

Claim No(s): 65-03848

Claimant(s) Ellis

T11N, R03E, S 1

T11N, R04E, S 6

Prepared by: Sue Bock

Date: 10/14/99

MAR 17 2003

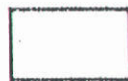
MICROFILM



Place of Use



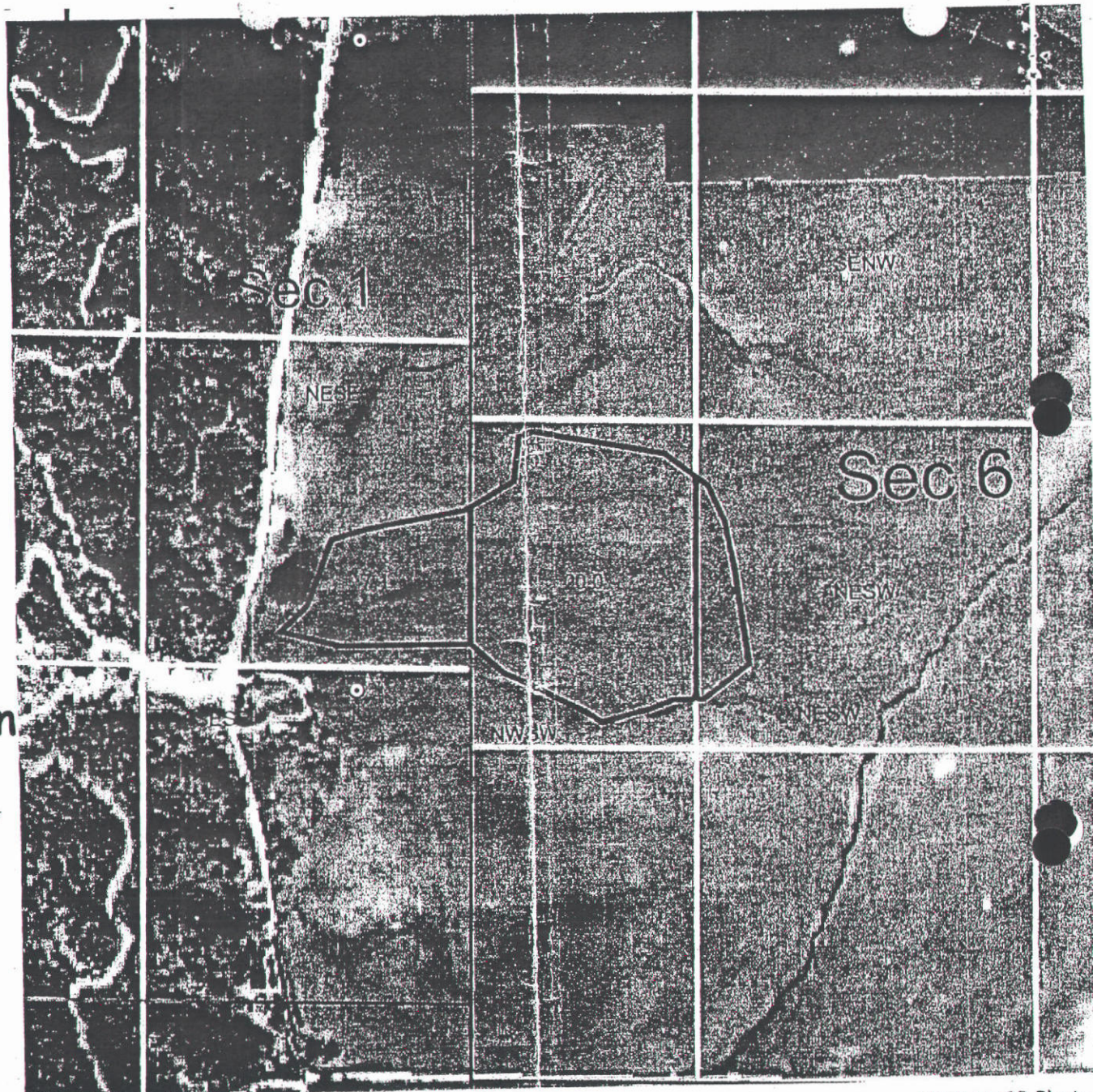
Point of Diversion



Section lines

1/4 1/4 lines

EXHIBIT



0

0.25

0.5 Miles

1987 NAPP Photo

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF WATER RIGHT)
NO. 65-3848 AND PERMIT NO 65-13944)
IN THE NAME OF KYLE F. ELLIS AND)
FERN R ELLIS)
_____)

