF WASHINGTON)
)ss.
County of Spokane)

On this 31st day of ~~December 1999~~ March 2000, before me personally appeared RACHELL L. JOHNSON, known or identified to me to be the person whose name is subscribed to the within and foregoing Easement Agreement, and acknowledged to me that he/she voluntarily executed the same.

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

STATE OF WASHINGTON N. M. GRAUPNER NOTARY PUBLIC COMMISSION EXPIRES JAN 04, 2003

N M Graupner N M Graupner
Notary Public for Washington
Residing at Spokane
Commission expires 5-4-2003

STATE OF ~~IDAHO~~ WA)
)ss.
County of Spokane)

On this 14 day of January, ~~1999~~ 2000 before me personally appeared TIMOTHY HARKINS, known or identified to me to be the person whose name is subscribed to the within and foregoing Easement Agreement, and acknowledged to me that he/she voluntarily executed the same.

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

Tamara K. Hinrg
Notary Public for ~~Idaho~~ Washington
Residing at Spokane
Commission expires 10/22/03

STATE OF ~~IDAHO~~ WA)
)ss.
County of Spokane)

On this 14 day of January, ~~1999~~ 2000 before me personally appeared PATRICIA D. HARKINS, known or identified to me to be the person whose name is subscribed to the within and foregoing Easement Agreement, and acknowledged to me that he/she voluntarily executed the same.

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

Tamara K. Hinrg
Notary Public for ~~Idaho~~ Washington
Residing at Spokane
Commission expires 10/22/03

STATE OF IDAHO)
)ss.
County of)

On this 1st day of March, ~~1999~~ 2000, before me personally appeared MATTHEW SANGER, known or identified to me to be the person whose name is subscribed to the within and foregoing Easement Agreement, and acknowledged to me that he/she voluntarily executed the same.

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

DEBRA A. GRUBER NOTARY PUBLIC STATE OF WASHINGTON Commission Expires DEC. 6, 20

Debra A Gruber
Notary Public for Idaho
Residing at Colbert
Commission expires 12/06/00

STATE OF IDAHO)
)ss.
County of)

On this 1st day of March, ~~1999~~ 2000, before me personally appeared JILL SANGER, known or identified to me to be the person whose name is subscribed to the within and foregoing Easement Agreement, and acknowledged to me that he/she voluntarily executed the same.

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

DEBRA A. GRUBER NOTARY PUBLIC STATE OF WASHINGTON Commission Expires DEC. 6, 2000

Debra A Gruber
Notary Public for Idaho
Residing at Colbert
Commission expires 12/06/00

STATE OF ~~IDAHO~~ WASHINGTON)
)ss.
County of SPOKANE)

On this 20 day of March, ~~1999~~ 2000, before me personally appeared MARK MAYS, known or identified to me to be the person whose name is subscribed to the within and foregoing Easement Agreement, and acknowledged to me that he/she voluntarily executed the same.

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

THERESA L. NOACK NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES 9-9-02

Theresa L. Noack
Notary Public for Idaho
Residing at Spokane
Commission expires 9-9-02

STATE OF ~~IDAHO~~ WASHINGTON)
)ss.
County of SPOKANE)

On this 20 day of March, ~~1999~~ 2000, before me personally appeared PAULA K. MAYS, known or identified to me to be the person whose name is subscribed to the within and foregoing Easement Agreement, and acknowledged to me that he/she voluntarily executed the same.

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

THERESA L. NOACK NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES 9-9-02

Theresa L. Noack
Notary Public for Idaho
Residing at Spokane
Commission expires 9-9-02

ATTACHMENT A

PROPERTY DESCRIPTION OF THREE PARCELS OWNED BY
A.E. KEIR AND MARGUERITE NASH

In Bonner County, Idaho:

PARCEL 1:

A portion of Government Lot 2 in Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho, more particularly described as follows:

From the Northwesterly most corner of Lot 3, Block 5 of Talache Village Plat, which point is on the Southerly right of way line of Lakeside Drive; thence North 48 degrees 24' 30" East along said right of way line 15.25 feet; thence North 41 degrees 35' 30" West 50 feet to a point on the Northerly right of way line of said Lakeside Drive; thence Northeasterly along said right of way along a curve whose radius is 393.45 feet, a distance of 59.21 feet to the true point of beginning; thence North 46 degrees 34' West 135.0 feet; thence South 84 degrees 25' 24" East 218.82 feet to a point on the North line of said Lakeside Drive; thence South 59 degrees 15' 39" West along said right of way line 124.16 feet; thence along said right of way line, along a curve to the left whose radius is 393.45 feet a distance of 15.31 feet to the true point of beginning.

