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DEC 19 1985

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MICROFILMED

FEB 07 1997

22-7280

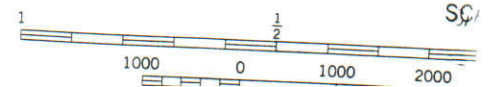
22-0,7792

1 OF 3

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Mapped, edited, and published by the Geological Survey
Control by USGS and NOS/NOAA
Topography from aerial photographs by multiplex methods



THE STANDARD JOURNAL
Rexburg, Idaho

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO
County of Madison

I, TERRY T. WEATHERSTON being first duly sworn, depose and say, that I am the printer of THE STANDARD-JOURNAL, a semi-weekly newspaper printed and published semi-weekly at Rexburg, Madison County, Idaho; and I do solemnly swear that the NOTICE OF WATER RIGHT #22-07792 ROWAN a copy of which notice appears attached hereto, was published in the regular and entire issue of said newspaper, and not in any supplement issue thereof for TWO consecutive issues, the first publication having been made on NOVEMBER 7, 1996 and the last publication having been made on NOVEMBER 14, 1996.

Further, that said newspaper is one of general circulation in said county; that it is a legal newspaper, conforming to legal specifications under the Idaho Statutes; that it has at least two hundred bona fide subscribers living within the county of publication; and that it has been continuously and uninterruptedly published in said county during a period of seventy eight consecutive weeks prior to the first publication of the said notice.

Terry Weatherston

STATE OF IDAHO)
COUNTY OF MADISON)

On this 15TH day of NOVEMBER in the year of 1996, before me, a Notary Public, Personally appeared Terry Weatherston, 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.

Logan J. Pater
Notary Public for Idaho
Residing at Rexburg, Idaho
My commission expires: May 21, 1999

RECEIVED

DEC 02 1996

Department of Water Resources
Eastern District Office

NOTICE OF APPLICATION
FOR WATER RIGHT

The Following application(s) have been filed to appropriate the public waters of the State of Idaho:

22-07792
ROWAN, CATHERINE
843 THREE FOUNTAINS No. 258
SALT LAKE CITY, UT 84107
Source: GROUNDWATER
Diversion Pt: SWSW Sec 11 T 05N 40E
in MADISON County.
Use: IRRIGATION (3,000 CFS) Total
Diversion: (3,000 CFS)
Date Filed: 9/4/1996
In: MADISON County T05N R40E S14
SWNW SENW NESW NWSW SWSW
SESW SWSE S15 NESE SESE 923
NWNE NENW NWNW 150.5 ACRES
TOTAL

THIS LAND WAS DEVELOPED CON-
CURRENTLY WITH PERMIT NO.
22-07280. THE LAND HAS BEEN IR-
RIGATED EVERY YEAR SINCE 1978.

The permit(s) will be subject to all prior water rights. Protests must be filed with the applicant and the Director, Dept. of Water Resources, along with a \$25 filing fee, Eastern Region, 900 N Skyline, Idaho Falls, Idaho 83402 on or before NOVEMBER 25, 1996.

KARL J. DREHER,
Director

Publ. Nov. 7 and 14, 1996J.

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FEB 07 1997

 NOTICE

March 6, 1998

No further action is to be taken on Water Right No. 22-07792 until the pending litigation involving this right is resolved.

L. Glen Saxton

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF WATER RIGHT)
PERMIT NO. 22-07792 IN THE NAME)
OF CATHERINE ROWAN)
_____)

**ORDER DESIGNATING A
PRELIMINARY ORDER**

This matter having come before the Idaho Department of Water Resources (department), as a result of an inquiry from a potentially affected water user, the department makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On January 30, 1997, the department issued water right permit No. 22-07792 in the name of Catherine Rowan. When issued, the department did not designate the permit as being a recommended order, preliminary order, or a final order.

2. On February 18, 1997, the department received a letter on behalf of potentially affected water users Norman and Robin Riley expressing concern regarding the issuance of the permit.

CONCLUSIONS OF LAW

1. IDAPA Rule 37.01.01750 (Rule of Procedure 750) provides as follows:

If an order does not designate itself as recommended, preliminary or final at its release, but is designated as recommended, preliminary or final after its release, its effective date for purposes of reconsideration or appeal is the date of the order of designation. If a party believes that an order not designated as a recommended order, preliminary order or final order according to the terms of these rules should be designated as a recommended order, preliminary order or final order, the party may move to designate the order as recommended, preliminary or final, as appropriate.

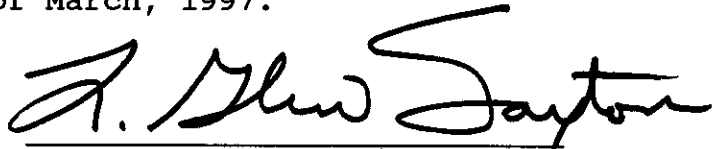
2. The department should designate the issuance of water right permit No. 22-07792 as a preliminary order and should allow a period of fourteen (14) days for any potentially affected water user to submit comments to the department, or for any aggrieved

party to petition for reconsideration as provided in IDAPA Rule 37.01.01730 (Rule of Procedure 730).

ORDER

IT IS THEREFORE, HEREBY ORDERED that the issuance of water right Permit No. 22-07792 is designated as a preliminary order of the department with the effective date for purposes of comment, or petition for reconsideration being the date of this order.

DATED this 12th day of March, 1997.


L. GLEN SAXTON, Chief
Water Allocation Bureau

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 12th day of March, 1997, I mailed a true and correct copy, postage prepaid, of the foregoing **PRELIMINARY ORDER** to the following:

Catherine Rowan
843 Three Fountains #258
Salt Lake City, UT 84107

Gregory W. Moeller
RIGBY THATCHER ANDRUS
RIGBY KAM & MOELLER
P.O. Box 250
Rexburg, ID 83440

Steven R. Parry
ANDERSON NELSON HALL
SMITH
P.O. Box 51630
Idaho Falls, ID 83405-1630


JULIE L. YARBROUGH
Senior Secretary

NO. 22-07792

FEB 07 1937

RECEIVED

RECEIVED

SEP 04 1996

DEC 16 1996

FORM 202
2/96

Department of Water Resources

Ident. No. 22-7792

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

RECEIVED

SEP 04 1996

Department of Water Resources
801-266-4044

1. Name of Applicant Catherine Rowan Phone 843 Three Fountains--Unit 258 Salt Lake City, Utah 84107
Mailing address 843 Three Fountains--Unit 258 Salt Lake City, Utah 84107
2. Source of water supply Groundwater which is a tributary of _____
3. Location of point of diversion is Township 05N Range 40E Sec. 11 in the SW 1/4,
SW 1/4, 1/4, Govt. Lot _____, B.M., Madison County;
additional points of diversion if any: _____
4. Water will be used for the following purposes:
Amount 3.2 cfs for Irrigation purposes from 04/15 to 10/15 (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
5. Total quantity to be appropriated is (a) 3.2 cubic feet per second and/or (b) _____ acre feet per annum
6. Proposed diverting works:
a. Describe type and size of devices used to divert water from the source Primary pump 500 h.p.
with 350 h.p. booster
b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total
reservoir capacity _____ acre-feet
c. Proposed well diameter is _____ 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? 1978; Drilling firm Andrew Well Drilling--Idaho Falls, Id.
Well was drilled for (well owner) _____; Drilling Permit No. _____
7. Time required for completion of works and application of water to 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. _____
e. Other; describe fully. _____

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FEB 07 1997

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	RGE	SEC	N E				N W				S W				S E				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
5N	40E	14							0.3	2	25	23	34	39			10		133.3
5N	40E	15													0.2			3	3.2
5N	40E	23		2			9	3											14

Total number of acres to be irrigated 150.5

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? Catherine Rowan

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

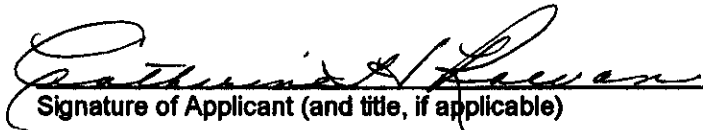
c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: _____

12. Remarks: This land was developed concurrently with Permit 22-7280.

The land has been irrigated every year since 1978. A Beneficial Use Field Report brought to my attention that the land had not been included in Permit 22-7280. Please see Beneficial Use Field Report for Permit 22-7280 for documentation that the land was irrigated prior to 1987.

13. MAP OF PROPOSED PROJECT REQUIRED - Attach an 8½"x11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

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


Signature of Applicant (and title, if applicable)

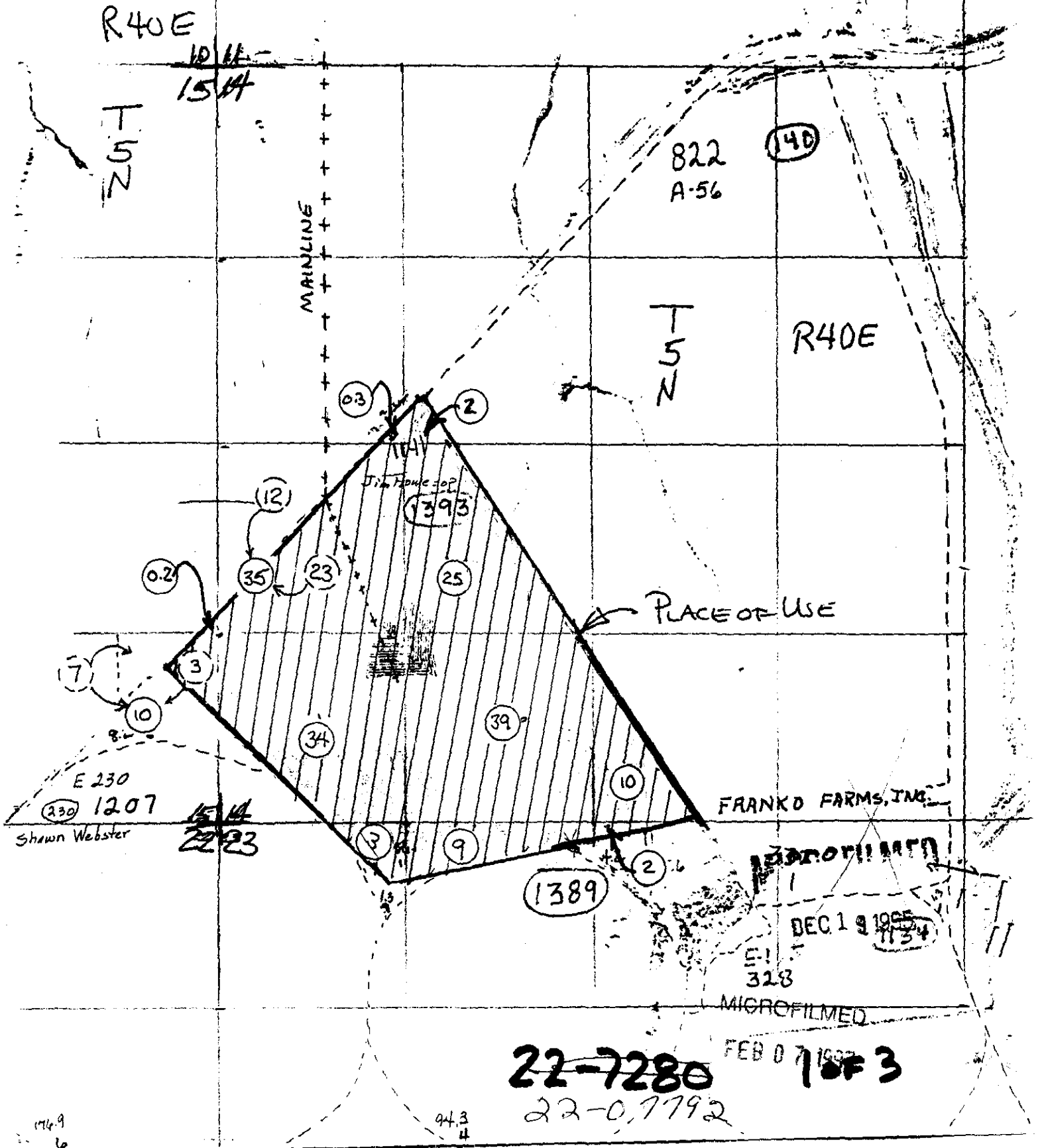
Received by Kel Date 9.4.96 Time _____ Preliminary check by _____
Fee \$ \$160.00 Received by _____ # C036463 Date 9-4-1996
Publication prepared by RB Date 11-7-14-96 Published in Boysburg Standard Journal
Publication approved RB Date 12-2-96