**AMENDED
PRELIMINARY ORDER
RECOGNIZING ABANDONMENT
OF WATER USE**

This matter having come before the Department of Water Resources (Department) as a result of a notice of intent to *abandon the right to use water*, the Department makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. On October 31, 2000, the Snake River Basin Adjudication (SRBA) court of the Fifth Judicial District of Idaho issued a partial decree finding that Fern R. Ellis and Kyle F. Ellis (right holders) have Water Right 65-3848 authorizing them to divert water from an unnamed tributary of Chipps Creek for the irrigation of 30 acres in Valley County, including three (3.0) acres of land in the NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 6, Township 11 North, Range 4 East, B. M.
2. On July 2, 2001, the Department issued Permit 65-13944 authorizing Fern R. Ellis and Kyle F. Ellis to divert water from a unnamed tributary of Chipps Creek for the irrigation of 30 acres in Valley County, including three (3.0) acres of land in the NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 6, Township 11 North, Range 4 East, B. M. The right holders stated in their application for Permit 65-13944, "This is a supplemental filing to 65-03848 claim, and will irrigate the same acres."
3. On July 26, 2001, the Department received the right holders' Proof of Beneficial Use statement for Permit 65-13944. The right holders indicated on the Proof of Beneficial Use statement that they had established a beneficial use of water in accordance with the permit on 27 acres and that the Department should "delete the 3 acres T11N-R4E-NESW."
4. On December 23, 2002, the Department received the right holders' signed and notarized statement (statement) of their intent to abandon the portion of Water Right 65-3848 for the diversion of 0.06 cfs to irrigate 3 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, Township 11 North, Range 4 East, B. M. The statement also indicates the right holders' intent to reduce the use authorized under Permit 65-13944 by diminishing the diversion rate by 0.06 cfs and the place of use by 3 acres located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, Township 11 North, Range 4 East, B. M.

MICROFILMED

MAR 17 2003

- 5 On January 2, 2003, the Department received a copy of an agreement (agreement) signed on January 16, 2001, by the right holders and by Florence E. Herrick, trustee of the Dorsey and Florence Herrick Family Trust (Herrick). The agreement states that the 3 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, Township 11 North, Range 4 East, B. M., included in the place of use for Water Right 65-3848 and Permit 65-13944, is located on land owned by Herrick. The agreement obligates the right holders to take action to "exclude reference to the Herrick land" in their water right place of use descriptions. The agreement also states, "Ellis also agrees that Ellis will continue not to apply the Ellis water rights to the Herrick land . . ."

CONCLUSIONS OF LAW

1. Abandonment of a water right requires the intent to give up the right and the actual relinquishment or surrender of the water right *Jenkins v. State, Dep't of Water Resources*, 103 Idaho 384, 388 (1982)
2. The agreement between the right holders and Herrick confirms that the right holders have ceased irrigating 3 acres of Herrick land located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, Township 11 North, Range 4 East, B. M., and that they intend to give up the right to do so.
3. The right holders have abandoned that portion of Water Right 65-3848 for the diversion of 0.06 cfs to irrigate 3 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, Township 11 North, Range 4 East, B. M.
4. By longstanding practice, a permit holder can relinquish a permit in its entirety or in part by submitting a signed statement of intent to the Department.
5. The right holders have relinquished the portion of Permit 65-13944 authorizing the irrigation of 3 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, Township 11 North, Range 4 East, B. M.

ORDER

IT IS HEREBY ORDERED that the record of Water Right 65-3848 shall be modified to show the abandonment of that portion of the right authorizing the diversion of 0.06 cfs from an unnamed tributary of Chipps Creek to irrigate 3 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, Township 11 North, Range 4 East, B. M.

IT IS FURTHER HEREBY ORDERED that the record of Permit 65-13944 shall be modified to show that the right holders have relinquished that portion of the permit authorizing the diversion of 0.06 cfs from an unnamed tributary of Chipps Creek to irrigate 3 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, Township 11 North, Range 4 East, B. M.

Dated this 13TH day of JANUARY, 2003


NORMAN C. YOUNG
Administrator, Water Management Division

MICROFILMED

MAR 17 2003

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF WATER RIGHT)
NO. 65-3848 AND PERMIT NO. 65-13944)
IN THE NAME OF KYLE F. ELLIS AND)
FERN R. ELLIS)
_____)