LESS a tract of land in Government Lot 2 of Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho, more specifically described as follows:

From the Northwesterly corner of Lot 1 of Block 5 of Talache Village, a plat recorded in the records of Bonner County in Book 2 of Plats, page 78; thence North 30 degrees 44' 21' West a distance of 50.00 feet to the Northerly right of way line of Lakeside Drive a distance of 63.68 feet to the true point of beginning; thence continuing North 59 degrees 15' 39" East a distance of 60.48 feet; thence leaving said Lakeside Drive, North 84 degrees 25' 24" West a distance of 93.82 feet; thence South 46 degrees 34' 40" East a distance of 57.58 feet to the true point of beginning.

PARCEL 2:

A tract of land in the Mexico Mineral Survey No. 2559, in Government Lot 2 of Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho, more specifically described as follows:

From the witness corner to corner Number 4 of said Mexico claim, which point is North 79 degrees 44' West a distance of 104.28 feet from said corner Number 4;

thence North 79 degrees 44' West along the North line of said Mexico claim a distance of 93.21 feet to the true point of beginning; thence continuing North 70 degrees 44' West a distance of 223.23 feet; thence leaving said North line, South 33 degrees 14' 36" East a distance of 46.65 feet to the Northerly right of way line of the existing 30.0 foot public access road; thence South 62 degrees 39' 16" East across said access road a distance of 32.99 feet; thence South 84 degrees 25' 24" East a disance of 125.0 feet; thence North 56 degrees 41' 23" East a distance of 48.30 feet to the true point of beginning;

LESS a tract of land in the Mexico Mineral Survey No. 2559, in Government Lot 2 of Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho, more specifically described as follows:

From the witness corner to corner No. 4 of said Mexico claim, which point is North 79 degrees 44' West a distance of 104.28 feet from said corner No. 4; thence North 79 degrees 44' West along the North line of said Mexico claim a distance of 316.44 feet to the true point of beginning; thence leaving said North line, South 33 degrees 14' 36" East a distance of 46.65 feet to the Northerly right of way line of the existing 30.0 foot public access road; thence along the Northerly access road to a point that is South 79 degrees 44' East from the point of beginning; thence North 79 degrees 44' West to a point of beginning.

PARCEL 3:

Lot 2A, Block 5, Talache Village, according to the replat of Lots 2 and 3, and a portion of Lot 1, Block 5, Talache Village Subdivision, and replat recorded as Instrument No. 490033, records of Bonner County, Idaho, Recorder.

ATTACHMENT B

PROPERTY DESCRIPTION OF PARCEL OWNED BY
RACHELL L. JOHNSON

In Bonner County, Idaho:

A portion of Government Lot 2 in Section 8, Township 55 North, Range 1 West, of the Boise Meridian, Bonner County, Idaho; and a portion of Government Lot 1 in Section 7, Township 55 North, Range 1 West, of the Boise Meridian, Bonner County, Idaho, described as follows:

BEGINNING at the Northwesterly most corner of Lot 9, Block 5, Talache Village Plat; thence North 48° 12' West 50.0 feet to the Northerly right of way line of Lakeside Drive in said Talache Village Plat; thence Southwesterly along said right of way line on a curve to the left, whose radius is 399.54 feet, a distance of 10.69 feet to the Point of Beginning; thence continuing along said curve a distance of 100.00 feet; thence North 46° 06' 33" West 83.01 feet; thence North 30° 42' East 100.00 feet; thence South 46° 33' East 87.12 feet to the Point of Beginning.

563142

ATTACHMENT C

PROPERTY DESCRIPTION OF PARCEL OWNED BY
MARK AND PAULA MAYS

That part of Government Lot 2 in Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho, described as follows, and recorded June 2, 1987 in Bonner County Instrument No. 335527:

From a point on the Southerly right of way line of Lakeside Drive as shown on the plat of Talache Village as recorded in Section 8, Township 55 North, Range 1 West, Boise Meridian, Bonner County, Idaho, which point is the Northerly most corner of Lot 5, Block 5 of said Talache Village Plat; THENCE Southwesterly along said Southerly right of way line 22.87 feet to the end of a curve on the right of way line of said Lakeside Drive; THENCE North 41° 35½' West 50 feet to a point on the Northerly right of way line of said Lakeside Drive; THENCE North 48° 24½' East 7.26 feet along said right of way line to the TRUE POINT OF BEGINNING; THENCE continuing along said right of way line North 48° 24½' East 60 feet; THENCE North 46° 33' West 135.71 feet; THENCE South 48° 24½' West 60 feet; THENCE South 46° 33' East 135.71 feet to the TRUE POINT OF BEGINNING.