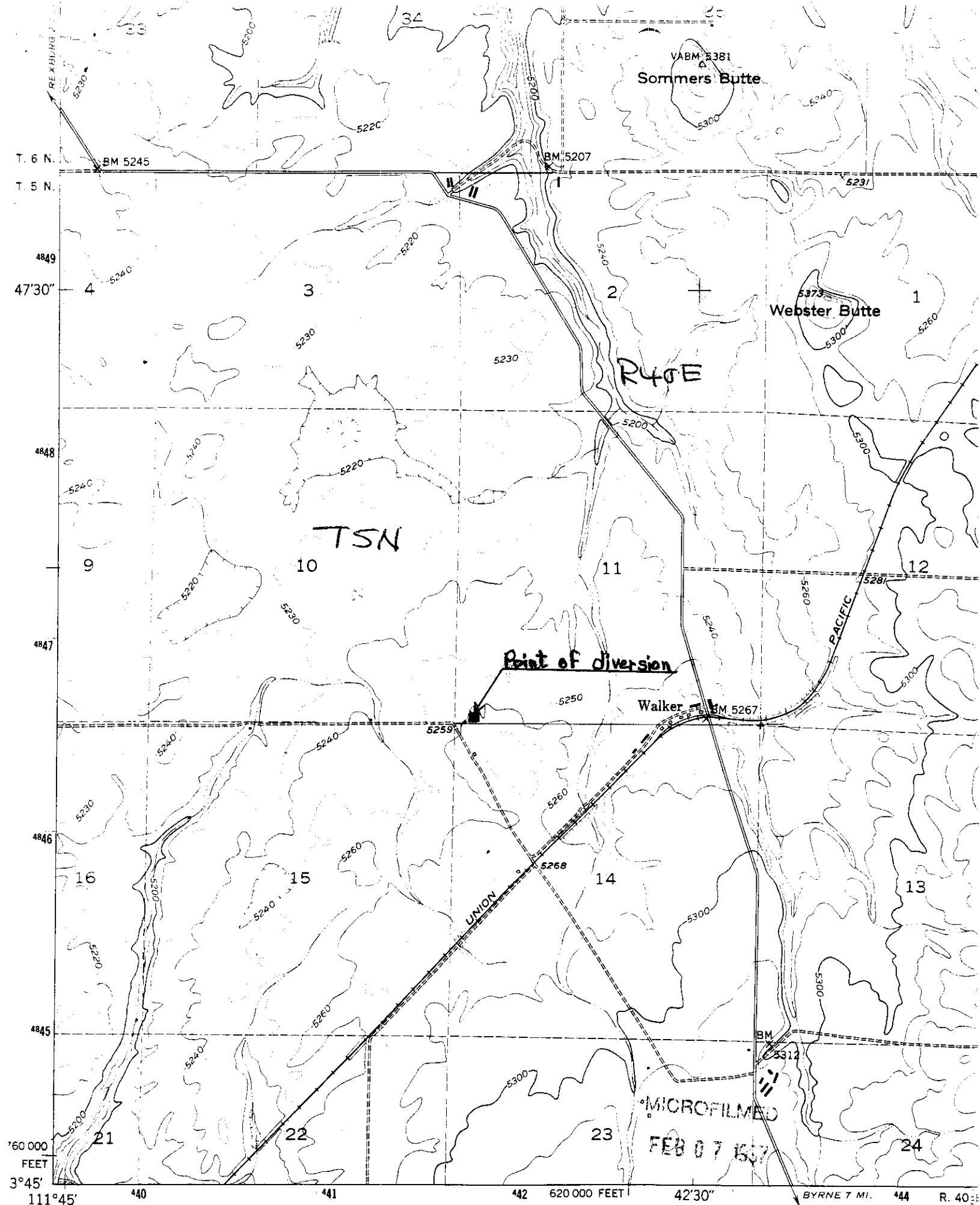
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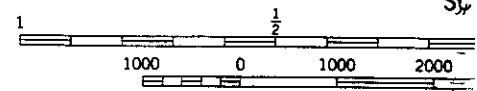




Maped, edited, and published by the Geological Survey

Control by USGS and NOS/NOAA

Topography from aerial photographs by multiplex methods



SC



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

June 20, 2003

Jerry R. Rigby
RIGBY THATCHER ANDRUS
RIGBY & MOELLER, CHARTERED
25 N. 200 E.
Rexburg, ID 83440-0250

RE: APPLICATION FOR PERMIT NO. 22-7792 IN THE NAME OF CATHERINE ROWAN

Dear Mr. Rigby:

Brian Ball recently contacted the department in connection with the use of water on the Rowan/Riley properties in Madison County, Idaho. He inquired about the status of the above referenced application in the name of Catherine Rowan ("applicant") and advised that ground water was being diverted by Lawrence Jensen to approximately 150 acres of land in parts of section 14, 15 and 23, T5N, R40E, B.M. described on the application.

In response to Mr. Ball's request, I reviewed the department's water right file for the application and determined the following:

- On January 30, 1997, the department issued Permit No. 22-7792
- On March 12, 1997, the department issued an order designating Permit No. 22-7792 as a Preliminary Order
- On March 26, 1997, the Rileys filed a Petition for Reconsideration
- On October 17, 2002, the department advised the parties that the department would continue to withhold further processing of the application until litigation between the parties was complete

Hence, the application for permit is presently an application, not a permit.

The purpose of this letter is to put parties on notice that Application for Permit No. 22-7792 does not authorize diversion and use of ground water as proposed in the application, since the department has not issued a Final Order in the matter. If diversion and use of ground water is occurring as described in the application and there is not otherwise a right authorizing diversion and use of ground water for the land described on the application, the applicant or the applicant's successor-in-interest is directed to cease and desist such diversion and use of ground water.

Jerry R. Rigby
June 20, 2003
Page 2

Administrative matters presently pending before the department in connection with the application are as follows:

1. Petition for Reconsideration
2. Petition for Disclosure of Ex Parte Communications
3. Petition for disqualification of L. Glen Saxton as Hearing Officer

If you have questions about this letter, please feel free to contact me or the department's Eastern Regional office in Idaho Falls at (208) 525-7161.

Sincerely,

A handwritten signature in black ink that reads "L. Glen Saxton". The signature is fluid and cursive, with the first name "L." being small and the last name "Saxton" being larger and more prominent.

L. GLEN SAXTON, P.E.

Administrator

Water Management Division

c:

Kip Manwaring
Lawrence Jensen
Brian Ball
IDWR – E. Region
Phil Rassier

**BALL TRADING CO.****RECEIVED**

June 20, 2003

JUN 20 2003

Department of Water Resources

Glen

Here are the address that you requested. If you need anything else please fell free to let me know. Thank you again for your help.

Brian Ball

Brian Ball\
306 Mohawk Ave
Rexburg ID 83440

Lawrence Jensen
497 North 4000 East
Rigby ID 83442

Kip Manuaring
381 Shoupe Ave Suite 211
Idaho Falls ID 83405

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

June 17, 2003

Mr. Keith Wilson
Idaho Department of Water Resources
Eastern Region
900 N. Skyline Drive
Idaho Falls, Idaho 83402

RECEIVED

JUN 19 2003

Re: Catherine Rowan/Riley Water Permit No. 22-7792

Department of Water Resources

Dear Mr. Wilson:

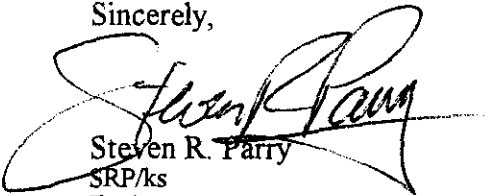
Robin Riley has provided me with a copy of the emails traded between yourself and Shelley Keen, and faxed to Robin on June 16, 2003. I do not know where the main file is being kept with regard to this water right, but it appears that there is information missing from the file. Enclosed herein is a copy of my November 29, 2002 letter to Mr. Norman C. Young. I have not yet received a response to this letter.

In short, the water rights between the Rileys and Rowan have been litigated over a ten year period and included a trip to the Idaho Supreme Court and confirmation by the Snake River Basin Adjudication. This litigation has been long and expensive, and it is simply impossible that any water rights developed during that period could have any result contrary to the Idaho Supreme Court's ruling. Consequently, the litigation at issue has been resolved and Water Permit No. 22-7792 must be divided with half to Rowan and half to the Rileys.

I am perplexed that Shelley has recommended that the Rileys "put any complaints in writing and that they be submitted to the State office for review before any action is taken." We have been corresponding with Mr. Young from the Department and therefore I assume that Shelley Keen was not aware of the existing file. However, it is absolutely correct that the Department does need to take action, as set forth above the action the Department needs to take is clear. If the Department takes any other action except to confirm a 50/50 ownership of these water rights, such action would be a clear abuse of discretion given the extended history of these water rights. Consequently, I am providing you with this letter and the enclosed copy of my November 29, 2002 letter to Mr. Young, and I am sending a copy to Shelley Keen as well, all with the hope that the Department will conclude this matter as set forth above.

If you or any of the other members of the Department of Water Resources have any questions, please do not hesitate to contact me. We are naturally anxious to have this matter resolved without any further litigation.

Sincerely,


Steven R. Parry
SRP/ks
Enclosure

cc: Shelley Keen
Norman and Robin Riley
Greg Moeller
L:\srp\2668\Wilson.ltr.wpd

COPY

Anderson Nelson Hall Smith, P.A.

ATTORNEYS

November 29, 2002

Mr. Norman C. Young
Idaho Department of Water Resources
1301 North Orchard St.
P.O. Box 83720
Boise, Idaho 83720-0098

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

Douglas R. Nelson
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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

RE: Catherine Rowan - Water Permit No. 22-7792

Dear Mr. Young:

I am in receipt of your letter dated October 23, 2002 to Mr. Moeller, along with his letter dated October 17, 2002, to you. Thank you for including me in your correspondence on this matter as I believe the circumstances require such as set forth below.

