



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

December 28, 2004

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

JERRY R RIGBY
PO BOX 250
REXBURG ID 83440

NORMAN AND ROBIN RILEY
1623 W 3400 S
REXBURG ID 83440

STEVEN PERRY
PO BOX 51630
IDAHO FALLS ID 83405-1630

Re: Application to Appropriate Water No. 22-7792

Gentlemen and Mrs. Riley:

On September 8, 2004, I sent a letter to Jerry Rigby and Steven Perry summarizing the history of application no. 22-7792 in the name of Catherine Rowan and asking for any additional information from Rowan or the Rileys related to the disposition of a related court case. Jerry Rigby sent me a letter dated September 30, 2004. In the letter, Mr. Rigby explains that the entire property and well described by application no. 22-7792 was determined to be owned by Catherine Rowan in the litigation. The application filed by Rowan appears to be solely in her name. Without additional information to the contrary, it appears that Catherine Rowan is entitled to inchoate ownership of application no. 22-7792.

Notwithstanding this initial interpretation, my further review of the application reveals that the point of diversion sought for the application falls within an area where IDWR has held new applications to appropriate water without processing except under special circumstances. One of the special circumstances is a showing by the applicant that development was complete prior to November 1987. In her water right application, Rowan asserts the pre-November 1987 development of her beneficial use.

Another application seeking approval for pre-1987 development was filed by Delis Farms, Inc. (Delis Farms) and was protested by the Twin Falls Canal Company, A & B Irrigation District, and the United States Bureau of Reclamation. The Delis Farms' application is numbered 36-16125. The protestants argue that IDWR does not have the authority to process water right applications representing development completed before November 1987. The protestants petitioned for declaratory relief on this issue. The Director of IDWR appointed Peter Anderson as the hearing officer.

December 28, 2004

Page 2

As a result of the legal issue raised by the Delis Farms' application, IDWR is not presently approving any applications that are being processed on the basis of pre-1987 development. Applicants who filed applications asserting pre-1987 development have been invited to participate in the Delis Farms case where the legal issue has been raised.

If you wish to participate in IDWR's determination of whether it can approve new water rights on the basis of development before November 1987, you should immediately file a petition to intervene in the Delis Farms case with Peter Anderson, c/o Idaho Department of Water Resources, P.O. Box 83720, Boise, ID 83720-0098. The petition should be filed according to IDWR's Rules of Procedure.

IDWR will continue to hold application no. 22-7792 without action until the issue raised in the Delis Farms case is resolved.

Sincerely,

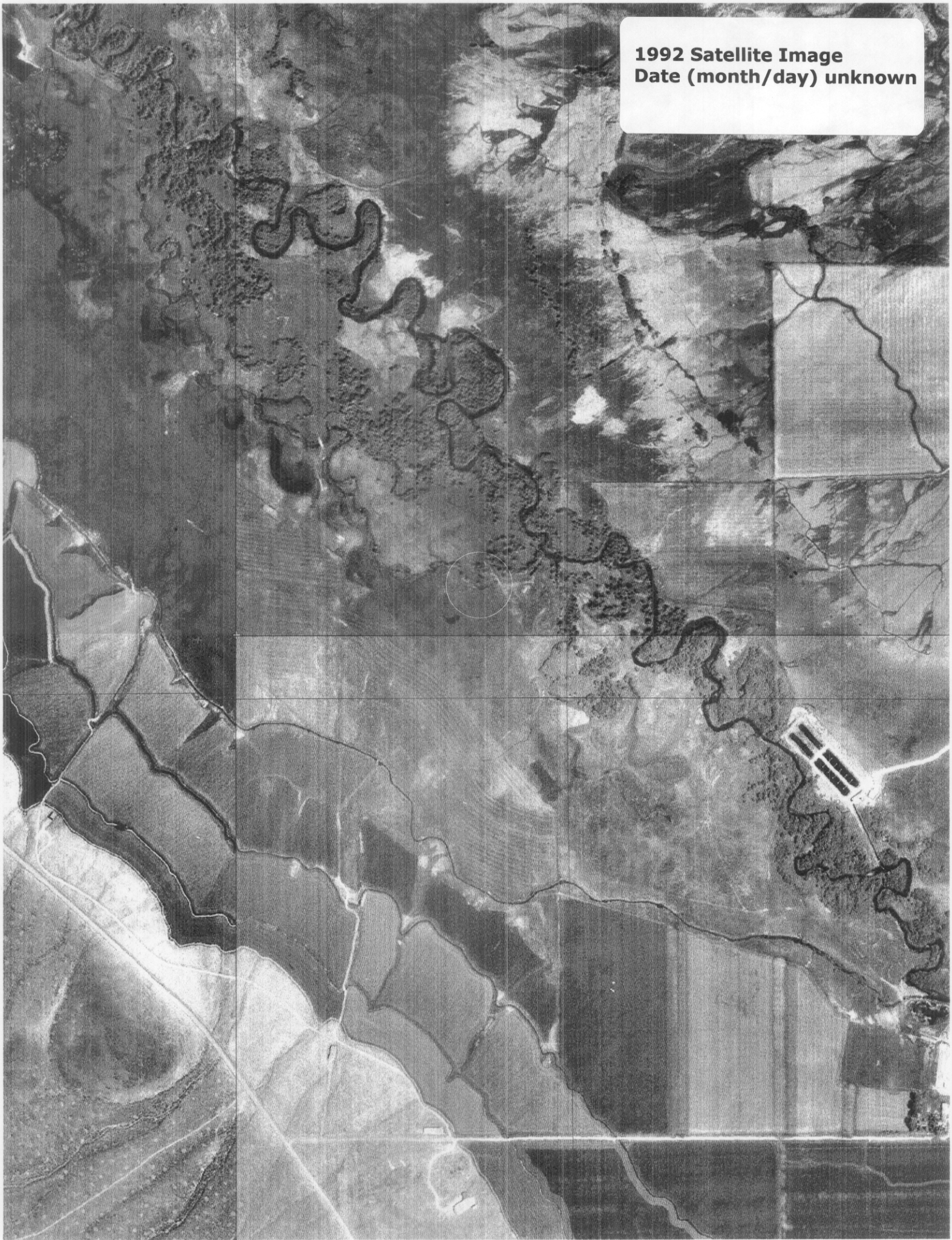
A handwritten signature in black ink, appearing to read "Gary Spackman", written over the printed name.