**PRELIMINARY ORDER
RECOGNIZING ABANDONMENT
OF WATER USE**

This matter having come before the Department of Water Resources (Department) as a result of a notice of intent to abandon the right to use water, the Department makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. On October 31, 2000, the Snake River Basin Adjudication (SRBA) court of the Fifth Judicial District of Idaho issued a partial decree finding that Fern R. Ellis and Kyle F. Ellis (right holders) have Water Right 65-3848 authorizing them to divert water from an unnamed tributary of Chipps Creek for the irrigation of 30 acres in Valley County, including three (3.0) acres of land in the NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 1, Township 11 North, Range 3 East, B. M.
2. On July 2, 2001, the Department issued Permit 65-13944 authorizing Fern R. Ellis and Kyle F. Ellis to divert water from a unnamed tributary of Chipps Creek for the irrigation of 30 acres in Valley County, including three (3.0) acres of land in the NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 1, Township 11 North, Range 3 East, B. M. The right holders stated in their application for Permit 65-13944, "This is a supplemental filing to 65-03848 claim, and will irrigate the same acres."
3. On July 26, 2001, the Department received the right holders' Proof of Beneficial Use statement for Permit 65-13944. The right holders indicated on the Proof of Beneficial Use statement that they had established a beneficial use of water in accordance with the permit on 27 acres and that the Department should "delete the 3 acres T11N-R4E-NESW."
4. On December 23, 2002, the Department received the right holders' signed and notarized statement (statement) of their intent to abandon the portion of Water Right 65-3848 for the diversion of 0.06 cfs to irrigate 3 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, Township 11 North, Range 4 East, B. M. The statement also indicates the right holders' intent to reduce the use authorized under Permit 65-13944 by diminishing the diversion rate by 0.06 cfs and the place of use by 3 acres located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, Township 11 North, Range 4 East, B. M.

MICROFILMED

MAR 17 2003

5. On January 2, 2003, the Department received a copy of an agreement (agreement) signed on January 16, 2001, by the right holders and by Florence E. Herrick, trustee of the Dorsey and Florence Herrick Family Trust (Herrick). The agreement states that the 3 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, Township 11 North, Range 4 East, B. M., included in the place of use for Water Right 65-3848 and Permit 65-13944, is located on land owned by Herrick. The agreement obligates the right holders to take action to "exclude reference to the Herrick land" in their water right place of use descriptions. The agreement also states, "Ellis also agrees that Ellis will continue not to apply the Ellis water rights to the Herrick land . . ."

CONCLUSIONS OF LAW

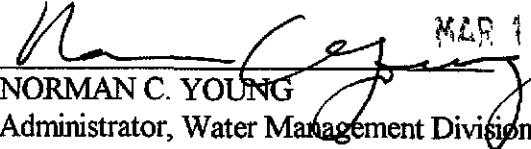
1. Abandonment of a water right requires the intent to give up the right and the actual relinquishment or surrender of the water right *Jenkins v. State, Dep't of Water Resources*, 103 Idaho 384, 388 (1982)
2. The agreement between the right holders and Herrick confirms that the right holders have ceased irrigating 3 acres of Herrick land located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, Township 11 North, Range 4 East, B. M., and that they intend to give up the right to do so.
3. The right holders have abandoned that portion of Water Right 65-3848 for the diversion of 0.06 cfs to irrigate 3 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, Township 11 North, Range 4 East, B. M.
4. By longstanding practice, a permit holder can relinquish a permit in its entirety or in part by submitting a signed statement of intent to the Department
5. The right holders have relinquished the portion of Permit 65-13944 authorizing the irrigation of 3 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, Township 11 North, Range 4 East, B. M.

ORDER

IT IS HEREBY ORDERED that the record of Water Right 65-3848 shall be modified to show the abandonment of that portion of the right authorizing the diversion of 0.06 cfs from an unnamed tributary of Chipps Creek to irrigate 3 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, Township 11 North, Range 4 East, B. M.

IT IS FURTHER HEREBY ORDERED that the record of Permit 65-13944 shall be modified to show that the right holders have relinquished that portion of the permit authorizing the diversion of 0.06 cfs from an unnamed tributary of Chipps Creek to irrigate 3 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, Township 11 North, Range 4 East, B. M.

Dated this 6TH day of January, 2003.
MICHAEL L. LEE


NORMAN C. YOUNG
Administrator, Water Management Division
MAR 17 2003

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

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
Case No. 39576) I.R.C.P. 54(b) FOR
) Water Right 65-03848

NAME AND ADDRESS: FERN R ELLIS
9982 ROUND VALLEY RD
CASCADE, ID 83611

KYLE F ELLIS
ROUND VALLEY RD
CASCADE, ID 83611

SOURCE: UNNAMED STREAM TRIBUTARY: CHIPPS CREEK
QUANTITY: 0.60 CFS
PRIORITY DATE: 06/01/1887
POINT OF DIVERSION: T11N R03E S01 SESE Within Valley County
PURPOSE AND PERIOD OF USE: PURPOSE OF USE PERIOD OF USE QUANTITY
 Irrigation 04-15 TO 10-15 0.60 CFS
PLACE OF USE: Irrigation Within Valley County
 T11N R03E S01 NESE 7.0
 R04E S06 NESW 3.0 LOT 06 (NWSW)20.0
 30.0 Acres Total