Robin Riley has indicated to me that there might be some confusion as to the status of this matter, and has suggested that I write to you setting forth the history and our position.

Water Permit No. 22-7792 ("Permit 7792") was issued without any prior notice to myself or my clients. This was extremely concerning because Permit 7792 had no independent basis other than the watering that occurred by my clients and their predecessor under Permit 22-07280. That permit, as you know, was finally divided exactly evenly between the Rileys and Rowan. As a result of such exact division, the Rileys were given ownership of primary water rights on 80+ acres of Rowan's ground. Likewise, Rowan was given some secondary water rights on certain of Riley's ground. This division was required because of the Idaho Supreme Court decision in this matter, which stated that the water rights arising under Permit 7280 must be divided evenly. As you know, the procedural history on the even split of Permit 7280 is very lengthy, and I will not recite it here. Suffice it to say, that Jim Howe was deemed to be acting for both himself and Rowan, and therefore all water rights under Permit 7280 were to be split exactly even regardless of who owned the land.

Without any notice to Rileys, Rowan filed for Permit 7792. Rowan had never placed a drop of water on this ground as only the Rileys and their predecessor watered the ground believing that to be appropriate under Permit 7280. When the field exam was done on Permit 7280, it was noted that the 160 acres south of the railroad was being watered as well. However, Permit 7280 was not allowed to be amended because the parties could not agree on the ownership of the added water rights for the 160 acres. Rowan then attempted to get a new permit, which was issued in the form of Permit 7792. HOWEVER, THE ENTIRE ANALYSIS APPLICABLE TO PERMIT 7280 IS EQUALLY APPLICABLE TO ANY WATER RIGHTS ON THE 160 ACRES SOUTH OF THE TRACK, AND THEREFORE ANY WATER RIGHTS ALLOWED UNDER PERMIT 7792 MUST BE ISSUED ½ TO ROWAN AND ½ TO RILEY. No matter how this case is analyzed, the fact is that the ownership of the water rights has been clearly settled by extended litigation.

CLIP

Norm Young
Idaho Department of Water Resources
November 29, 2002
Page 2

Enclosed for your information is a copy of the March 6, 1998 letter from Mr. Saxton to Catherine Rowan. As that letter states, the issues on Permit 7792 were to be held in abeyance by the Department, pending the outcome of the water rights issue with the Supreme Court. Although there are other related issues on appeal with the Idaho Supreme Court, the water ownership issues have been fully resolved. As stated in Mr. Saxton's letter, the proceedings on Permit 7792 were to be withheld pending further order of the department.

Although I assume you have these documents in your file, I have enclosed for your convenience copies of the following Petitions which were filed together in 1997 and have all been held in abeyance:

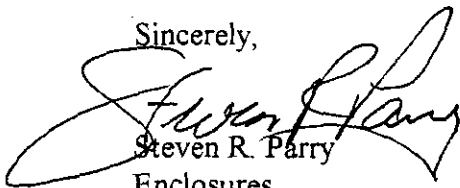
1. Petition for Reconsideration in Re: Permit 22-07792. At the time this Petition was filed, the parties had not yet been through the SRBA or the Idaho Supreme Court. Now that it has been finally determined that the Rileys own $\frac{1}{2}$ of whatever water rights were developed, it should be relatively easy to resolve this matter by putting any new permits in the Rileys' name as to 50% and Rowan's name as to 50%.
2. Petition for Disclosure of Ex Parte Communications.
3. Petition for Disqualification of L. Glen Saxton as Hearing Officer.

None of these Petitions have been resolved, although the Petition of primary concern is of course the Petition for Reconsideration.

I hope this information is helpful to you. Certainly there are numerous other relevant documents, but the key issue is: How could the department issue water rights to Rowan without giving the same rights to Rileys? A decade of litigation involving the Idaho Supreme Court and the SRBA has confirmed that the water rights developed by Jim Howe through Permit 7280 were owned equally by him (now the Rileys) and Rowan. Unless the moratorium was somehow lifted for Rowan, the issues regarding the ownership of Permit 7792 must be resolved along the same lines.

We look forward to hearing from you with regard to how this matter will be proceeding.

Sincerely,



Steven R. Parry

Enclosures

cc: Rileys
Gregory W. Moeller



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

Sent
copy
to
Riley

March 6, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

Catherine Rowan
843 Three Fountains #258
Salt Lake City, UT 84107

Re: Permit No. 22-07792 In the Name of Catherine Rowan

Dear Ms. Rowan:

On November 30, 1997, the Department of Water Resources (department) sent you a Proof Due Notice for Water Right Permit No. 22-07792. Subsequently, on February 12, 1998, the department sent you a Lapse Notice for Permit No. 22-07792. These two letters were sent in error by the department and should be disregarded. The two letters were inappropriately sent because the status of the permit as issued on January 30, 1997, remains a preliminary order pursuant to the department's order of March 12, 1997.

Norman and Robin Riley (the "Rileys"), as non-parties to the proceeding on permit no. 22-07792 submitted comments in the form of a "Petition for Reconsideration" on March 26, 1997. The Rileys expressed a concern that permit no. 22-07792, as issued, causes potential injury or prejudice to the rights of the Rileys under Licensed Water Right No. 22-07280. To prevent the preliminary order from becoming final, the Rileys filed a "protective appeal" with the director on May 9, 1997, pursuant to department Rule of Procedure 730.02.b. On May 14, 1997, Department representatives met with the Rileys and their legal counsel, Mr. Steven Parry, and your attorney regarding permit no. 22-07792. At the meeting the parties orally agreed that the department should hold the matter of permit no. 22-07792 in abeyance until pending litigation between the parties in the Snake River Basin Adjudication is resolved. This litigation is presently pending appeal before the Idaho Supreme Court in Docket No. 24153.

Although the parties expressed an intent to file a written stipulation with the department agreeing to a stay of further proceedings on permit no. 22-07792, the stipulation has not yet been filed. By this letter, the department reiterates its intent to withhold further processing under permit no. 22-07792, pending further order of the department.

Sincerely,

L. GLEN SAXTON
Chief, Water Allocation Bureau

c: Gregory W. Moeller, Esq.
Steven R. Parry, Esq.

STEVEN R. PARRY
ANDERSON NELSON HALL SMITH, P.A.
490 MEMORIAL DRIVE
P.O. BOX 51630
IDAHO FALLS, IDAHO 83405-1630
TELEPHONE: (208) 522-3001
FAX: (208) 523-7254

ATTORNEYS FOR NORMAN & ROBIN RILEY

BEFORE THE IDAHO
DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF WATER RIGHT)
PERMIT NO. 22-07792 IN THE NAME)
OF CATHERINE ROWAN and IN THE)
MATTER OF LICENSE NO. 22-07280)
IN THE NAME OF JIM W. HOWE)
AND LUCILLE W. HOWE (both)
deceased))

CATHERINE ROWAN,
Plaintiff,

v.

NORMAN RILEY AND ROBIN
RILEY, husband and wife,
Defendants.

PETITION FOR
DISQUALIFICATION OF
L. GLEN SAXTON AS
HEARING OFFICER

Norman and Robin Riley, through their counsel of record, hereby Petition the Department of Water Resources (the "Department") to disqualify Mr. L. Glen Saxton as a hearing officer on both of the above captioned matters. The Rileys do not, by this Petition, intend in anyway to impugn Mr. Saxton's qualifications or integrity. However, under the

PETITION FOR DISQUALIFICATION -- 1

circumstances imposed on Mr. Saxton and the issues remaining in both matters, it would be nearly impossible for Mr. Saxton to continue in either matter as an independent hearing officer.

Idaho Code Section 67-5252 provides that:

any party shall have a right to move to disqualify for bias, prejudice, interest, substantial prior involvement in the matter other than as a presiding officer, status as an employee of the agency hearing the contested case, lack of professional knowledge in the subject matter of the contested case, or any other cause provided in this chapter or any cause for which a judge is or may be disqualified.

Such petition must be brought "promptly upon discovering facts establishing grounds for disqualification...." I.C. 67-5252(2)(b).

Concurrently herewith, the Rileys have filed their Petition for Reconsideration In Re: Permit 22-07792 and their Petition for Disclosure of Ex Parte Communications. Both of these Petitions provide relevant background information to this Petition and are therefore incorporated herein by this reference. The facts upon which this Petition are based were discovered in connection with Mr. Saxton's March 12, 1997 letter to the Riley's attorney (Mr. Saxton's "Letter").

The Rileys believe that Mr. Saxton's actions in connection with the issuance of Permit No. 22-07792 and his attitudes and perceptions as set forth in his Letter indicate that he would potentially be biased in any further actions in this matter. Again, the Rileys do not make this allegation as a personal attack upon Mr. Saxton, as the circumstances were imposed upon him by Rowan's attorneys. However, Mr. Saxton made statements in his Letter that suggest he would be unwilling to make any rulings that would alter License No. 22-07280 as originally issued. For example, despite the fact that the issuance of the license is under protest in the currently pending hearing (as well as almost all of the details of the license), Mr. Saxton states in the Letter that: "The license is in full force and effect and does not include irrigation of the 160 Acre Parcel." The referenced license is the same license under protest in the pending hearing in In Re: License No. 22-07280. Moreover, the issuance to Rowan of Permit 22-07792 is based on the assumption that the issuance of License No. 22-07280 will not be overturned and that no details in connection with the 160

PETITION FOR DISQUALIFICATION -- 2

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Acre Parcel will be changed. Given these statements, how could Mr. Saxton or any other person in his situation subsequently view these issues with independence. Consequently, the Rileys hereby request that Mr. Saxton either disqualify himself or be disqualified, and that a new, independent hearing officer be appointed.

Mr. Saxton has at all times conducted himself in a professional manner and is obviously very knowledgeable and competent, and but for the circumstances, would have been an appropriate hearing officer. However, disqualification under the circumstances is necessary and is respectfully requested.

DATED this 24th day of March, 1997.


Steven R. Parry
Attorney for the Rileys

CERTIFICATE OF SERVICE

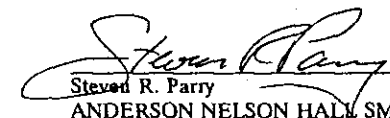
I HEREBY CERTIFY that I served a true and correct copy of the following described pleading or document on the persons listed below on this 24th day of March, 1997, by:

☐ Hand Delivering ☒ Mailing ☐ Telecopy

Document Served: PETITION FOR DISQUALIFICATION OF L. GLEN SAXTON AS HEARING OFFICER

Attorney Served:

Gregory W. Moeller
Rigby, Thatcher, Andrus,
Rigby, Kam & Moeller
P.O. Box 250
Rexburg, Idaho 83440


Steven R. Parry
ANDERSON NELSON HALL SMITH, P.A.