Gary Spackman

Enclosure

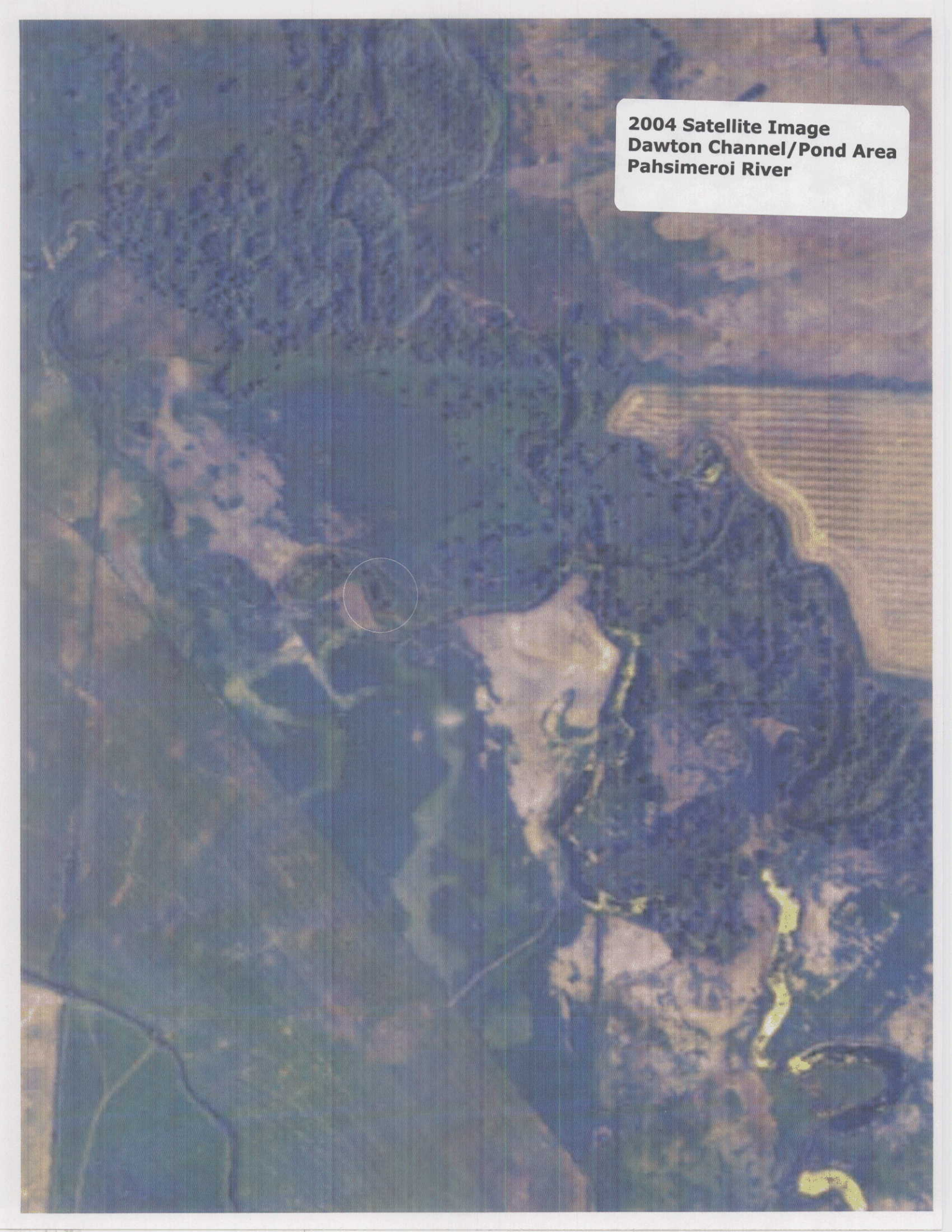
Cc: IDWR Region

1992 Satellite Image
Date (month/day) unknown



**7/14/2003 Satellite Image
Dawton Channel/Pond Area**



A satellite image of a river system, likely the Pahsimeroi River, showing a complex network of channels and ponds. The image is in false color, with dark blue representing water and lighter blue/purple representing land. A white circle highlights a specific area in the center-left of the image. A white rectangular box in the top right corner contains the text: "2004 Satellite Image", "Dawton Channel/Pond Area", and "Pahsimeroi River".