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

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

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


Barry Wood
Administrative District Judge
Presiding Judge of the
Snake River Basin Adjudication

MICROFILMED

MAR 17 2003

65-3848
65-13944

Mr. Kyle Ellis
9982 Round Valley Rd
Cascade ID 83611-5407

RECEIVED

FEB 3 - 2003

Department of Water Resources

Shelley Keen -

we are at a temporary
address & would like our
mail sent here as R office
will not forward it
(Due to "Return to Sender")
on envelop

Please send any mail to
us till further notice
at this address:

Kyle Ellis
22400 Eel Lane
middleton, id.
83644

ADDRESS
NOTE

MICROFILMED

MAR 17 2003

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720
Boise, Idaho 83720-0098

Return Service Requested

Mail present to
Widdleton Address
Kari Lynn
2.3.00

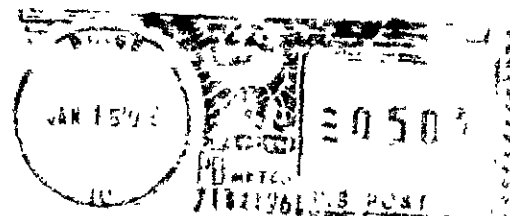
MAILED
JAN 15 2003

RECEIVED

JAN 27 2003

Department of Water Resources

DEPT. OF
WATER RESOURCES



ELLI982 T836112018 1802 05 01/18/03
ELLIS RETURN TO SENDER
TEMPORARILY AWAY
RETURN TO SENDER

KAAGTMS 83611





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

January 14, 2003

KYLE F ELLIS
FERN R ELLIS
9982 ROUND VALLEY RD
CASCADE ID 83611

RE: Amended Preliminary Order Recognizing Abandonment of Water Use in the
matter of Water Right 65-3848 and Permit 65-13944

Dear Interested Parties:

The accompanying order is an **"amended preliminary order"** issued by the department pursuant to Section 67-5243, *Idaho Code*. The amended preliminary order was issued on the department's own motion to correct typographical errors in the legal descriptions shown in finding of fact #1 and finding of fact #2 of the preliminary order issued on January 6, 2003. It can and will become a final order without further action of the department unless a party petitions for reconsideration within fourteen (14) days after issuance as described in the enclosed information sheet.

If you have any questions regarding this matter, please call me at 208-327-7940.

Sincerely,

Shelley W. Keen
Water Rights Supervisor

Enclosures

MICROFILMED
JAN 17 2003

CERTIFICATE OF SERVICE

I hereby certify that on **January 14, 2003**, I mailed a true and correct copy, certified, postage prepaid, of the foregoing **AMENDED PRELIMINARY ORDER** to the person(s) listed below:

RE: Permit 65-13944 & Water Right 65-3848

**KYLE F ELLIS
FERN R ELLIS
9982 ROUND VALLEY RD
CASCADE ID 83611**

**DORSEY HERRICK
FLORENCE HERRICK
10568 HWY 55
CASCADE ID 83611**


**Kari Lynn Townsend
Secretary**

MICROFILMED

MAY 17 2003

**EXPLANATORY INFORMATION
TO ACCOMPANY A
PRELIMINARY ORDER**

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

PETITION FOR RECONSIDERATION

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

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

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

ORAL ARGUMENT

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

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

MICROFILMED

MAR 17 2003

FINAL ORDER

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

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

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

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

APPEAL OF FINAL ORDER TO DISTRICT COURT

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

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

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

WR 65-3848

MICROFILMED
JAN 14 2003

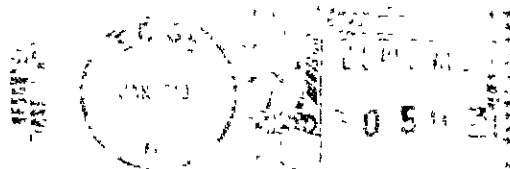
STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720
Boise, Idaho 83720-0098