LASRP2668\DISQUALI.PET

STEVEN R. PARRY
ANDERSON NELSON HALL SMITH, P.A.
490 MEMORIAL DRIVE
P.O. BOX 51630
IDAHO FALLS, IDAHO 83405-1630
TELEPHONE: (208) 522-3001
FAX: (208) 523-7254

ATTORNEYS FOR NORMAN & ROBIN RILEY

BEFORE THE IDAHO
DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF WATER RIGHT)
PERMIT NO. 22-07792 IN THE NAME)
OF CATHERINE ROWAN and IN THE)
MATTER OF LICENSE NO. 22-07280)
IN THE NAME OF JIM W. HOWE)
AND LUCILLE W. HOWE (both)
deceased))

CATHERINE ROWAN,
Plaintiff,

v.

NORMAN RILEY AND ROBIN
RILEY, husband and wife,
Defendants.

PETITION FOR
DISCLOSURE OF EX PARTE
COMMUNICATIONS

Norman and Robin Riley, through their counsel of record, hereby Petition the Department of Water Resources (the "Department") to disclose all ex parte communications that have occurred between any of the Department personnel and the representatives for Catherine Rowan (including any attorney with the firm of Rigby, Thatcher, Andrus, Rigby,

PETITION FOR DISCLOSURE -- 1

Kam & Moeller) in relation to the above-captioned matters or Rowan's claimed water rights in general, specifically including but without limitation any communications relative to the issuance of water right Permit 22-07792.

This Petition is filed in conjunction with the Rileys' Petition for Reconsideration in Re: Permit 22-07792, which is incorporated herein by this reference. As described in the Petition for Reconsideration, it is apparent that Rowan's attorneys have had ex parte communications with Department personnel, including the hearing officer. The water rights that are the subject of Permit No. 22-07792 are subject to the hearing currently pending before the Department in In Re: Permit No. 22-07280. Consequently, in addition to improperly issuing Permit 22-07792 without regard to the pending hearing, the Department failed to disclose the ex parte communications. Because Permit No. 22-07792 was actually signed by the hearing officer in In Re: Permit No. 22-07280 (Mr. L. Glen Saxton), communications to all Department personnel must be disclosed as having been either directly or indirectly made to Mr. Saxton.

IDAPA Rule 37.01.417 provides the following:

Unless required for the disposition of a matter specifically authorized by statute to be done ex parte, a presiding officer serving in a contested case shall not communicate, directly or indirectly, regarding any substantive issue in the contested case with any party, except upon notice and opportunity for all parties to participate in the communication. The presiding officer may communicate ex parte with a party concerning procedural matters (e.g., scheduling). Ex parte communications from members of the general public not associated with any party are not required to be reported by this rule. However, when a presiding officer becomes aware of a written ex parte communication regarding any substantive issue from a party or representative of a party during a contested case, the presiding officer shall place a copy of the communication in the file for the case and order the party providing the written communication to serve a copy of the written communication upon all parties of record. Written communications from a party showing service upon all other parties are not ex parte communications. (Emphasis added.)

The issuance of Permit 22-07792 directly impacts issues pending in the contested case in In Re: Permit 22-07280, and surreptitiously provided Rowan with an advantage in that matter to the Rileys' prejudice. Consequently, the communications from Rowan's representatives

PETITION FOR DISCLOSURE -- 2

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preliminary hearing, the Rileys filed a Motion to Dismiss and a Motion for Continuance of Hearing. On March 19, 1996, the Department issued its Order Denying Motion to Dismiss and Granting Continuance.

Detailed Analysis

The Rowan Permit purports to grant Rowan certain rights to use water on the 160 Acre Parcel. Rowan has no basis for obtaining water rights on the property because she has never placed any water on the property, either before or after the designation of the Eastern Snake River Plain Moratorium. Rather, the 160 Acre Parcel has been irrigated by the Rileys or their predecessors in interest, all in conjunction with Water Permit No. 22-7280. In fact, the water line to the 160 Acre Parcel goes through a pipe under the railroad, and both the pipe and the railroad lease are owned by the Rileys. However, even if Rowan had any right to claim a new permit for water on the 160 Acre Parcel, that was clearly an issue to be decided in the pending hearing on License 22-07280. This position is supported by the following excerpts from the record:

1. The Rileys' Petition Regarding Water Right 22-07280 and Request for Hearing dated December 20, 1995, filed with the Department, states:

6. The allocations on the place of use are inaccurate and are not consistent with either the Permit or the Field Report. The allocation should be made with the Petitioners' input as the owners of the Permit. Petitioners request that the Department set forth its basis for the allocation as listed on the License. Included in the Petitioners' concerns are the fact that water was being used on leased ground at the time that is not included in the allocation, including the 160 acres south of the rail road tracks and 90 acres that were previously leased from Lionel Jensen. These factors need to be taken into consideration when allocating the water. (Emphasis Added.)

Hence, the Rileys raised the issue of water on the 160 Acre Parcel immediately after Water License 22-07280 was issued. In addition, it should be noted that the Rileys also objected "in its entirety to the issuance of the Water Right License for Water Right No. 22-07280." Because the hearing on these issues has been continued, the Rileys still have pending before the Department the issue of whether Water License No. 22-07280 was properly issued, as well as the issue of water rights on the 160 Acre Parcel.

PETITION FOR RECONSIDERATION -- 3

2. Likewise, Rowan's Objection to Motion to Dismiss; Objection to Motion for Continuance dated March 13, 1996, and filed with the Department, makes the following statements:

This matter has been before this Department for a considerable amount of time. Changing forums at a time when other issues remain unresolved is prejudicial and uneconomical. It would [be] extremely wasteful and result in additional delays to abandon the present proceedings when these issues remain unresolved. These issues are of tremendous interest to both parties. These issues include length of season, amount of water under the license, the number of acres to be irrigated under the license, and other conditions relevant to the use of the license. The parties efforts can serve to maximize the amount of water and acreage that [may] subsequently be divided by the SRBA. . . .

At the prehearing conference, the Department made it clear that it would not determine the ownership issue. It was clear that both Plaintiffs and Defendants had other issues which needed to [be] resolved. As a means of resolving these remaining issues, the Department urged the parties to come together with an agreement that might have the effect of maximizing the amount of water available under the license. . . . (Emphasis added.)

Both parties were concerned that the 160 Acre Parcel was left out of the license as issued and that more water had been applied than reflected in the license, but the hearing officer clearly indicated that if the parties cooperated, the Department could work with them on the 160 Acre Parcel because the water had been applied prior to the Moratorium. Both parties wanted to pursue this issue, and the Department gave every indication that arrangements could be made to correct the fact that the underlying permit did not include the 160 Acre Parcel, especially in light of the Field Exam which established that the 160 Acre Parcel had been watered. Yet, by issuing the Rowan Permit, the Department has now allowed Rowan through ex parte actions to usurp all of the benefit of these additional rights without any opportunity for the Rileys to protect their interests therein.

3. The fact that the water rights, inchoate as they were, on the 160 Acre Parcel were an issue in the hearing (which has been continued, but is still pending) is confirmed without doubt by the Rileys' Response to Objections to Motion to Dismiss and Motion for Continuance dated March 17, 1996, filed with the Department, which states:

PETITION FOR RECONSIDERATION -- 4

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ATTORNEYS FOR NORMAN & ROBIN RILEY

BEFORE THE IDAHO
DEPARTMENT OF WATER RESOURCES

(IN THE MATTER OF WATER RIGHT)
PERMIT NO. 22-07792 IN THE NAME)
OF CATHERINE ROWAN and IN THE)
MATTER OF LICENSE NO. 22-07280)
IN THE NAME OF JIM W. HOWE)
AND LUCILLE W. HOWE (both)
deceased))

CATHERINE ROWAN,
Plaintiff,

v.

NORMAN RILEY AND ROBIN
RILEY, husband and wife,
Defendants.

PETITION FOR
DISCLOSURE OF EX PARTE
COMMUNICATIONS

(Norman and Robin Riley, through their counsel of record, hereby Petition the
Department of Water Resources (the "Department") to disclose all ex parte communications
that have occurred between any of the Department personnel and the representatives for
Catherine Rowan (including any attorney with the firm of Rigby, Thatcher, Andrus, Rigby,

PETITION FOR DISCLOSURE -- 1

Kam & Moeller) in relation to the above-captioned matters or Rowan's claimed water rights
in general, specifically including but without limitation any communications relative to the
issuance of water right Permit 22-07792.

This Petition is filed in conjunction with the Rileys' Petition for Reconsideration in
Re: Permit 22-07792, which is incorporated herein by this reference. As described in the
Petition for Reconsideration, it is apparent that Rowan's attorneys have had ex parte
communications with Department personnel, including the hearing officer. The water rights
that are the subject of Permit No. 22-07792 are subject to the hearing currently pending
before the Department in In Re: Permit No. 22-07280. Consequently, in addition to
improperly issuing Permit 22-07792 without regard to the pending hearing, the Department
failed to disclose the ex parte communications. Because Permit No. 22-07792 was actually
signed by the hearing officer in In Re: Permit No. 22-07280 (Mr. L. Glen Saxton),
communications to all Department personnel must be disclosed as having been either
directly or indirectly made to Mr. Saxton.

IDAPA Rule 37.01.417 provides the following:

Unless required for the disposition of a matter specifically authorized by
statute to be done ex parte, a presiding officer serving in a contested case
shall not communicate, directly or indirectly, regarding any substantive issue
in the contested case with any party, except upon notice and opportunity for
all parties to participate in the communication. The presiding officer may
communicate ex parte with a party concerning procedural matters (e.g.,
scheduling). Ex parte communications from members of the general public not
associated with any party are not required to be reported by this rule.
However, when a presiding officer becomes aware of a written ex parte
communication regarding any substantive issue from a party or representative
of a party during a contested case, the presiding officer shall place a copy of
the communication in the file for the case and order the party providing the
written communication to serve a copy of the written communication upon all
parties of record. Written communications from a party showing service upon
all other parties are not ex parte communications. (Emphasis added.)

The issuance of Permit 22-07792 directly impacts issues pending in the contested case in In
Re: Permit 22-07280, and surreptitiously provided Rowan with an advantage in that matter
to the Rileys' prejudice. Consequently, the communications from Rowan's representatives

PETITION FOR DISCLOSURE -- 2

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that led to the issuance of that permit were clearly ex parte in violation of the above-quoted rule. In addition, the ex parte communications violated I.C. 67-5253 which provides:

Unless required for the disposition of ex parte matters specifically authorized by statute, a presiding officer serving in a contested case shall not communicate, directly or indirectly, regarding any substantive issue in the proceeding, with any party, except upon notice and opportunity for all parties to participate in the communication.