563142

ATTACHMENT D

PROPERTY DESCRIPTION OF PARCEL OWNED BY
TIMOTHY AND PATRICIA D. HARKINS AND MATTHEW AND JILL SANGER

In Bonner County, Idaho:

From the Northwesterly most corner of Lot 3, Block 5 of Talache Village Plat, which point is on the Southerly right of way line of Lakeside Drive; thence North 18° 24' 30" East along said right of way line 15.25 feet; thence North 51° 35' 30" West 50 feet to a point on the Northerly right of way line of said Lakeside Drive and the true point of beginning; thence South 48° 24' 30" West 10.82 feet; thence; North 46° 33' West 135.71 feet; thence North 52° 37' 30" East 70.0 feet; thence South 46° 34' 40" East 135.0 feet to the Northerly right of way line of Lakeside Drive; thence Southwesterly along said right of way line along a curve to the left whose radius is 393.45 feet a distance of 59.21 feet to the true point of beginning, all lying in Section 8, Township 55 North of Range 1, West of the Boise Meridian.

TOGETHER with the reasonable right of ingress and egress to said properties over adjoining properties of the grantors.

RECEIVED
DEC - 6 2001
Department of Water Resources

State of Idaho
DEPARTMENT OF WATER RESOURCES
NORTHERN REGION, Suite No. 210 • 1910 Northwest Blvd. • Coeur d'Alene, Idaho 83814-2615
(208) 769-1450 Fax (208) 769-1454

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

December 4, 2001

TIMOTHY J HARKINS
W 1304 COLLEGE
SPOKANE WA 99201

Re: Change of Water Right Ownership for 96-08857

Dear Mr. Harkins:

This acknowledges receipt of your letter dated November 29, 2001 and the attachments. It also acknowledged receipt of your original documents that were received in our office in early October. Receipt No. N014693 was issued on October 5, 2001, and a report of the details of that receipt is enclosed herewith.

We forwarded your original Notice of Change of Water Right Ownership forms and attachments to our State Office in Boise on October 10, 2001, for final processing.

I cannot offer you a date by which you will receive confirmation of that change being entered in our database system, but for information purposes and to put your mind at ease, water rights automatically transfer to the new owner with the sale of the property unless the seller specifically withholds those rights. Our State Office has received the paper work you sent.

Thank you for your patience.

Sincerely,

Dianne Ball

Dianne Ball
Administrative Assistant

Db

Enc. Copy of information on Receipt No. N014693 dated 10/5/01.

RECEIVED
DEC - 6 2001
Department of Water Resources
RECEIVED
DEC 03 2001
IDWR/North

November 29, 2001

State of Idaho
Dept. of Water Resources
Northern Region
1910 N.W. Blvd., Suite 210
Coeur d'Alene, Idaho 83814-2615

Dear Water Resource Department:

I include herein a copy of a letter dated October 4, 2001 and a State of Idaho Department of Water Resources Notice of Change in Water Right Ownership Application. I have not heard back from your department or received anything further. Please let me know if there is any further information I need to provide or further steps I need to take in order to complete this application. I look forward to hearing from you.

Very truly yours,

TIMOTHY J. HARKINS

TJH:th
encl-

Harkins
West 1304 College
Spokane, Washington 99201

RECEIVED
OCT 12 2001
Department of Water Resources

October 4, 2001

State of Idaho
Dept. of Water Resources
Northern Region
1910 N.W. Blvd., Suite 210
Coeur d'Alene, Idaho 83814-2615

Dear Water Resource Department:

I include herein a State of Idaho Notice Of Change in Water Right Ownership Application, a $25.00 fee and various legal documents supporting the transfer of ownership. The existing water license was to service several cabins at Lake Pend Oreille. The owner of the shoreline property was Mr. and Mrs. Nash and the water lines crossed their property and moved up the hill to several other properties. The Nashes sued other shoreline owners for ingress and egress easements and also sued the Water Association to clear title regarding the water lines crossing their property. As a result of this lawsuit the parties entered into a settlement stipulation, this was approved by a judgment and order and all respective parties thereafter entered into an easement agreement.

According to page 3, section 7, the community association or the Nashes were supposed to transfer the existing encroachment permits from the State of Idaho. Discovering that this had not been done, I herein as Secretary of the water users association, herein requested the ownership of that water right be transferred. If you have any questions you can reach me during the day at (509) 325-5466, or in the evening at (509) 448-3702. If you have any other questions regarding this application or other questions about any of the documents herein, please let me know at your earliest convenience. Otherwise, I request that this Ownership Permit be transferred pursuant to the terms of this settlement and court order.

I thank you for your attention.

Very truly yours,

TIMOTHY J. HARKINS

TJH:th
encl-