**2004 Satellite Image
Dawton Channel/Pond Area
Pahsimeroi River**

Luke, Tim

From: Luke, Tim
Sent: Wednesday, December 08, 2004 3:40 PM
To: Spackman, Gary
Cc: Foster, Bob; Blau, Terry
Subject: Dowton Ponds - Images

Gary,

Attached are jpeg images that I created by exporting from ArcView for the channel and pond area on the Dowton property. Images are from 2004, 2003 and 1992. These are the best images I could find and as you can see, the resolution is not that great. I circled the approximate location of the ponds in each image. I also printed images out directly from ArcView, so the hard copy print outs may be a little better resolution than the jpeg images you see here. I'll place the hard copies in your in-basket.

I believe the ponds are barely visible in the 2004 image. The 2003 image looks a bit different, showing a wider channel in the same area. Bob and Terry may need to help verify that the area I circled is the location of the ponds that they observed this year. The 1992 image is perhaps the best resolution image and it appears to show no ponds at that time, although that was a drought year. I was not able to confirm the day and month of the 2004 and 1992 images. I got the 2004 image from NRCS. I left a message with someone from NRCS and our own GIS section to verify the month and day of these images.



dowtpond-04image.dowtpond-0714200dowtpond-1992.jpg
jpg



3.jpg



Tim Luke
Idaho Department of Water Resources
322 E Front St
PO Box 83720
Boise, ID 83720-0098
208-2874959
tim.luke@idwr.idaho.gov

SPECK & AANESTAD
A PROFESSIONAL CORPORATION
ATTORNEYS

JAMES P. SPECK
jimspeck@cox-internet.com

DOUGLAS J. AANESTAD
aanestad@cox-internet.com

120 EAST AVENUE
P. O. BOX 987
KETCHUM, IDAHO 83340

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

December 6, 2004

VIA E-MAIL - GSpackman@idwr.state.id.us
ORIGINAL WILL NOT FOLLOW

Mr. Gary Spackman
Idaho Department of Water Resources
322 E. Front St.
Boise, ID 83720-0098

Re: B P Bar Ranch, Inc./Water Rights
Our File No. 9/950341

Dear Gary:

Attached to this e-mail are two aerial photographs taken in August 1992 about the time my client purchased its ranch. I have also enclosed a copy of an aerial photograph taken in September 2000 from the Terra Server website. You will see that the "Dowton side channel" is remarkably similar in all of the photographs. There appears to be little, if any, water flowing down the channel and there is no evidence of the pond now located behind the vertical culvert, or any predecessor pond allegedly created by a "ford" in the location of the vertical culvert.

My client and I contend these photographs clearly establish that the Dowtons have done substantial work in the "side channel" to enhance the flow out of the main stream and down that channel. If this is in fact a channel of the river and not an artificially created ditch, then all of this channel enhancement work required one or more stream alteration permits from the Department and perhaps corresponding permits from the Corps of Engineers. A notice of violation should definitely be issued for this non-permitted activity.

Furthermore, notwithstanding the adamant denials of the Dowtons at the pre-hearing conference, we still contend the "spit" of land which conveniently directs a significant portion of the flow of the main stream into the "side channel," is at least in part man made. We contend this constitutes both an illegal diversion of water without a water right and non-permitted activity in the stream. The pending notice of violation for an illegal diversion should NOT be withdrawn.

We have retained Steve Fisher to assist us with our analysis of the evidence and ask that you grant him permission to inspect the premises on our behalf with Terry Blau as soon as possible. If

Gary Spackman
December 6, 2004
Page 2

you have located additional aerial, satellite or other photography that bears on these issues, please forward it Jerry Rigby and me as soon as possible.

Thank you.

Sincerely yours,

SPECK & AANESTAD
A Professional Corporation

A handwritten signature in black ink, appearing to read "Jim", written over the printed name of James P. Speck.