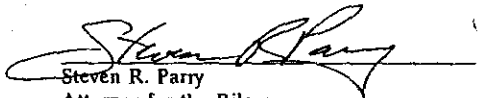
The prohibition against ex parte communications is well known to the parties and the hearing officer as it was one of the issues raised in the Rileys' Motion for Continuance of Hearing dated March 6, 1996. Although Rowan's attorneys indicated in response that the earlier communications were inadvertent, the recent communications could not have been inadvertent. The Rileys' concerns regarding these ex parte communications must be viewed in light of the circumstances surrounding this case. As stated in the Rileys' Motion for Continuance of Hearing, they have been very concerned that one of the attorneys in the firm representing Rowan is a member of the Department's board. This fact is compounded by the multiple rumors which the Rileys have heard that the Department is in essence working against them and in favor of Rowan. Just recently the Rileys were told (through rumor) that Rowan had taken care of her water problems and that it was a "done deal" clear up "to the top." That rumor was heard just weeks before Rowan's attorney disclosed in Judge Herndon's chambers that Rowan had secured a Permit from the Department. How are the Rileys expected to ignore such rumors when the events unfold that seem to support them? Under the circumstances (with the issue having already arisen once and with Mr. Rigby's membership on the board), one would expect an abundance of caution on this issue so as to preserve the integrity of the process. Whether or not any impropriety has occurred, the perception of independence has certainly been completely shattered. Consequently, it is imperative that the Rileys be provided with detailed information regarding all such ex parte communications.

The Rileys specifically request that they be provided with (1) copies of all written correspondence to or from the Department (including any of its employees) that is from or to Rowan or any of her representatives (including her attorneys and Gary Ball) regarding

either of the above-captioned matters (or her claimed water rights generally) occurring after January 13, 1995, and (2) a description of all oral communications between the Department (including any of its employees) and Rowan or any of her representatives (including her attorneys and Gary Ball) regarding either of the above-captioned matters (or her claimed water rights generally) occurring after January 13, 1995, such description to include the names of the persons to the conversation and the general content of each such conversation. Only by having this information can the Rileys assess the events that have occurred and take action to protect their legal rights.

Therefore, the Rileys respectfully request that such information be provided to them at the earliest time possible.

DATED this 24th day of March, 1997.


Steven R. Parry
Attorney for the Rileys

The Objection correctly states that the parties were encouraged at the Prehearing Conference to "come together with an agreement that might have the effect of maximizing the amount of water available under the license." In fact, such agreement would be essential for the hearing to proceed smoothly. However, it is now apparent that the parties do not and will not be agreeing on the key issue of allocation of water and other issues on which agreement would be imperative to maximize the amount of water available. Hence, the issues are in fact far more complex and perilous to the parties and it is reckless for the Plaintiff to push for a premature hearing wherein the Defendants will have no choice but to argue against the allocation of water to the southern 160 acres.

One of the key issues regards the 160 acres south of the railroad tracks. If the Defendants own all of the water rights as tenants on Plaintiff's property, then they may be agreeable to spreading water down to the 160 acres assuming they would have the right to move the water if they lost the lease. If, however, the Defendants do not own all of the water rights, then they will oppose moving any of the water from the north to the south because doing so would potentially result in their ultimately owning less water. Consequently, holding the hearing prior to determining ownership will put the Defendants at odds with the Plaintiff with respect to the treatment of the 160 acres. Putting the parties in this situation is unjust and contrary to the promise made by the Department's prior director in his letter, a copy of which is attached, of November 7, 1994 which states:

The field examination indicates that more land is irrigated than authorized under the permit. The list of land confirmed to be irrigated under the license will depend upon a selection by the owner(s) of the water right. For this reason, IDWR will not issue the license while the parties are seeking a determination by the court of the ownership of the water right. Should the parties, or the court on its own initiative, elect not to proceed with a judicial determination of ownership of the water right, IDWR is prepared to address the issue in an administrative proceeding subject to judicial review. (Emphasis added).

By issuing the license without deciding the ownership issue, the Department has put the Defendants in the very position that should be avoided. Due process simply requires that the Defendants know what rights they own before being asked to forego or to defend those rights. It is this complexity that needs more review if in fact the Defendant is placed in such an untenable position. However, this complexity is easily solved if the parties are allowed to proceed to the SRBA for an adjudication as to ownership and then to

return to the Department for a resolution of the licensing details. (Emphasis added.)

One of the parties' primary hopes was that the Department would allow for the permitting of additional water based on its beneficial use on the 160 Acre Parcel prior to the Moratorium. Certainly the Rileys anticipated that the Department would eventually grant them a permit relative to the 160 Acre Parcel inasmuch as they (and their predecessors) had developed and applied water to that land prior to the Moratorium. The Rowan Permit shows the Department was willing to address this issue by issuing a new permit, but the permit should not have been issued until after the ownership of the rights relating to the 160 Acre Parcel was established. How could the Department determine, without notice to the Rileys, that Rowan owned the right to seek and eventually obtain the Rowan Permit? Based upon the actual application of the water, the Rileys developed and therefore should be deemed to own whatever water rights may exist in relation to the 160 Acre Parcel--but this is obviously a disputed claim that was to be and should be decided in In Re License No. 22-07280.

4. The Department, in its Order Denying Motion to Dismiss and Granting Continuance dated March 19, 1996, recognized that the "appropriateness of the acreage" under the license was being contested as indicated by the following statement:

In addition to the question of ownership of the water right, the issues identified concern the appropriateness of the acreage, diversion rate, season of use and other conditions of approval contained in the license. (Emphasis added.)

Obviously the 160 Acre Parcel was at issue in connection with the "appropriateness of the acreage." The Order further states that:

The Rileys also ask that the setting of any hearing to be held by the department pursuant to section 42-1701A(3), Idaho Code, be indefinitely continued until the parties have resolved the ownership of the water right before the district court. The Rileys persuasively argue that their interests in the department hearing may vary depending upon the extent of their ownership of water right no. 22-07280. The department desires to minimize rather than add to the expense of the parties in resolving this dispute. For that reason the hearing officer will approve an indefinite continuance of the

42-1701A(3) hearing previously requested by both parties to this proceeding.
(Emphasis added.)

As set forth above in Section 3, the Rileys' arguments were centered on the treatment of water rights for the 160 Acre Parcel, and that was one of the primary reasons the hearing was continued as stated in the Order. How then can the Department issue the Rowan Permit on the 160 Acre Parcel while this hearing is still pending?

5. Mr. Saxton's letter of March 12, 1997 states that "The department does not view its issuance of the [Rowan] permit to have altered the relative positions of the parties in the ongoing water right dispute generally summarized below." Surely the Department knows that the Rileys' position would have been improved had the Rowan Permit been issued to them. How, then, does the Department think its actions have not benefitted Rowan and thereby "altered the relative positions of the parties"? Under the circumstances, the statement is incredible and suggests the Department is advocating Rowan's position rather than attempting to maintain a neutral position. Certainly Rowan believes she has "altered the relative positions of the parties" as the issuance of the Rowan Permit was disclosed to Judge Herndon (and the Rileys' attorney) in chambers prior to the most recent hearing in the Madison County Case and was presented as having given Rowan rights to water on the 160 Acre Parcel that were not recognized previously.

Despite the pending hearing, Mr. Saxton's letter repeatedly refers¹ to the license as if its terms were final and binding. For example, his letter states that:

The license as issued does not recognize irrigation of the additional 160 acres owned by Rowan even though water has been applied to the land.

The "license as issued" is not relevant to the propriety of issuing the Rowan Permit because the "license as issued" is the subject of the pending protest, including a protest on the very issuance of the license and on the water rights for the 160 Acre Parcel. Moreover, either

¹ Elsewhere the letter also states:

"Issuance of the Rowan permit does not conflict with the ongoing ownership question of the license because the land identified under the permit is different than the land on the license."

party may choose to appeal the Department's ultimate decision on the license as it will be subject to judicial review. Yet, the Department relies upon the "license as issued" to take additional actions which are prejudicial to the Rileys, and without notice to the Rileys. Oddly, the letter states:

IDWR does not perceive any circumstance under which approval of the Rowan permit will prejudice the Riley's claim of license ownership or the use of water under Riley's rights. The Rowan permit was issued subject to all prior water rights including the license.

Yet, two paragraphs later the letter states:

IDWR could not issue a permit to the Rileys to irrigate the 160 acre parcel without Rileys obtaining ownership of the parcel or showing evidence of other rights to develop and hold a water right on the land. Further, IDWR would not issue a second permit for use on the same lands.

There, in short, is the prejudice that the Department has imposed on the Rileys. The Department will now not issue a similar permit to the Rileys because they have issued one to Rowan all without any ruling on who had the underlying right to seek such a permit in the first place. Moreover, the Department issued the permit to Rowan despite that fact that she has never paid for, developed or applied any of the water to the 160 Acre Parcel. One of the purposes of the hearing (which as stated above is still pending) is to allow the Rileys to show "evidence of other rights to develop and hold a water right on the [160 Acre Parcel]." The primary point being that the Department took this action while the issue was pending in a hearing before the Department, without any notice to the Rileys or any other attempt to give them due process before eliminating their rights with respect to the 160 Acre Parcel.

Mr. Saxton's letter again relies upon the license as issued to justify the Department's actions with the following statement:

The department is aware that you are seeking judicial determination of the ownership of the licensed water right. If Rileys are found to own all of the license, the department may need to issue an amended license. The Department does not perceive that issuing the permit to Rowan for lands not now covered by the license will affect the Riley's potential ability to control all of the water authorized to be diverted under the existing license.
(Emphasis Added.)

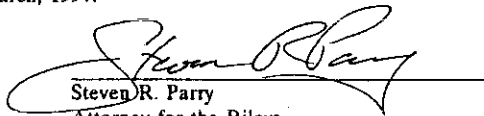
After the ownership issue is decided by the SRBA Court, the pending hearing will resume and the Rileys will pursue their water rights arising from the fact that they have applied water to the 160 Acre Parcel. If there is additional water to license, then the right to license that water should belong to the Rileys. That determination, however, should be made after SRBA has ruled upon the ownership issue.

Finally, the letter states that "the license is in full force and effect and does not include irrigation of the 160 Acre Parcel." The license is under protest, even as to its very issuance, is subject to a pending hearing in front of the Department, and will not be in "full force and effect" until the Department holds the hearing, rules upon the issues related to the license, and those decisions are subjected to judicial review. This statement makes it apparent that the Department has somehow overlooked the fact that the license is under protest in the pending hearing, and confirms that the Department was premature in issuing the Rowan Permit.

Conclusion

The license for right 22-07280 is the subject of a hearing pending before the Department, one of the issue in which relates to the water rights on the 160 Acre Parcel. Consequently, the Department should not have taken any action on the 160 Acre Parcel water rights without providing notice to the Rileys. Likewise, the communications that occurred between the Department and Rowan's attorneys in this matter were ex parte thereby violating the Rileys' due process rights. Therefore, the Rowan Permit should be cancelled, or issued in a way that will not prejudice the Rileys once the issue of water on the 160 Acre Parcel is properly placed before the Department.

DATED this 24th day of March, 1997.


Steven R. Parry
Attorney for the Rileys

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the following described pleading or document on the persons listed below on this 24th day of March, 1997, by:

☐ Hand Delivering ☒ Mailing ☐ Telecopy

Document Served: PETITION FOR RECONSIDERATION IN RE: PERMIT 22-07792

Attorney Served:

Gregory W. Moeller
Rigby, Thatcher, Andrus,
Rigby, Kam & Moeller
P.O. Box 250
Rexburg, Idaho 83440


Steven R. Parry
ANDERSON NELSON HALL SMITH, P.A.

LASRP2668/PETITION.REC

 NOTICE

March 6, 1998

No further action is to be taken on Water Right No. 22-07792 until the pending litigation involving this right is resolved.

