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MAR 20 2006

DEPARTMENT OF
WATER RESOURCES

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A Professional Corporation
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Ketchum, Idaho 83340
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Attorneys for Rhythm Ranch Homeowners Association

ORIGINAL IN RED

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF TRANSFER NO.	)	
71145 IN THE NAME OF RHYTHM	)	
RANCH HOMEOWNERS	)	PETITION FOR
ASSOCIATION	)	RECONSIDERATION
	)	
	)	

Rhythm Ranch Homeowners Association (the "Association"), by and through its attorney, James P. Speck, of Speck & Aanestad, A Professional Corporation, hereby petitions the Idaho Department of Water Resources (the "Department") pursuant to I.C. § 67-5343(3) for reconsideration of its preliminary order titled Transfer of Water Right Transfer No. 71145 (the "Transfer"). In support thereof, the Association states as follows:

1. The Association is the owner of the six (6) water rights which are the subject of the Transfer and all of which are diverted from Broadford Slough (the "water rights"). The water rights are used to irrigate property previously owned by Kate Rosekrans which was platted in 2004 into

PETITION FOR RECONSIDERATION - 1

Petition for Reconsideration.wpd

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Rhythm Ranch Subdivision (the "Subdivision"). The members of the Association are the owners of the four (4) lots in the Subdivision.

2. On March 2, 2006 the Department issued the Transfer which was then served on the Association by mail on March 3, 2006. Condition of Approval No. 1 for each of the water rights as modified by the Transfer limits all of the water rights when combined to the irrigation of 31.1 acres.

3. Jason C. Helms, P.E. of Brockway Engineering, PLLC, has done an analysis of aerial photography of the property which is now the Subdivision taken in 1982, 1984, 1985, 1987, 1990 and 2004 and has concluded that in 1982 and 1984 a total of forty (40) acres of this property was irrigated by the water rights. Copies of the aerial photographs and a letter from Mr. Helms describing his analysis and findings are attached hereto as Exhibits 1 through 7. Attached as Exhibit 8 is another copy of the 1984 photograph on which the irrigated area analyses of both Mr. Jim Stanton from the Department and Mr. Helms have been superimposed. Mr. Stanton's analysis is the basis for the irrigated acres limitation in the Transfer.

4. Claims for all of the water rights which are the subject of the Transfer were filed in the SRBA in late 1988. Therefore, the forfeiture period of five (5) consecutive years after the irrigation of forty (40) acres in 1984 had not yet run when the claims were filed.

5. In or about 2004 Ms. Rosekrans sold to neighboring property owners portions of the water rights for the irrigation of five (5) acres. Therefore, according to Mr. Helms analysis, the portions of the water rights which remain to appurtenant to the Subdivision can irrigate thirty-five (35) acres.

WHEREFORE, The Association respectfully requests the Department to amend Condition of Approval No. 1 for each of the water rights in the Transfer to permit the irrigation of thirty-five

PETITION FOR RECONSIDERATION - 2

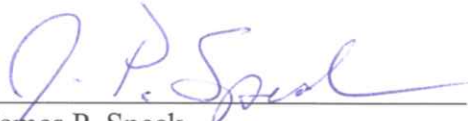
Petition for Reconsideration.wpd

3/17/06

(35) acres by all of the water rights combined.

Dated this 17 day of March, 2006.

SPECK & AANESTAD
A Professional Corporation
Attorneys for Rhythm Ranch Homeowners
Association.