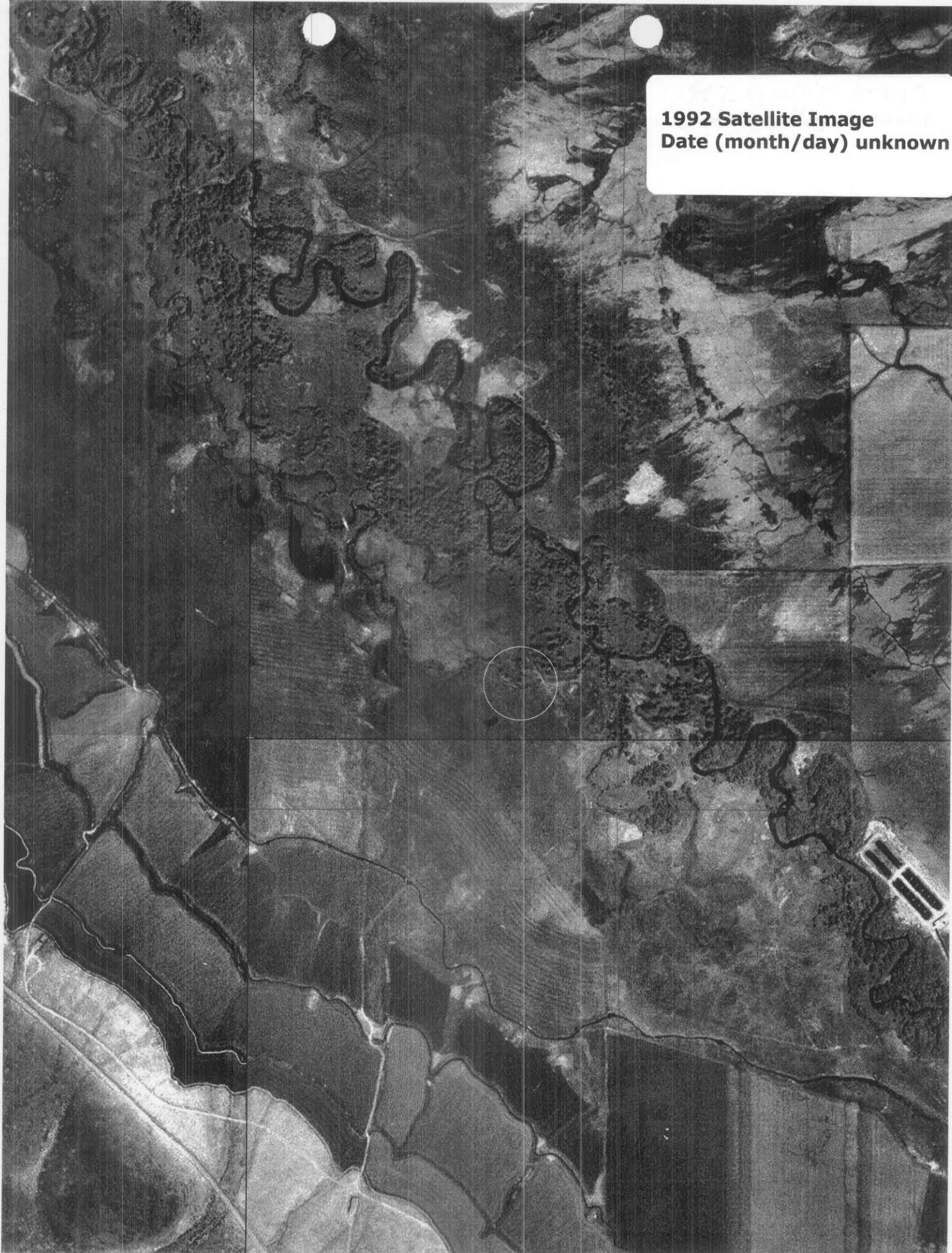
James P. Speck

JPS/j
(enclosures)

cc: Mr. Jerry Rigby (w/ enclosures)
Mr. Terry Blau (w/ enclosures)
Mr. Steve Fisher (w/ enclosures)
Mr. Robert Brochu (w/ enclosures)
Client (w/ enclosures)

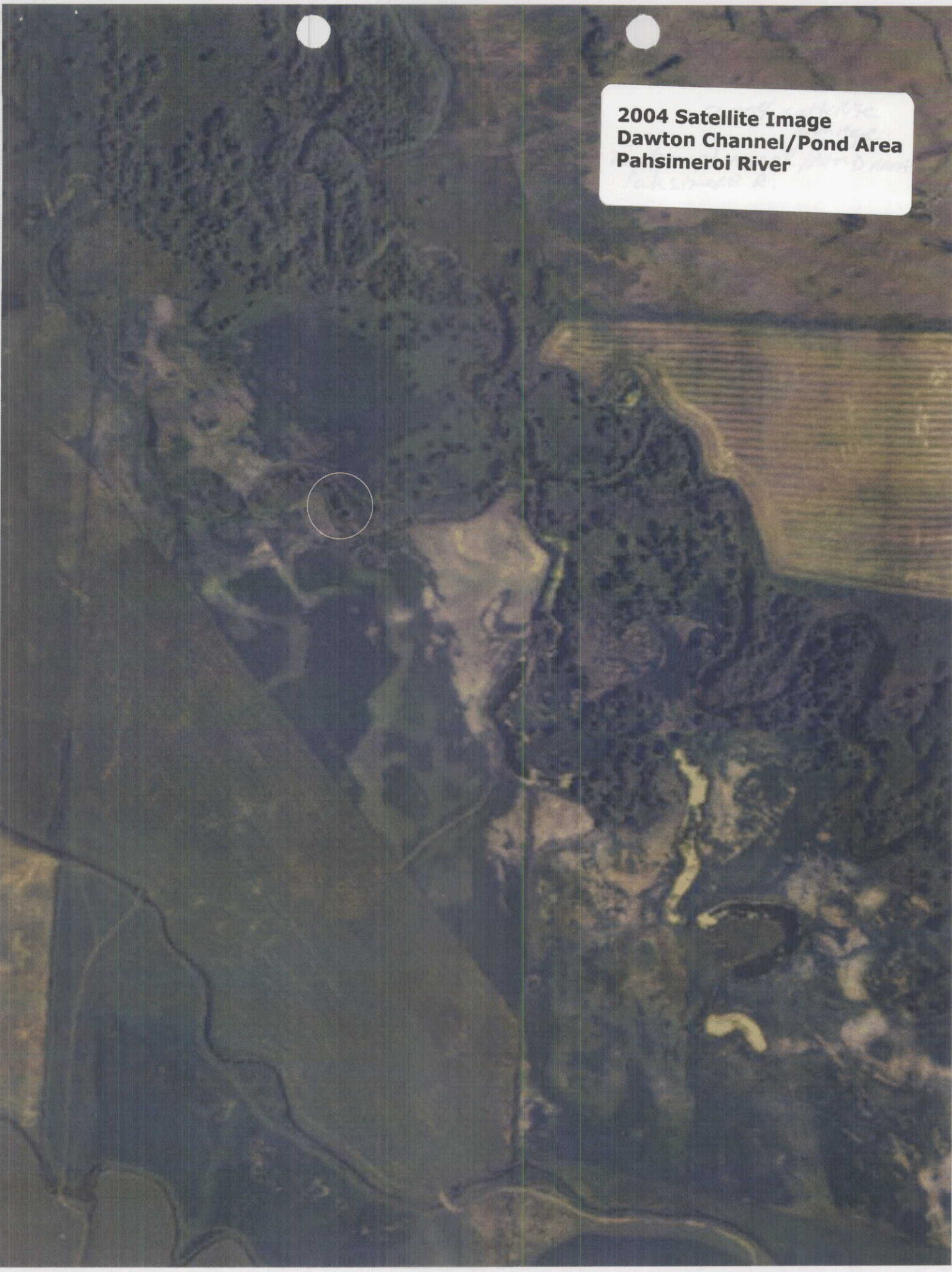
G:\WPDATA\JIM\BPBarRanch\DOWNTON\Correspondence\Spackman 120604.wpd