L. Glen Saxton

Anderson Nelson Hall Smith, P.A.

ATTORNEYS

November 29, 2002

Mr. Norman C. Young
Idaho Department of Water Resources
1301 North Orchard St.
P.O. Box 83720
Boise, Idaho 83720-0098

RECEIVED

DEC - 4 2002

Department of Water Resources

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Steven R. Parry*
Brian T. Tucker
Jeffery W. Banks
Wiley R. Dennert
W. Joe Anderson
(1923-2002)

*Also member of Utah bar

RE: Catherine Rowan - Water Permit No. 22-7792

Dear Mr. Young:

I am in receipt of your letter dated October 23, 2002 to Mr. Moeller, along with his letter dated October 17, 2002, to you. Thank you for including me in your correspondence on this matter as I believe the circumstances require such as set forth below.

Robin Riley has indicated to me that there might be some confusion as to the status of this matter, and has suggested that I write to you setting forth the history and our position.

Water Permit No. 22-7792 ("Permit 7792") was issued without any prior notice to myself or my clients. This was extremely concerning because Permit 7792 had no independent basis other than the watering that occurred by my clients and their predecessor under Permit 22-07280. That permit, as you know, was finally divided exactly evenly between the Rileys and Rowan. As a result of such exact division, the Rileys were given ownership of primary water rights on 80+ acres of Rowan's ground. Likewise, Rowan was given some secondary water rights on certain of Riley's ground. This division was required because of the Idaho Supreme Court decision in this matter, which stated that the water rights arising under Permit 7280 must be divided evenly. As you know, the procedural history on the even split of Permit 7280 is very lengthy, and I will not recite it here. Suffice it to say, that Jim Howe was deemed to be acting for both himself and Rowan, and therefore all water rights under Permit 7280 were to be split exactly even regardless of who owned the land.

Without any notice to Rileys, Rowan filed for Permit 7792. Rowan had never placed a drop of water on this ground as only the Rileys and their predecessor watered the ground believing that to be appropriate under Permit 7280. When the field exam was done on Permit 7280, it was noted that the 160 acres south of the railroad was being watered as well. However, Permit 7280 was not allowed to be amended because the parties could not agree on the ownership of the added water rights for the 160 acres. Rowan then attempted to get a new permit, which was issued in the form of Permit 7792. HOWEVER, THE ENTIRE ANALYSIS APPLICABLE TO PERMIT 7280 IS EQUALLY APPLICABLE TO ANY WATER RIGHTS ON THE 160 ACRES SOUTH OF THE TRACK, AND THEREFORE ANY WATER RIGHTS ALLOWED UNDER PERMIT 7792 MUST BE ISSUED ½ TO ROWAN AND ½ TO RILEY. No matter how this case is analyzed, the fact is that the ownership of the water rights has been clearly settled by extended litigation.

MICROFILMED

MAR 26 2003

Norm Young
Idaho Department of Water Resources
November 29, 2002
Page 2

Enclosed for your information is a copy of the March 6, 1998 letter from Mr. Saxton to Catherine Rowan. As that letter states, the issues on Permit 7792 were to be held in abeyance by the Department, pending the outcome of the water rights issue with the Supreme Court. Although there are other related issues on appeal with the Idaho Supreme Court, the water ownership issues have been fully resolved. As stated in Mr. Saxton's letter, the proceedings on Permit 7792 were to be withheld pending further order of the department.

Although I assume you have these documents in your file, I have enclosed for your convenience copies of the following Petitions which were filed together in 1997 and have all been held in abeyance:

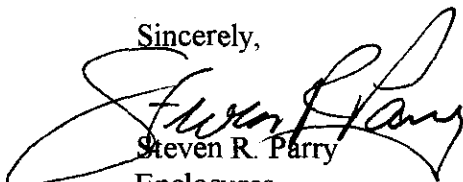
1. Petition for Reconsideration in Re: Permit 22-07792. At the time this Petition was filed, the parties had not yet been through the SRBA or the Idaho Supreme Court. Now that it has been finally determined that the Rileys own ½ of whatever water rights were developed, it should be relatively easy to resolve this matter by putting any new permits in the Rileys' name as to 50% and Rowan's name as to 50%.
2. Petition for Disclosure of Ex Parte Communications.
3. Petition for Disqualification of L. Glen Saxton as Hearing Officer.

None of these Petitions have been resolved, although the Petition of primary concern is of course the Petition for Reconsideration.

I hope this information is helpful to you. Certainly there are numerous other relevant documents, but the key issue is: How could the department issue water rights to Rowan without giving the same rights to Rileys? A decade of litigation involving the Idaho Supreme Court and the SRBA has confirmed that the water rights developed by Jim Howe through Permit 7280 were owned equally by him (now the Rileys) and Rowan. Unless the moratorium was somehow lifted for Rowan, the issues regarding the ownership of Permit 7792 must be resolved along the same lines.

We look forward to hearing from you with regard to how this matter will be proceeding.

Sincerely,



Steven R. Parry

Enclosures

cc: Rileys
Gregory W. Moeller

MICROFILMED

MAR 26 2003



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

Sent copy to Rileys

March 6, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

Catherine Rowan
843 Three Fountains #258
Salt Lake City, UT 84107

Re: Permit No. 22-07792 In the Name of Catherine Rowan

Dear Ms. Rowan:

On November 30, 1997, the Department of Water Resources (department) sent you a Proof Due Notice for Water Right Permit No. 22-07792. Subsequently, on February 12, 1998, the department sent you a Lapse Notice for Permit No. 22-07792. These two letters were sent in error by the department and should be disregarded. The two letters were inappropriately sent because the status of the permit as issued on January 30, 1997, remains a preliminary order pursuant to the department's order of March 12, 1997.

Norman and Robin Riley (the "Rileys"), as non-parties to the proceeding on permit no. 22-07792 submitted comments in the form of a "Petition for Reconsideration" on March 26, 1997. The Rileys expressed a concern that permit no. 22-07792, as issued, causes potential injury or prejudice to the rights of the Rileys under Licensed Water Right No. 22-07280. To prevent the preliminary order from becoming final, the Rileys filed a "protective appeal" with the director on May 9, 1997, pursuant to department Rule of Procedure 730.02.b. On May 14, 1997, Department representatives met with the Rileys and their legal counsel, Mr. Steven Parry, and your attorney regarding permit no. 22-07792. At the meeting the parties orally agreed that the department should hold the matter of permit no. 22-07792 in abeyance until pending litigation between the parties in the Snake River Basin Adjudication is resolved. This litigation is presently pending appeal before the Idaho Supreme Court in Docket No. 24153.

Although the parties expressed an intent to file a written stipulation with the department agreeing to a stay of further proceedings on permit no. 22-07792, the stipulation has not yet been filed. By this letter, the department reiterates its intent to withhold further processing under permit no. 22-07792, pending further order of the department.

Sincerely,

L. GLEN SAXTON
Chief, Water Allocation Bureau

MICROFILMED

MAR 26 2003

c: Gregory W. Moeller, Esq.
Steven R. Parry, Esq.

STEVEN R. PARRY
ANDERSON NELSON HALL SMITH, P.A.
490 MEMORIAL DRIVE
P.O. BOX 51630
IDAHO FALLS, IDAHO 83405-1630
TELEPHONE: (208) 522-3001
FAX: (208) 523-7254

ATTORNEYS FOR NORMAN & ROBIN RILEY

BEFORE THE IDAHO
DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF WATER RIGHT)
PERMIT NO. 22-07792 IN THE NAME)
OF CATHERINE ROWAN and IN THE)
MATTER OF LICENSE NO. 22-07280)
IN THE NAME OF JIM W. HOWE)
AND LUCILLE W. HOWE (both)
deceased))

CATHERINE ROWAN,
Plaintiff,

v.

NORMAN RILEY AND ROBIN
RILEY, husband and wife,
Defendants.

PETITION FOR
DISQUALIFICATION OF
L. GLEN SAXTON AS
HEARING OFFICER

Norman and Robin Riley, through their counsel of record, hereby Petition the Department of Water Resources (the "Department") to disqualify Mr. L. Glen Saxton as a hearing officer on both of the above captioned matters. The Rileys do not, by this Petition, intend in anyway to impugn Mr. Saxton's qualifications or integrity. However, under the

PETITION FOR DISQUALIFICATION -- 1

circumstances imposed on Mr. Saxton and the issues remaining in both matters, it would be nearly impossible for Mr. Saxton to continue in either matter as an independent hearing officer.

Idaho Code Section 67-5252 provides that:

any party shall have a right to move to disqualify for bias, prejudice, interest, substantial prior involvement in the matter other than as a presiding officer, status as an employee of the agency hearing the contested case, lack of professional knowledge in the subject matter of the contested case, or any other cause provided in this chapter or any cause for which a judge is or may be disqualified.

Such petition must be brought "promptly upon discovering facts establishing grounds for disqualification...." I.C. 67-5252(2)(b).

Concurrently herewith, the Rileys have filed their Petition for Reconsideration In Re: Permit 22-07792 and their Petition for Disclosure of Ex Parte Communications. Both of these Petitions provide relevant background information to this Petition and are therefore incorporated herein by this reference. The facts upon which this Petition are based were discovered in connection with Mr. Saxton's March 12, 1997 letter to the Riley's attorney (Mr. Saxton's "Letter").

The Rileys believe that Mr. Saxton's actions in connection with the issuance of Permit No. 22-07792 and his attitudes and perceptions as set forth in his Letter indicate that he would potentially be biased in any further actions in this matter. Again, the Rileys do not make this allegation as a personal attack upon Mr. Saxton, as the circumstances were imposed upon him by Rowan's attorneys. However, Mr. Saxton made statements in his Letter that suggest he would be unwilling to make any rulings that would alter License No. 22-07280 as originally issued. For example, despite the fact that the issuance of the license is under protest in the currently pending hearing (as well as almost all of the details of the license), Mr. Saxton states in the Letter that: "The license is in full force and effect and does not include irrigation of the 160 Acre Parcel." The referenced license is the same license under protest in the pending hearing in In Re: License No. 22-07280. Moreover, the issuance to Rowan of Permit 22-07792 is based on the assumption that the issuance of License No. 22-07280 will not be overturned and that no details in connection with the 160

PETITION FOR DISQUALIFICATION -- 2

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Acre Parcel will be changed. Given these statements, how could Mr. Saxton or any other person in his situation subsequently view these issues with independence. Consequently, the Rileys hereby request that Mr. Saxton either disqualify himself or be disqualified, and that a new, independent hearing officer be appointed.

Mr. Saxton has at all times conducted himself in a professional manner and is obviously very knowledgeable and competent, and but for the circumstances, would have been an appropriate hearing officer. However, disqualification under the circumstances is necessary and is respectfully requested.

DATED this 24th day of March, 1997.