By: 
James P. Speck

CERTIFICATE OF SERVICE

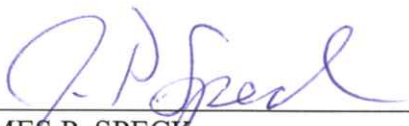
I hereby certify that on the 17 day of March 2006, I served a true and correct copy of the within and foregoing document upon the persons named below in the manner noted:

Mr. Gary Spackman
IDAHO DEPARTMENT OF WATER
RESOURCES
322 East Front Street
P.O. Box 83720
Boise ID 83720-0098
Fax: 1-208-287-6700

☐ United States Mail, Postage Prepaid
☐ Hand Delivery
☒ Facsimile

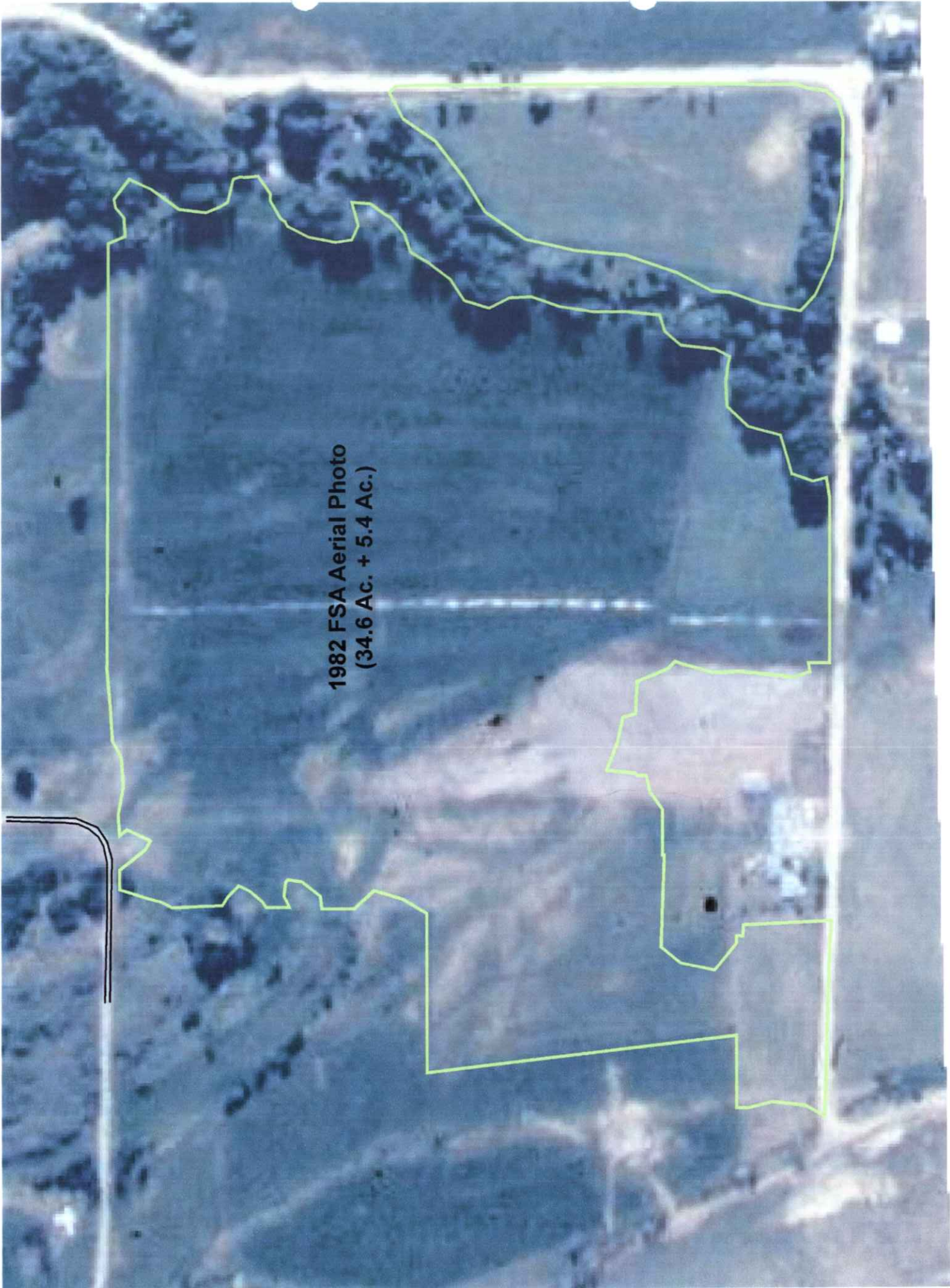
Mr. Karl J. Dreher
Director
IDAHO DEPARTMENT OF WATER
RESOURCES
322 East Front Street
P.O. Box 83720
Boise ID 83720-0098
Fax: 1-208-287-6700 322 East Front Street
P.O. Box 83720
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JAMES P. SPECK