1992 Satellite Image
Date (month/day) unknown



07/14/2003 5:00:15
**7/14/2003 Satellite Image
Dawton Channel/Pond Area**



A satellite image showing a complex network of water bodies and land. A large, irregularly shaped pond or lake is on the right side, with a straight, light-colored strip of land or a channel running along its upper edge. To the left of this pond, a winding river or channel flows through a darker, more textured landscape. A small white circle is drawn on the left side of the image, highlighting a specific area of interest. The overall image has a grainy, high-contrast appearance typical of satellite photography.

**2004 Satellite Image
Dawton Channel/Pond Area
Pahsimeroi River**

Order No. P 18281

EXHIBIT A

Twp. 6 N. R. 5 W., B. M., Payette County, Idaho:

Section 13: SW1/4SW1/4;

Section 14: S1/2S1/2;

Section 15: SE1/4SE1/4;

Section 22: N1/2NE1/4, E1/2NW1/4, E1/2SW1/4, SE1/4NE1/4, SE1/4, SW1/4NE1/4;

Section 23: NE1/4NE1/4, W1/2NE1/4, NE1/4NW1/4, NW1/4NW1/4, S1/2NW1/4, E1/2NW1/4SW1/4,
N1/2NW1/4NW1/4SW1/4, S1/2SW1/4NW1/4SW1/4, SE1/4NE1/4, N1/2SE1/4SW1/4,
NE1/4SW1/4, N1/2SE1/4, N1/2SW1/4SE1/4;

Section 24: W1/2NW1/4, W1/2NW1/4SW1/4;

Anderson Nelson Hall Smith, P.A.

ATTORNEYS

490 MEMORIAL DRIVE
POST OFFICE BOX 51630
IDAHO FALLS, IDAHO 83405-1630
TELEPHONE (208) 522-3001
FAX (208) 523-7254
E-MAIL anhs@anhs.net

Douglas R. Nelson
Blake G. Hall
Marvin M. Smith*
Scott R. Hall
Joel E. Tingey
Steven R. Parry*
Brian T. Tucker
Jeffery W. Banks
Wiley R. Dennert

W. Joe Anderson
(1923-2002)

*Also member of Utah bar

October 1, 2004

Gary Spackman
Idaho Department of Water Resources
1301 North Orchard Street
P.O. Box 83720
Boise, Idaho 83720-0098

RECEIVED
OCT 05 2004
DEPARTMENT OF
WATER RESOURCES

Re: *Water Right No. 22-7792*

Dear Mr. Spackman:

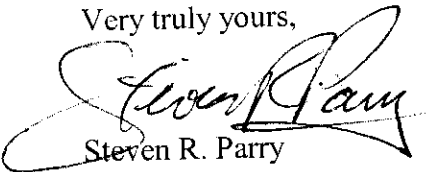
Thank you for your letter of September 8, 2004. I have also just received Mr. Rigby's letter of September 30, 2004. Although we have not formally withdrawn on this matter, my firm no longer represents the Rileys and with this letter I am forwarding on to them a copy of your September 8 letter and Jerry Rigby's September 30 letter. Consequently, I ask that you allow the Riley's time to present these documents to their new attorney as it may affect their rights. In addition, this firm now holds certain water rights held by the Rileys and may directly have a claim as well. Consequently, may I request that you send future correspondence both to myself and directly to the Rileys at 1623 W. 3400 S., Rexburg, ID 83440.

Considerable litigation occurred before the Idaho Supreme Court confirmed that the original water rights under License 22-07280 were owned 50% by the Rileys and 50% by Rowan. To the extent that any water rights accrued on the 160 acres south of the railroad tracks, both the spirit and letter of the Supreme Court's ruling would require that those water rights also be owned 50% by Rowan and 50% by the Rileys as the successors to Jim Howe. Jim Howe and the Rileys applied the water and took all other steps the same as was done for the land north of the railroad tracks. There is no basis to treat this water any different than the Supreme Court ordered after extended litigation.

So that this matter can move forward, I would suggest that the Department set forth a briefing schedule or other input deadlines. Obviously these are complex issues and it would be in the best interest of all parties to have the matter formally resolved.

I look forward to hearing from you.