Steven R. Parry
Attorney for the Rileys

PETITION FOR DISQUALIFICATION -- 3

CERTIFICATE OF SERVICE

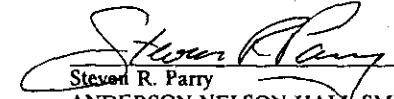
I HEREBY CERTIFY that I served a true and correct copy of the following described pleading or document on the persons listed below on this 24th day of March, 1997, by:

☐ Hand Delivering ☒ Mailing ☐ Telecopy

Document Served: PETITION FOR DISQUALIFICATION OF L. GLEN SAXTON AS HEARING OFFICER

Attorney Served:

Gregory W. Moeller
Rigby, Thatcher, Andrus,
Rigby, Kam & Moeller
P.O. Box 250
Rexburg, Idaho 83440


Steven R. Parry
ANDERSON NELSON HALL SMITH, P.A.

L:\SRP\2668\DISQUALI.PET

PETITION FOR DISQUALIFICATION -- 4

STEVEN R. PARRY
ANDERSON NELSON HALL SMITH, P.A.
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ATTORNEYS FOR NORMAN & ROBIN RILEY

BEFORE THE IDAHO
DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF WATER RIGHT)
PERMIT NO. 22-07792 IN THE NAME)
OF CATHERINE ROWAN and IN THE)
MATTER OF LICENSE NO. 22-07280)
IN THE NAME OF JIM W. HOWE)
AND LUCILLE W. HOWE (both)
deceased))

CATHERINE ROWAN,
Plaintiff,

v.

NORMAN RILEY AND ROBIN
RILEY, husband and wife,
Defendants.

PETITION FOR
DISCLOSURE OF EX PARTE
COMMUNICATIONS

Norman and Robin Riley, through their counsel of record, hereby Petition the Department of Water Resources (the "Department") to disclose all ex parte communications that have occurred between any of the Department personnel and the representatives for Catherine Rowan (including any attorney with the firm of Rigby, Thatcher, Andrus, Rigby,

PETITION FOR DISCLOSURE -- 1

Kam & Moeller) in relation to the above-captioned matters or Rowan's claimed water rights in general, specifically including but without limitation any communications relative to the issuance of water right Permit 22-07792.

This Petition is filed in conjunction with the Rileys' Petition for Reconsideration in Re: Permit 22-07792, which is incorporated herein by this reference. As described in the Petition for Reconsideration, it is apparent that Rowan's attorneys have had ex parte communications with Department personnel, including the hearing officer. The water rights that are the subject of Permit No. 22-07792 are subject to the hearing currently pending before the Department in In Re: Permit No. 22-07280. Consequently, in addition to improperly issuing Permit 22-07792 without regard to the pending hearing, the Department failed to disclose the ex parte communications. Because Permit No. 22-07792 was actually signed by the hearing officer in In Re: Permit No. 22-07280 (Mr. L. Glen Saxton), communications to all Department personnel must be disclosed as having been either directly or indirectly made to Mr. Saxton.

IDAPA Rule 37.01.417 provides the following:

Unless required for the disposition of a matter specifically authorized by statute to be done ex parte, a presiding officer serving in a contested case shall not communicate, directly or indirectly, regarding any substantive issue in the contested case with any party, except upon notice and opportunity for all parties to participate in the communication. The presiding officer may communicate ex parte with a party concerning procedural matters (e.g., scheduling). Ex parte communications from members of the general public not associated with any party are not required to be reported by this rule. However, when a presiding officer becomes aware of a written ex parte communication regarding any substantive issue from a party or representative of a party during a contested case, the presiding officer shall place a copy of the communication in the file for the case and order the party providing the written communication to serve a copy of the written communication upon all parties of record. Written communications from a party showing service upon all other parties are not ex parte communications. (Emphasis added.)

The issuance of Permit 22-07792 directly impacts issues pending in the contested case in In Re: Permit 22-07280, and surreptitiously provided Rowan with an advantage in that matter to the Rileys' prejudice. Consequently, the communications from Rowan's representatives

PETITION FOR DISCLOSURE -- 2

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that led to the issuance of that permit were clearly ex parte in violation of the above-quoted rule. In addition, the ex parte communications violated I.C. 67-5253 which provides:

Unless required for the disposition of ex parte matters specifically authorized by statute, a presiding officer serving in a contested case shall not communicate, directly or indirectly, regarding any substantive issue in the proceeding, with any party, except upon notice and opportunity for all parties to participate in the communication.

The prohibition against ex parte communications is well known to the parties and the hearing officer as it was one of the issues raised in the Rileys' Motion for Continuance of Hearing dated March 6, 1996. Although Rowan's attorneys indicated in response that the earlier communications were inadvertent, the recent communications could not have been inadvertent. The Rileys' concerns regarding these ex parte communications must be viewed in light of the circumstances surrounding this case. As stated in the Rileys' Motion for Continuance of Hearing, they have been very concerned that one of the attorneys in the firm representing Rowan is a member of the Department's board. This fact is compounded by the multiple rumors which the Rileys have heard that the Department is in essence working against them and in favor of Rowan. Just recently the Rileys were told (through rumor) that Rowan had taken care of her water problems and that it was a "done deal" clear up "to the top." That rumor was heard just weeks before Rowan's attorney disclosed in Judge Herndon's chambers that Rowan had secured a Permit from the Department. How are the Rileys expected to ignore such rumors when the events unfold that seem to support them? Under the circumstances (with the issue having already arisen once and with Mr. Rigby's membership on the board), one would expect an abundance of caution on this issue so as to preserve the integrity of the process. Whether or not any impropriety has occurred, the perception of independence has certainly been completely shattered. Consequently, it is imperative that the Rileys be provided with detailed information regarding all such ex parte communications.

The Rileys specifically request that they be provided with (1) copies of all written correspondence to or from the Department (including any of its employees) that is from or to Rowan or any of her representatives (including her attorneys and Gary Ball) regarding

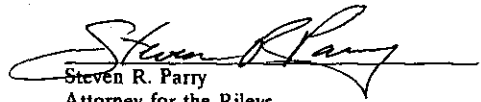
PETITION FOR DISCLOSURE -- 3

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either of the above-captioned matters (or her claimed water rights generally) occurring after January 13, 1995, and (2) a description of all oral communications between the Department (including any of its employees) and Rowan or any of her representatives (including her attorneys and Gary Ball) regarding either of the above-captioned matters (or her claimed water rights generally) occurring after January 13, 1995, such description to include the names of the persons to the conversation and the general content of each such conversation. Only by having this information can the Rileys assess the events that have occurred and take action to protect their legal rights.

Therefore, the Rileys respectfully request that such information be provided to them at the earliest time possible.

DATED this 24th day of March, 1997.


Steven R. Parry
Attorney for the Rileys

PETITION FOR DISCLOSURE -- 4

STEVEN R. PARRY
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TELEPHONE: (208) 522-3001
FAX: (208) 523-7254

ATTORNEYS FOR NORMAN & ROBIN RILEY

BEFORE THE IDAHO
DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF WATER RIGHT)
PERMIT NO. 22-07792 IN THE NAME)
OF CATHERINE ROWAN and IN THE)
MATTER OF LICENSE NO. 22-07280)
IN THE NAME OF JIM W. HOWE)
AND LUCILLE W. HOWE (both)
deceased))

CATHERINE ROWAN,
Plaintiff,

v.

NORMAN RILEY AND ROBIN
RILEY, husband and wife,
Defendants.

PETITION FOR
RECONSIDERATION
IN RE: PERMIT 22-07792

Pursuant to IDAPA Rule 37.01.01730 (Rule of Procedure 730) and that certain
Order Designating A Preliminary Order dated March 12, 1997 (the "Designation Order"),
Norman and Robin Riley (the "Rileys"), through their counsel of record, hereby Petition for

PETITION FOR RECONSIDERATION -- 1

reconsideration of the issuance of water right Permit No. 22-07792 (the "Rowan Permit"),
which was designated as a preliminary order of the Department by the Designation Order.

The Rowan Permit should be cancelled until the issues pending in In Re: License No.
22-07280 have been resolved, or alternatively, the name on the Rowan Permit should be
changed to the Rileys or to a designation that will not prejudice the Rileys. As set forth
below, the issuance of the Rowan Permit directly impacts the Rileys and the issues pending
in In Re: License No. 22-07280, and the Rowan Permit should not have been issued
pursuant to the ex parte actions of Rowan's attorneys. The statements made by Mr. Saxton
in his March 12, 1997 letter to the Rileys' attorney make it clear that the Department issued
the Rowan Permit on the erroneous assumption that License No. 22-07280 was in final form
and that water to the 160 acres south of the railroad tracks (the "160 Acre Parcel") was no
longer an issue. The record will show unequivocally that the water rights on the 160 Acre
Parcel are still at issue in the pending hearing over License No. 22-07280, as is the issuance
and details of License No. 22-07280, and therefore that the Rowan Permit was improperly
issued.

Background

Litigation between Rowan and the Rileys began August 16, 1993, when Rowan
brought an action against the Rileys in the District Court for Madison County (Madison
County Case No. CV-93-00350). On January 3, 1995, Judge Herndon ruled the Court did
not have jurisdiction over the water right issues and the parties moved the water dispute to
the Department. Rowan filed her Memorandum of Law and Authorities dated January 13,
1995, and the Rileys filed their Brief dated January 13, 1995. The record will show that the
parties came to the Department for a decision on who owned water permit 22-7280. Despite
this expressed purpose, the Department issued License No. 22-07280 without deciding the
ownership issue, opting instead to issue the license in the names of two deceased persons.
Both parties objected to various aspects of License No. 22-07280, and the Rileys objected
to the very issuance of the License. NONE OF THESE OBJECTIONS HAVE BEEN
RESOLVED OR RULED UPON BY THE DEPARTMENT, AND ALL OF THESE
OBJECTIONS ARE STILL PENDING IN IN RE: LICENSE NO. 22-07280. After the

PETITION FOR RECONSIDERATION -- 2

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preliminary hearing, the Rileys filed a Motion to Dismiss and a Motion for Continuance of Hearing. On March 19, 1996, the Department issued its Order Denying Motion to Dismiss and Granting Continuance.

Detailed Analysis

The Rowan Permit purports to grant Rowan certain rights to use water on the 160 Acre Parcel. Rowan has no basis for obtaining water rights on the property because she has never placed any water on the property, either before or after the designation of the Eastern Snake River Plain Moratorium. Rather, the 160 Acre Parcel has been irrigated by the Rileys or their predecessors in interest, all in conjunction with Water Permit No. 22-7280. In fact, the water line to the 160 Acre Parcel goes through a pipe under the railroad, and both the pipe and the railroad lease are owned by the Rileys. However, even if Rowan had any right to claim a new permit for water on the 160 Acre Parcel, that was clearly an issue to be decided in the pending hearing on License 22-07280. This position is supported by the following excerpts from the record:

1. The Rileys' Petition Regarding Water Right 22-07280 and Request for Hearing dated December 20, 1995, filed with the Department, states:

6. The allocations on the place of use are inaccurate and are not consistent with either the Permit or the Field Report. The allocation should be made with the Petitioners' input as the owners of the Permit. Petitioners request that the Department set forth its basis for the allocation as listed on the License. Included in the Petitioners' concerns are the fact that water was being used on leased ground at the time that is not included in the allocation, including the 160 acres south of the rail road tracks and 90 acres that were previously leased from Lionel Jensen. These factors need to be taken into consideration when allocating the water. (Emphasis Added.)