PETITION FOR RECONSIDERATION - 3

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An aerial photograph showing a large land parcel outlined in yellow. The parcel is irregularly shaped, with a jagged boundary line. It is surrounded by dense forest and some cleared areas. A road or path is visible on the left side, and a small building or structure is visible in the lower right corner of the parcel. The text "1982 FSA Aerial Photo (34.6 Ac. + 5.4 Ac.)" is printed vertically in the center of the image.

1982 FSA Aerial Photo
(34.6 Ac. + 5.4 Ac.)

An aerial photograph showing a large, irregularly shaped area outlined in yellow. The area is mostly covered in dense, dark green forest. In the lower right portion of the yellow-outlined area, there is a small, light-colored building with a dark roof. The surrounding area outside the yellow line is also forested but appears less dense. A road or path is visible in the bottom left corner, and a straight line, possibly a road or boundary, runs vertically along the right side of the yellow-outlined area.

1984 FSA Aerial Photo
(34.6 Ac. + 5.4 Ac.)

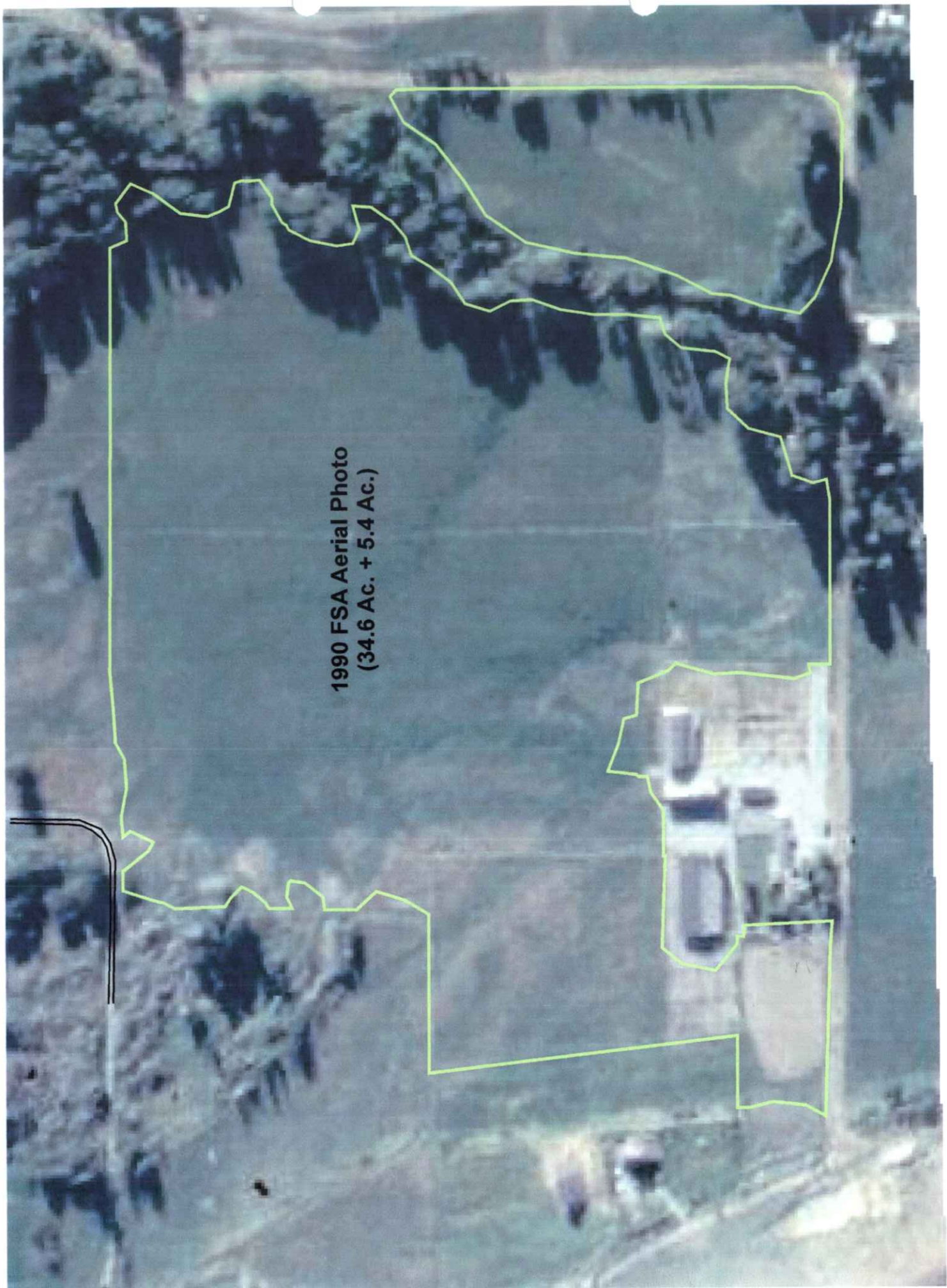
1985 FSA Aerial Photo
(34.6 Ac. + 5.4 Ac.)