Very truly yours,


Steven R. Parry
SRP/ks

cc: Jerry Rigby
Norman and Robin Riley

RECEIVED

OCT 04 2004

DEPARTMENT OF
WATER RESOURCES

Law Offices

***RIGBY, THATCHER, ANDRUS
RIGBY, & MOELLER, Chartered***

*Ray W. Rigby
Gordon S. Thatcher
G. Rich Andrus
Jerry R. Rigby
Michael S. Kam (1954-2001)
Gregory W. Moeller
Reed E. Andrus*

*P.O. Box 250
25 North Second East
Rexburg, ID 83440*

*Telephone: (208) 356-3633
Fax: (208) 356-0768
E-Mail: jrigby@rigby-thatcher.com*

September 30, 2004

SENT VIA FACSIMILE TRANSMISSION: 327-7866

Gary Spackman
Idaho Department of Water Resources
1301 North Orchard Street
P.O. Box 83720
Boise, Idaho 83720-0098

Re: Rowan Water Right Number 22-7792

Dear Mr. Spackman:

Pursuant to your letter, dated September 8, 2004, and on behalf of Catherine Rowan, we submit the following information to IDWR for its consideration of the pending order of the above described permit:

1. First of all, other than the determination of ownership of the water rights and well (as determined by the Supreme Court of Idaho and addressed below), nothing has changed as to the facts in the original application which led the Department to issue Permit No. 22-07792 in the name of Catherine Rowan (the same person who made the original application).
2. Proof of construction of works and application of water to a beneficial use is sufficiently contained within the application itself referring to the field report conducted for License No. 22-07280 which documents that the land was irrigated prior to 1987, the statutory cutoff date. Furthermore, evidence of its application to the 160 acres from the beginning is found throughout the files with the Department, including some references contained in the file of the original Howe Water Right No. 22-02223. Additionally, the permit was issued upon a finding by the Department that the 160 acre parcel was in fact irrigated prior to the designation of the Eastern Snake River Plain Moratorium and that no other water rights were appurtenant to the land (see letter from Glen Saxton to Steven R. Parry, dated March 123, 1997).
3. It is therefore our understanding that sufficient proof of the priority date for beneficial application upon the claimed place of use is not in question by the Department. Should this not be the case, we would respectfully request additional time in which to properly document this well understood fact.

Page - 2

4. The main reason why the Department has held the permit as a preliminary order until now was because of litigation affecting the ownership of the permit pending before the Supreme Court of Idaho. Finally, on June 19, 2003, the Supreme Court ruled in Rowan v. Riley, 72 P.3d 889, that Riley's claim of ownership of the subject well and casings are fixtures and owned exclusively by Catherine Rowan (see *id* at p. 895). Furthermore, the most important determination concluded by the Supreme Court was that "it is reasonable to conclude the owners intended the southern well to serve the southern portion of the property and the northern well the northern portion of the property", *id* at p. 896.

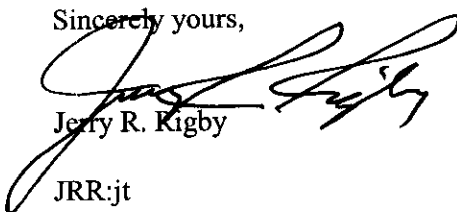
4. Because the Riley's have no further claim of ownership to the well (except only to the Water Right No. 22-07280B which will eventually be finally determined in the SRBA adjudication), Rowan was absolutely free to make any application for permit she deemed appropriate and legal for a water right to cover the almost 160 acres lying south of all other water rights associated with the subject well. The claim by Riley's that they are in some way entitled to a portion of said permit or water from said permit fails to conform with the principal upon which they were granted rights in Water Right No. 22-07280 due to a very significant and overriding distinction: Unlike the application and use made of Water Right No. 22-07280 by Jim Howe for the benefit of the entire farm (now in two parcels), the application and the beneficial use of Permit No. 22-07792 was made by Catherine Rowan independently, following the death of Jim Howe and following the division of the farm. Furthermore, the application covered her southern most 160 acres only. Therefore a claim by Riley's based upon the premise that such an application was made primarily for the benefit of all three original farm owners (Lucille Howe, Jim Howe, and Catherine Rowan) or even the undivided interests of the owners before the split in the property fails because the application made by Catherine Rowan after the division was made for the benefit of her lands and herself only.

5. Finally, the permit was issued subject to all prior water rights and therefore any water right finally determined in the adjudication to be held by Riley's will be fully protected.

Because of the above reasons, together with those others addressed in the Saxton letter of March 12, 1997, we respectfully request that the order granting the permit for Water Right No. 22-07792 be made permanent and Catherine Rowan be given a reasonable period of time in which to prove up her water right in order to obtain a license for said permit.

Should you have any questions, please do not hesitate to request a response from us and we will do so quickly. Due to this matter having been pending for such a great length of time, please allow us the opportunity to supply any additional documentation which the Department now determines to be inadequate.

Sincerely yours,



Jerry R. Kigby

JRR:jt

~~Enclosure~~

cc: Steven R. Parry
F:\WP6\SB\ROWAN.LT2

*Law Offices****RIGBY, THATCHER, ANDRUS
RIGBY, & MOELLER, Chartered***

*Ray W. Rigby
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September 30, 2004

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Gary Spackman
Idaho Department of Water Resources
1301 North Orchard Street
P.O. Box 83720
Boise, Idaho 83720-0098

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Gary Spackman
Idaho Department of Water Resources
September 30, 2004