Return Service Requested

RECEIVED

JAN 14 2003

Department of Water Resources



KYLE F ELLIS
FERN R ELLIS
9982 ROUND VALLEY RD
CASCADE ID 893611

ELLI982 T636112001 1802 05 01/10/03
RETURN TO SENDER
ELLIS
TEMPORARILY AWAY
RETURN TO SENDER

KAGCTMS2426/0036





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

January 7, 2003

KYLE F ELLIS
FERN R ELLIS
9982 ROUND VALLEY RD
CASCADE ID 893611

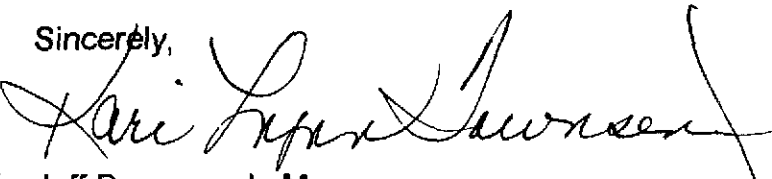
RE: Preliminary Order Recognizing Abandonment of Water Use in the matter of
Water Right 65-3848 and Permit 65-13944

Dear Interested Parties:

The accompanying order 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 within fourteen (14) days after issuance as described in the enclosed information sheet.

If you have any questions regarding this matter, please call me at 208-327-7940.

Sincerely,

for 
Jeff Peppersack, Manager
Water Right Permits Section

JP:klt

Enclosures

cc: Garrick Baxter, IDWR Legal Section
Dorsey & Florence Herrick

MICROFILMED

MAR 17 2003

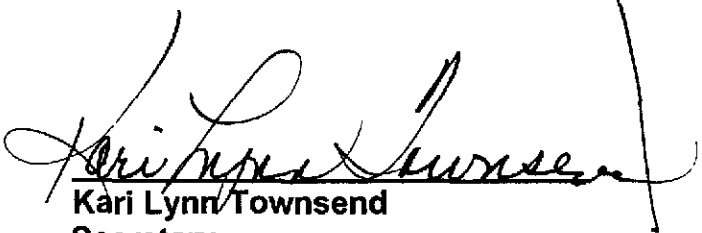
CERTIFICATE OF SERVICE

I hereby certify that on **January 7, 2003**, I mailed a true and correct copy, certified, postage prepaid, of the foregoing **PRELIMINARY ORDER** to the person(s) listed below:

RE: Permit 65-13944 & Water Right 65-3848

**KYLE F ELLIS
FERN R ELLIS
9982 ROUND VALLEY RD
CASCADE ID 83611**

**DORSEY HERRICK
FLORENCE HERRICK
10568 HWY 55
CASCADE ID 83611**


**Kari Lynn Townsend
Secretary**

MICROFILMED

FEB 17 2003

**EXPLANATORY INFORMATION
TO ACCOMPANY A
PRELIMINARY ORDER**

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

PETITION FOR RECONSIDERATION

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

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

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

ORAL ARGUMENT

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

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

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

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

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

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

APPEAL OF FINAL ORDER TO DISTRICT COURT

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

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

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

RECEIVED

JAN - 2 2003

Department of Water Resources

AGREEMENT

Instrument # 252396

VALLEY COUNTY, CASCADE, IDAHO

2001-01-30

10:00:07 No. of Pages: 7

Recorded for : FLORENCE HERRICK

LELAND G. HEINRICH

Fee: 21.00

Ex-Officio Recorder Deputy

Index to MISCELLANEOUS RECORD

DEFINITIONS

1. "Ellis" refers to Kyle and Fern Ellis whose address is 9982 Round Valley Rd, Cascade, ID 83611;
2. "Ellis water rights" means water right nos. 65-03848 and 65-13944, which are more specifically described on Exhibits A and B attached hereto;
3. "Herrick" refers to the Dorsey and Florence Herrick Family Trust, whose address is 10568 Hwy 55, Cascade, ID 83611;
4. "Herrick land" means Township 11N, Range 4E, Section 6, NESW;
5. "Place of use" refers to a three-acre place of use description contained in the Ellis water rights, which describes the three-acre place of use as being located on the Herrick land, as more fully illustrated on Exhibit C attached hereto.

AGREEMENT

WHEREAS the Ellis water rights contain an error in the place of use descriptions in that the place of use descriptions erroneously refer to three acres of the Herrick land;

WHEREAS Herrick has valid claims and causes of action to require that the Ellis water right place of use descriptions be amended to exclude reference to the Herrick land;

WHEREAS Ellis has agreed to correct, at Ellis' sole expense, the Ellis water right place of use descriptions to exclude reference to the Herrick land, but Ellis has requested additional time within which to make the necessary corrections;

WHEREFORE, the parties agree as follows:

In consideration of Herrick not immediately exercising any valid claims or causes of action to require that the Ellis water right place of use descriptions be amended to exclude reference to the Herrick land, Ellis agrees, at Ellis' sole expense, to correct the Ellis water right place of use descriptions to exclude reference to the Herrick land upon the earlier of (1) completion of the pending Snake River Basin Adjudication (SRBA) and administrative processes for the Ellis water rights, or (2) two years from the date of this agreement, whichever occurs first.