1987 Infrared Aerial Photo
(34.6 Ac. + 5.4 Ac.)



1990 FSA Aerial Photo
(34.6 Ac. + 5.4 Ac.)



2004 NAIP Aerial Photo
(34.6 Ac. + 5.4 Ac.)





BROCKWAY
ENGINEERING
P.L.L.C.

Hydraulics

Hydrology

Water Resources

March 17, 2006

Mr. James P. Speck
120 East Avenue
P.O. Box 987
Ketchum, Idaho 83340

Re: Rhythm Ranch Historical Surface Water Irrigation

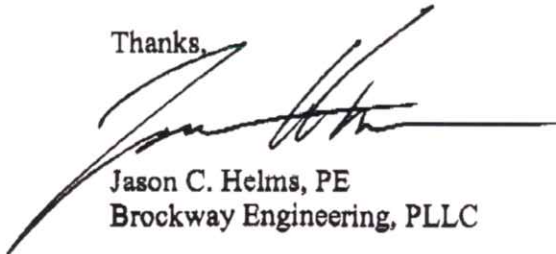
Dear Jim:

I previously sent several aerial photos with my delineation of total irrigation occurring on the current Rhythm Ranch subdivision prior to addition of the ground water right 37-7745 which was transferred onto the property in 1996 under transfer #4707. I included all areas which appeared green and thus irrigated in either the 1984, 1985 FSA aerials as well as the '1987' infrared. Although more extensive irrigation was apparent in the 1982 FSA photo, it was not used as a basis for my determination. Total area was calculated after creation of the outline using ArcGIS which is extremely accurate once the correct units are defined.

Based on my best delineation, a total irrigation of 40 acres on the property appears reasonable. It is certainly possible that the surface water was spread over an even larger area, however due to the gravelly nature of the ground on the property which I have visited several times, and the associated high seepage rates, effective irrigation in certain areas was likely hindered. Additionally, the tree canopy - particularly along the Broadford Slough, makes it difficult to determine the full extent of irrigation along the Slough so I was necessarily conservative in that area.

If you have any questions, please feel free to call.

Thanks,


Jason C. Helms, PE
Brockway Engineering, PLLC

CHARLES E.
BROCKWAY,
PH.D., P.E.

CHARLES G.
BROCKWAY,
PH.D., P.E.

2016 NORTH
WASHINGTON
STREET • SUITE 4

TWIN FALLS,
IDAHO 83301

208•736•8543

FAX: 736•8506

1984 FSA Aerial Photo

Brockway
(34.6 Ac. + 5.4 Ac.)

IDWR
(30.7 Ac. + 4.7 Ac.)