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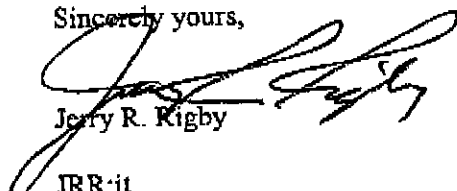
4. Because the Riley's have no further claim of ownership to the well (except only to the Water Right No. 22-07280B which will eventually be finally determined in the SRBA adjudication), Rowan was absolutely free to make any application for permit she deemed appropriate and legal for a water right to cover the almost 160 acres lying south of all other water rights associated with the subject well. The claim by Riley's that they are in some way entitled to a portion of said permit or water from said permit fails to conform with the principal upon which they were granted rights in Water Right No. 22-07280 due to a very significant and overriding distinction: Unlike the application and use made of Water Right No. 22-07280 by Jim Howe for the benefit of the entire farm (now in two parcels), the application and the beneficial use of Permit No. 22-07792 was made by Catherine Rowan independently, following the death of Jim Howe and following the division of the farm. Furthermore, the application covered her southern most 160 acres only. Therefore a claim by Riley's based upon the premise that such an application was made primarily for the benefit of all three original farm owners (Lucille Howe, Jim Howe, and Catherine Rowan) or even the undivided interests of the owners before the split in the property fails because the application made by Catherine Rowan after the division was made for the benefit of her lands and herself only.

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Sincerely yours,



Jerry R. Rigby

JRR:jt
Enclosure

cc: Steven R. Parry
PAWP&SB\ROWAN.LT2

Westlaw

72 P.3d 889
139 Idaho 49, 72 P.3d 889, 50 UCC Rep.Serv.2d 1127
(Cite as: 72 P.3d 889)

Page 1

H

Supreme Court of Idaho,
Boise, April 2003, Term.

Catherine ROWAN, Plaintiff-Respondent,
v.
Norman RILEY and Robin Riley, husband and wife, Defendants-Appellants.

No. 26172.

June 19, 2003.

After land was partitioned, landowner, who was a former tenant-in-common, brought declaratory judgment action against purchasers of former co-tenant's half of partitioned property, seeking determination of ownership of water rights, well, and easement, and determination of responsibility for debt. After determining it lacked subject matter jurisdiction to hear water law issues and dismissing that claim, the District Court, Seventh Judicial District, Madison County, James C. Herndon, J., entered judgment declaring rights. Purchasers appealed. The Supreme Court, Trout, C.J., held that: (1) landowner was an accommodation party on note signed for former co-tenant and thus was only secondarily liable; (2) purchasers lacked equitable subrogation right against landowner; (3) well and well casings were "fixtures" appurtenant to landowner's land; (4) agreement with railroad was license rather than easement; and (5) license was negotiated for benefit of then-existing landowners and thus landowner was entitled to license.

Affirmed.

See also Riley v. Rowan, 131 Idaho 831, 965 P.2d 191 (1998).

West Headnotes

[11] Appeal and Error ↪842(2)
30k842(2) Most Cited Cases

[11] Appeal and Error ↪1010.1(6)
30k1010.1(6) Most Cited Cases

The Supreme Court must defer to the district court's findings of fact to the extent they are supported by substantial evidence but will freely review the district court's conclusions of law.

[21] Bills and Notes ↪49
56k49 Most Cited Cases

[21] Bills and Notes ↪122
56k122 Most Cited Cases

Law Offices

**RIGBY, THATCHER, ANDRUS
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Ray W. Rigby
Gordon S. Thatcher
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Michael S. Kam (1954-2001)
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P.O. Box 250
25 North Second East
Rexburg, ID 83440

Telephone: (208) 356-3633
Fax: (208) 356-0768
E-Mail: jrigby@rigby-thatcher.com

September 30, 2004

SENT VIA FACSIMILE TRANSMISSION: 327-7866

Gary Spackman
Idaho Department of Water Resources
1301 North Orchard Street
P.O. Box 83720
Boise, Idaho 83720-0098

Re: Rowan Water Right Number 22-7792

Dear Mr. Spackman:

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Idaho Department of Water Resources
September 30, 2004

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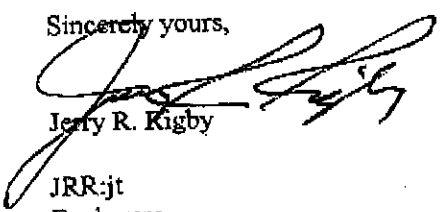
4. Because the Riley's have no further claim of ownership to the well (except only to the Water Right No. 22-07280B which will eventually be finally determined in the SRBA adjudication), Rowan was absolutely free to make any application for permit she deemed appropriate and legal for a water right to cover the almost 160 acres lying south of all other water rights associated with the subject well. The claim by Riley's that they are in some way entitled to a portion of said permit or water from said permit fails to conform with the principal upon which they were granted rights in Water Right No. 22-07280 due to a very significant and overriding distinction: Unlike the application and use made of Water Right No. 22-07280 by Jim Howe for the benefit of the entire farm (now in two parcels), the application and the beneficial use of Permit No. 22-07792 was made by Catherine Rowan independently, following the death of Jim Howe and following the division of the farm. Furthermore, the application covered her southern most 160 acres only. Therefore a claim by Riley's based upon the premise that such an application was made primarily for the benefit of all three original farm owners (Lucille Howe, Jim Howe, and Catherine Rowan) or even the undivided interests of the owners before the split in the property fails because the application made by Catherine Rowan after the division was made for the benefit of her lands and herself only.

5. Finally, the permit was issued subject to all prior water rights and therefore any water right finally determined in the adjudication to be held by Riley's will be fully protected.

Because of the above reasons, together with those others addressed in the Saxton letter of March 12, 1997, we respectfully request that the order granting the permit for Water Right No. 22-07792 be made permanent and Catherine Rowan be given a reasonable period of time in which to prove up her water right in order to obtain a license for said permit.