Ellis also agrees that Ellis will continue not to apply the Ellis water rights to the Herrick land and that Ellis has no claim of, and will make no future claim for, any interest whatsoever in and to the Herrick land. Time is of the essence of this agreement. If legal action is required by any party to enforce this agreement, the prevailing party shall be

entitled to reimbursement of reasonable costs and attorney fees. This agreement supercedes all prior oral or written communications between the parties and shall represent the entire agreement between the parties. This agreement shall be binding on the parties, their heirs, successors, and assigns.

WE AGREE TO THE ABOVE TERMS AND CONDITIONS:

Kyle F. Ellis
KYLE F. ELLIS

Fern R. Ellis
FERN R. ELLIS

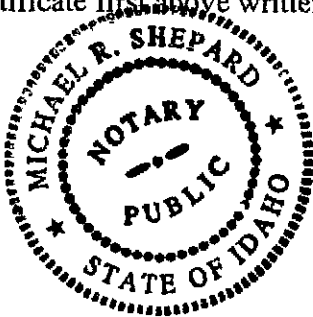
Florence Herrick, Trustee
FLORENCE E. HERRICK, as Trustee of
THE DORSEY & FLORENCE HERRICK
FAMILY TRUST

VERIFICATION

STATE OF IDAHO)
County of Ada)ss.

On the 16th day of January 2001, before me, the undersigned, a Notary Public in and for the State, personally appeared KYLE F. ELLIS known to me to be the person whose name appears upon the within instrument and subscribed to same, and being by me first duly sworn signed the foregoing instrument.

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

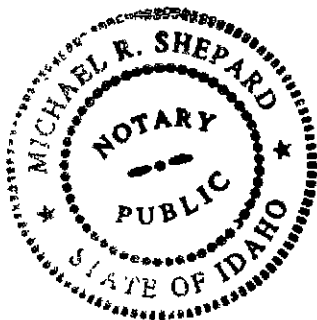



NOTARY PUBLIC FOR IDAHO
Residing at BOISE
My commission expires 1-15-05

STATE OF IDAHO)
County of Ada)ss.

On the 16th day of January 2001, before me, the undersigned, a Notary Public in and for the State, personally appeared FERN R. ELLIS known to me to be the person whose name appears upon the within instrument and subscribed to same, and being by me first duly sworn signed the foregoing instrument.

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

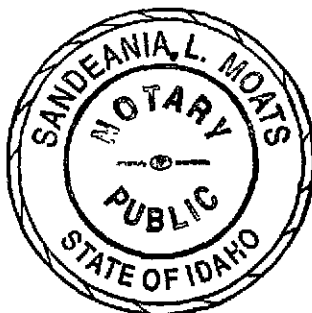



NOTARY PUBLIC FOR IDAHO
Residing at BOISE
My commission expires 1-15-05

STATE OF IDAHO)
)ss.
County of Valley)

On the 30th day of January 2001, before me, the undersigned, a Notary Public in and for the State, personally appeared FLORENCE E. HERRICK known to me to be the person whose name appears upon the within instrument and subscribed to same, and being by me first duly sworn, declared that she is the Trustee of the Dorsey & Florence Herrick Family Trust and that she signed the foregoing instrument as Trustee of the aforementioned trust

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



Sandeania L. Moats
NOTARY PUBLIC FOR IDAHO
Residing at New Meadows
My commission expires 9/15/2003

AJ5856NP

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

DATE: DEC-8-1999
PAGE: A-813

RIGHTS FROM:	SOURCE: UNNAMED STREAM	TRIBUTARY: CHIPPS CREEK
RIGHT NUMBER:	65-03848	
NAME & ADDRESS:	FERN R ELLIS 9982 ROUND VALLEY RD CASCADE ID 83611 KYLE F ELLIS ROUND VALLEY RD CASCADE ID 83611	
SOURCE:	UNNAMED STREAM	TRIBUTARY: CHIPPS CREEK
QUANTITY:	0.6 CFS	
PRIORITY DATE:	06/01/1987	
POINT OF DIVERSION:	T11N R03E S01 SESE	Within VALLEY County
PURPOSE AND PERIOD OF USE:	PURPOSE OF USE IRRIGATION	PERIOD OF USE 04-15 10-15
		QUANTITY 0.6 CFS
PLACE OF USE:	IRRIGATION T11N R03E S01 R04E S06 30 ACRES TOTAL	Within VALLEY County NESE 7 NESW 3 Lot 6 (NWSW)20