Should you have any questions, please do not hesitate to request a response from us and we will do so quickly. Due to this matter having been pending for such a great length of time, please allow us the opportunity to supply any additional documentation which the Department now determines to be inadequate.

Sincerely yours,



Jerry R. Rigby

JRR:jt
Enclosure

cc: Steven R. Parry
FAWP65B\ROWAN.LT2



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

September 8, 2004

Jerry R. Rigby
Attorney at Law
P.O. Box 250
Rexburg, ID 83440

Steven R. Parry
Attorney at Law
P.O. Box 51630
Idaho Falls, ID 83405-1630

Re: Application to appropriate water no. 22-7792 in the name of Catherine Rowan

Gentlemen:

On August 30, 2004, Jerry Rigby sent an e-mail message to Glen Saxton of the Idaho Department of Water Resources (IDWR) inquiring about the status of the application to appropriate water no. 22-7792. A copy of the e-mail message is enclosed. In the message, Mr. Rigby refers to filing no. 22-7792 as both a permit and an application.

I also reviewed a letter Jerry Rigby mailed to Glen Saxton dated July 8, 2004. A copy of the letter is also enclosed. The letter refers to filing no. 22-7792 as a permit that should "proceed to license." I recall reading the letter in July, assumed Eastern Region of IDWR would schedule a licensing field examination, and asked staff to file the letter without a response.

After reading the correspondence in file no. 22-7792, I conclude the following:

- IDWR issued a preliminary order approving application no. 22-7792.
- Norman and Robin Riley petitioned for reconsideration of the preliminary order.
- IDWR determined issuance of the preliminary order did not create a contested case, and Rileys could not petition for reconsideration because they were not parties.
- IDWR agreed to consider the facts and issues raised by the petition.
- IDWR held application no. 22-7792 pending the outcome of litigation.
- Filing no. 22-7792 is an unapproved application to appropriate water.

If the litigation between Rowan and Rileys is concluded, IDWR will consider any information Rowan or Rileys submit related to the application. Following the submittal of information, and determination by IDWR that the water right application can be considered, IDWR will issue another preliminary order. Following issuance of the decision, the applicant may challenge the decision. In addition, if a person is aggrieved by the decision, the aggrieved person may request a hearing under Idaho Code § 42-1701A.

Please submit any information on or before October 1, 2004 that may help IDWR decide whether consideration of the application is appropriate.

Sincerely,

Gary Spackman

Enclosure

Saxton, Glen

From: Jerry R. Rigby [jrigby@rigby-thatcher.com]
Sent: Monday, August 30, 2004 11:24 AM
To: gsaxton@idwr.state.id.us
Subject: Catherine Rowan - Water permit number 22-7792

Dear Glen,

As you know, my partner, Mike Kam, who is now deceased, was involved with Catherine Rowan for many years and along with my other partner, Greg Moeller, represented Mrs. Rowan through two Supreme Court appeals. It is my understanding that the above permit was filed on Mrs. Rowan's behalf. Furthermore, during the last appeal, I understand that Norm Young decided to hold the application until the Supreme Court confirmed the ownership issue being claimed by the Reiley's. Now that the Supreme Court has confirmed Mrs. Rowan's ownership, I understood that it would be appropriate to advance the permit. I sent you a letter dated July 8, 2004 and proposed that the permit be advanced. Since then, I have not heard anything from the Department. Do I need to do something else to proceed? I would be happy to discuss this with you or whoever you have designated to take the place of Norm on this matter. I appreciate that many things are going on, but this matter truly needs to be finalized. Please let me know where we are. This is certainly not a usual case due to the multiple litigation and appeals.

Sincerely

Jerry R. Rigby
Rigby, Thatcher, Andrus
Rigby & Moeller, Chtd.
Tel: 208-356-3633
Fax: 208-356-0768
Email: jrigby@rigby-thatcher.com

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RECEIVED *1/1*

JUL 12 2004

DEPARTMENT OF
WATER RESOURCES

Gong
at Rex Carlson - Edna
Law Offices

RIGBY, THATCHER, ANDRUS
RIGBY, & MOELLER, Chartered

Ray W. Rigby
Gordon S. Thatcher
G. Rich Andrus
Jerry R. Rigby
Michael S. Kam (1954-2001)
Gregory W. Moeller
Reed E. Andrus

P.O. Box 250
25 North Second East
Rexburg, ID 83440

Telephone: (208) 356-3633
Fax: (208) 356-0768
E-Mail: jrigby@rigby-thatcher.com

July 8, 2004

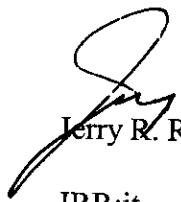
L. Glen Saxton, P.E.
Idaho Department of Water Resources
1301 North Orchard Street
P.O. Box 83720
Boise, Idaho 83706

Re: Catherine Rowan - Water permit number 22-7792

Dear Glen,

For some time, this firm has been involved with the above entitled water permit which has been entangled in litigation before the Supreme Court of Idaho. Norm Young decided to hold the permit until a decision of the Supreme Court affirmed the decision of the lower court. This has now occurred and we now desire to have the permit proceed to license in the name of Catherine Rowan as originally requested by my partner, Greg W. Moeller. Should you need the details of the supreme court decision, or a copy of the District Court's original ruling, please contact me and we will produce the same for you as quickly as possible. I have already spoken with Keith Wilson in the regional office who should be up to speed on this matter.

Sincerely yours,


Jerry R. Rigby

JRR:jt
F:\WP6\SB\ROWAN.LTR