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

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

EXPLANATORY MATERIAL. BASIS OF CLAIM - DECREE

MICRO
APR 11 1999

EXHIBIT A

DATE: 07/25/00
PAGE: 1

Audit: 04/14/00 DNELSON 04/18/00 SCURTIS 06/01/00 STAYLOR

天
正
十
五
年

10

Claim No(s): 65-03848

Claimant(s) Ellis

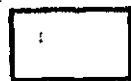
T11N, R03E, S 1

T11N, R04E, S 6

Prepared by: Sue Bock

Date: 10/14/99

MILWAUKEE
1987 NAPP PHOTO



Place of Use



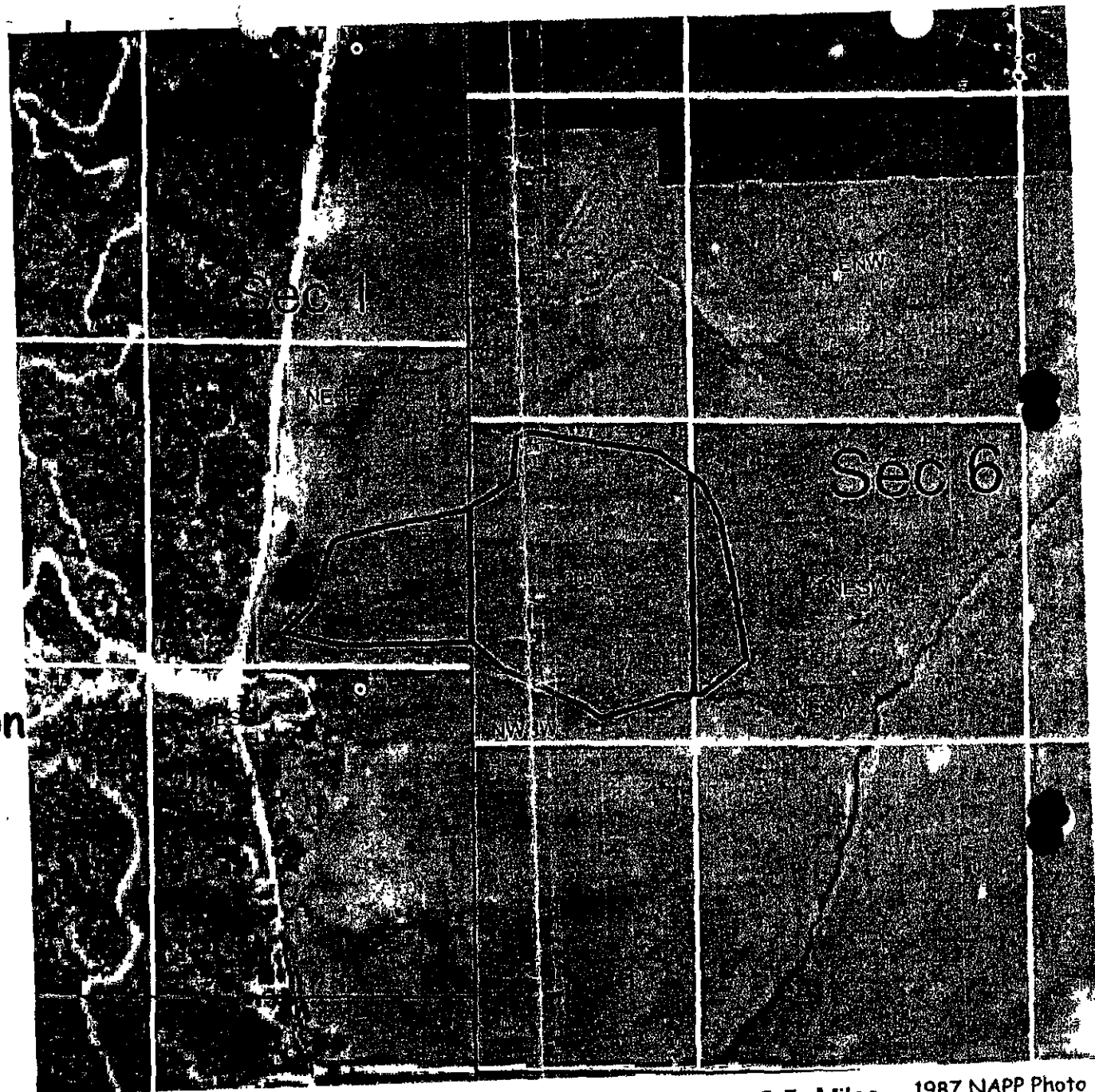
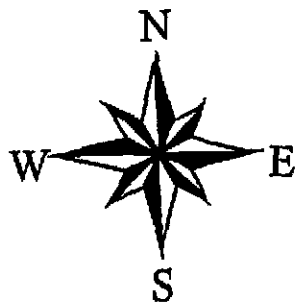
Point of Diversion



Section lines

1/4 1/4 lines

EXHIBIT



0

0.25

0.5 Miles

1987 NAPP Photo

December 23, 2002

RECEIVED

DEC 23 2002

Idaho Department of Water Resources
1301 No. Orchard St.
P O Box 83720
Boise, Idaho 83705-5082

Department of Water Resources

[Handwritten signature]

Norman Young
Administrator
Water Management Division

Subject: Ellis Decreed Water Right 65-3848 and Ellis Permit Application 65-13944

Dear Sir

We, Kyle F. and Fern R. Ellis, 9982 Round Valley Road, Cascade, Idaho. 83611 hereby request that our Decreed Water Right 65-3848 be amended to reflect the abandonment of that portion of our filing showing 3 acres located in the NESW portion of Section 6, T11N, R04E, and that prorated portion of our 0.6 cfs of water to a new amount of 0.54 cfs of water. Our previous filings were in error, as the Dorsey and Florence Herrick Family Trust own these 3 acres.

We also request that our Permit Application 65-13944 also be amended, showing the abandonment of the same 3 acres and the same prorated 0.54 cfs of water as Permit 65-13944 is combined with our Decreed Water Right 65-3848 listed above.

Finally, we hereby request a Formal Order by the Director of the Idaho Department of Water Resources recognizing our intent to abandon; And that the Idaho Department of Water Resources revise its Water Rights records to reflect the abandonment of our Decreed Water Right 65-03848 and Permit for Application 65-13944 for these 3 acres of land belonging to the Dorsey and Florence Herrick Family Trust.

Respectfully,

[Handwritten signature: Kyle F. Ellis]
Kyle F. Ellis

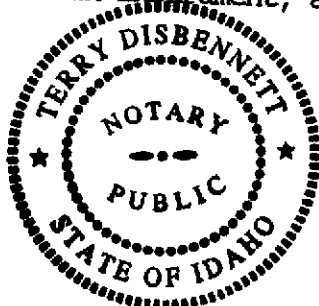
[Handwritten signature: Fern R. Ellis]
Fern R. Ellis

STATE OF IDAHO

COUNTY OF Ada) : SS

On this 23rd day of December, in the year 2002, before me, a Notary Public in and for said State, personally appeared Kyle F. Ellis and Fern R. Ellis, known or identified to me to be the person(s) whose name(s) are subscribed to the within Instrument, and acknowledged to me that they executed the same.

12/23/02



[Handwritten signature: Terry Disbennett]

Notary Public of Idaho

Residing at Boise, Idaho

Commission Expires: 03/19/2007

MICROFILMED

DEC 23 2002

December 23, 2002

Idaho Department of Water Resources
1301 No. Orchard St.
P.O. Box 83720
Boise, Idaho 83705-5082

Norman Young
Administrator
Water Management Division

Subject: Ellis Decreed Water Right 65-3848 and Ellis Permit Application 65-13944

Dear Sir:

We, Kyle F. and Fern R. Ellis, 9982 Round Valley Road, Cascade, Idaho. 83611 hereby request that our Decreed Water Right 65-3848 be amended to reflect the abandonment of that portion of our filing showing 3 acres located in the NESW portion of Section 6, T11N, R04E, and that prorated portion of our 0.6 cfs of water to a new amount of 0.54 cfs of water. Our previous filings were in error, as the Dorsey and Florence Herrick Family Trust own these 3 acres.

We also request that our Permit Application 65-13944 also be amended, showing the abandonment of the same 3 acres and the same prorated 0.54 cfs of water as Permit 65-13944 is combined with our Decreed Water Right 65-3848 listed above.

Finally, we hereby request a Formal Order by the Director of the Idaho Department of Water Resources recognizing our intent to abandon; And that the Idaho Department of Water Resources revise its Water Rights records to reflect the abandonment of our Decreed Water Right 65-03848 and Permit for Application 65-13944 for these 3 acres of land belonging to the Dorsey and Florence Herrick Family Trust.

Respectfully,

Kyle F. Ellis
Kyle F. Ellis

Fern R. Ellis
Fern R. Ellis

STATE OF IDAHO)
COUNTY OF Ada) : ss

On This 23rd day of December, in the year 2002, before me, a Notary Public in and for said State, personally appeared Kyle F. Ellis and Fern R. Ellis, known or identified to me to be the person(s) whose name(s) are subscribed to the within Instrument, and acknowledged to me that they executed the same.

12/23/02



Terry Disbennett
Notary Public of Idaho
Residing at Boise, Idaho
Commission Expires: 03/19/2007

MICAC.

MAR 17 2003