Hence, the Rileys raised the issue of water on the 160 Acre Parcel immediately after Water License 22-07280 was issued. In addition, it should be noted that the Rileys also objected "in its entirety to the issuance of the Water Right License for Water Right No. 22-07280." Because the hearing on these issues has been continued, the Rileys still have pending before the Department the issue of whether Water License No. 22-07280 was properly issued, as well as the issue of water rights on the 160 Acre Parcel.

PETITION FOR RECONSIDERATION -- 3

2. Likewise, Rowan's Objection to Motion to Dismiss; Objection to Motion for Continuance dated March 13, 1996, and filed with the Department, makes the following statements:

This matter has been before this Department for a considerable amount of time. Changing forums at a time when other issues remain unresolved is prejudicial and uneconomical. It would [be] extremely wasteful and result in additional delays to abandon the present proceedings when these issues remain unresolved. These issues are of tremendous interest to both parties. These issues include length of season, amount of water under the license, the number of acres to be irrigated under the license, and other conditions relevant to the use of the license. The parties efforts can serve to maximize the amount of water and acreage that [may] subsequently be divided by the SRBA. . . .

At the prehearing conference, the Department made it clear that it would not determine the ownership issue. It was clear that both Plaintiffs and Defendants had other issues which needed to [be] resolved. As a means of resolving these remaining issues, the Department urged the parties to come together with an agreement that might have the effect of maximizing the amount of water available under the license. . . . (Emphasis added.)

Both parties were concerned that the 160 Acre Parcel was left out of the license as issued and that more water had been applied than reflected in the license, but the hearing officer clearly indicated that if the parties cooperated, the Department could work with them on the 160 Acre Parcel because the water had been applied prior to the Moratorium. Both parties wanted to pursue this issue, and the Department gave every indication that arrangements could be made to correct the fact that the underlying permit did not include the 160 Acre Parcel, especially in light of the Field Exam which established that the 160 Acre Parcel had been watered. Yet, by issuing the Rowan Permit, the Department has now allowed Rowan through ex parte actions to usurp all of the benefit of these additional rights without any opportunity for the Rileys to protect their interests therein.

3. The fact that the water rights, inchoate as they were, on the 160 Acre Parcel were an issue in the hearing (which has been continued, but is still pending) is confirmed without doubt by the Rileys' Response to Objections to Motion to Dismiss and Motion for Continuance dated March 17, 1996, filed with the Department, which states:

PETITION FOR RECONSIDERATION -- 4

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The Objection correctly states that the parties were encouraged at the Prehearing Conference to "come together with an agreement that might have the effect of maximizing the amount of water available under the license." In fact, such agreement would be essential for the hearing to proceed smoothly. However, it is now apparent that the parties do not and will not be agreeing on the key issue of allocation of water and other issues on which agreement would be imperative to maximize the amount of water available. Hence, the issues are in fact far more complex and perilous to the parties and it is reckless for the Plaintiff to push for a premature hearing wherein the Defendants will have no choice but to argue against the allocation of water to the southern 160 acres.

One of the key issues regards the 160 acres south of the railroad tracks. If the Defendants own all of the water rights as tenants on Plaintiff's property, then they may be agreeable to spreading water down to the 160 acres assuming they would have the right to move the water if they lost the lease. If, however, the Defendants do not own all of the water rights, then they will oppose moving any of the water from the north to the south because doing so would potentially result in their ultimately owning less water. Consequently, holding the hearing prior to determining ownership will put the Defendants at odds with the Plaintiff with respect to the treatment of the 160 acres. Putting the parties in this situation is unjust and contrary to the promise made by the Department's prior director in his letter, a copy of which is attached, of November 7, 1994 which states:

The field examination indicates that more land is irrigated than authorized under the permit. The list of land confirmed to be irrigated under the license will depend upon a selection by the owner(s) of the water right. For this reason, IDWR will not issue the license while the parties are seeking a determination by the court of the ownership of the water right. Should the parties, or the court on its own initiative, elect not to proceed with a judicial determination of ownership of the water right, IDWR is prepared to address the issue in an administrative proceeding subject to judicial review. (Emphasis added).

By issuing the license without deciding the ownership issue, the Department has put the Defendants in the very position that should be avoided. Due process simply requires that the Defendants know what rights they own before being asked to forego or to defend those rights. It is this complexity that needs more review if in fact the Defendant is placed in such an untenable position. However, this complexity is easily solved if the parties are allowed to proceed to the SRBA for an adjudication as to ownership and then to

return to the Department for a resolution of the licensing details. (Emphasis added.)

One of the parties' primary hopes was that the Department would allow for the permitting of additional water based on its beneficial use on the 160 Acre Parcel prior to the Moratorium. Certainly the Rileys anticipated that the Department would eventually grant them a permit relative to the 160 Acre Parcel inasmuch as they (and their predecessors) had developed and applied water to that land prior to the Moratorium. The Rowan Permit shows the Department was willing to address this issue by issuing a new permit, but the permit should not have been issued until after the ownership of the rights relating to the 160 Acre Parcel was established. How could the Department determine, without notice to the Rileys, that Rowan owned the right to seek and eventually obtain the Rowan Permit? Based upon the actual application of the water, the Rileys developed and therefore should be deemed to own whatever water rights may exist in relation to the 160 Acre Parcel--but this is obviously a disputed claim that was to be and should be decided in In Re License No. 22-07280.

4. The Department, in its Order Denying Motion to Dismiss and Granting Continuance dated March 19, 1996, recognized that the "appropriateness of the acreage" under the license was being contested as indicated by the following statement:

In addition to the question of ownership of the water right, the issues identified concern the appropriateness of the acreage, diversion rate, season of use and other conditions of approval contained in the license. (Emphasis added.)

Obviously the 160 Acre Parcel was at issue in connection with the "appropriateness of the acreage." The Order further states that:

The Rileys also ask that the setting of any hearing to be held by the department pursuant to section 42-1701A(3), Idaho Code, be indefinitely continued until the parties have resolved the ownership of the water right before the district court. The Rileys persuasively argue that their interests in the department hearing may vary depending upon the extent of their ownership of water right no. 22-07280. The department desires to minimize rather than add to the expense of the parties in resolving this dispute. For that reason the hearing officer will approve an indefinite continuance of the

MAR 26 2002

42-1701A(3) hearing previously requested by both parties to this proceeding.
(Emphasis added.)

As set forth above in Section 3, the Rileys' arguments were centered on the treatment of water rights for the 160 Acre Parcel, and that was one of the primary reasons the hearing was continued as stated in the Order. How then can the Department issue the Rowan Permit on the 160 Acre Parcel while this hearing is still pending?

5. Mr. Saxton's letter of March 12, 1997 states that "The department does not view its issuance of the [Rowan] permit to have altered the relative positions of the parties in the ongoing water right dispute generally summarized below." Surely the Department knows that the Rileys' position would have been improved had the Rowan Permit been issued to them. How, then, does the Department think its actions have not benefitted Rowan and thereby "altered the relative positions of the parties"? Under the circumstances, the statement is incredible and suggests the Department is advocating Rowan's position rather than attempting to maintain a neutral position. Certainly Rowan believes she has "altered the relative positions of the parties" as the issuance of the Rowan Permit was disclosed to Judge Herndon (and the Rileys' attorney) in chambers prior to the most recent hearing in the Madison County Case and was presented as having given Rowan rights to water on the 160 Acre Parcel that were not recognized previously.

Despite the pending hearing, Mr. Saxton's letter repeatedly refers¹ to the license as if its terms were final and binding. For example, his letter states that:

The license as issued does not recognize irrigation of the additional 160 acres owned by Rowan even though water has been applied to the land.

The "license as issued" is not relevant to the propriety of issuing the Rowan Permit because the "license as issued" is the subject of the pending protest, including a protest on the very issuance of the license and on the water rights for the 160 Acre Parcel. Moreover, either

¹ Elsewhere the letter also states:

"Issuance of the Rowan permit does not conflict with the ongoing ownership question of the license because the land identified under the permit is different than the land on the license."

PETITION FOR RECONSIDERATION -- 7

party may choose to appeal the Department's ultimate decision on the license as it will be subject to judicial review. Yet, the Department relies upon the "license as issued" to take additional actions which are prejudicial to the Rileys, and without notice to the Rileys. Oddly, the letter states:

IDWR does not perceive any circumstance under which approval of the Rowan permit will prejudice the Riley's claim of license ownership or the use of water under Riley's rights. The Rowan permit was issued subject to all prior water rights including the license.

Yet, two paragraphs later the letter states:

IDWR could not issue a permit to the Rileys to irrigate the 160 acre parcel without Rileys obtaining ownership of the parcel or showing evidence of other rights to develop and hold a water right on the land. Further, IDWR would not issue a second permit for use on the same lands.

There, in short, is the prejudice that the Department has imposed on the Rileys. The Department will now not issue a similar permit to the Rileys because they have issued one to Rowan all without any ruling on who had the underlying right to seek such a permit in the first place. Moreover, the Department issued the permit to Rowan despite that fact that she has never paid for, developed or applied any of the water to the 160 Acre Parcel. One of the purposes of the hearing (which as stated above is still pending) is to allow the Rileys to show "evidence of other rights to develop and hold a water right on the [160 Acre Parcel]." The primary point being that the Department took this action while the issue was pending in a hearing before the Department, without any notice to the Rileys or any other attempt to give them due process before eliminating their rights with respect to the 160 Acre Parcel.

Mr. Saxton's letter again relies upon the license as issued to justify the Department's actions with the following statement:

The department is aware that you are seeking judicial determination of the ownership of the licensed water right. If Rileys are found to own all of the license, the department may need to issue an amended license. The Department does not perceive that issuing the permit to Rowan for lands not now covered by the license will affect the Riley's potential ability to control all of the water authorized to be diverted under the existing license.
(Emphasis Added.)

PETITION FOR RECONSIDERATION -- 8

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MAR 26 2003

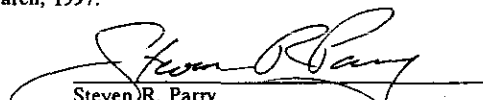
After the ownership issue is decided by the SRBA Court, the pending hearing will resume and the Rileys will pursue their water rights arising from the fact that they have applied water to the 160 Acre Parcel. If there is additional water to license, then the right to license that water should belong to the Rileys. That determination, however, should be made after SRBA has ruled upon the ownership issue.

Finally, the letter states that "the license is in full force and effect and does not include irrigation of the 160 Acre Parcel." The license is under protest, even as to its very issuance, is subject to a pending hearing in front of the Department, and will not be in "full force and effect" until the Department holds the hearing, rules upon the issues related to the license, and those decisions are subjected to judicial review. This statement makes it apparent that the Department has somehow overlooked the fact that the license is under protest in the pending hearing, and confirms that the Department was premature in issuing the Rowan Permit.

Conclusion

The license for right 22-07280 is the subject of a hearing pending before the Department, one of the issue in which relates to the water rights on the 160 Acre Parcel. Consequently, the Department should not have taken any action on the 160 Acre Parcel water rights without providing notice to the Rileys. Likewise, the communications that occurred between the Department and Rowan's attorneys in this matter were ex parte thereby violating the Rileys' due process rights. Therefore, the Rowan Permit should be cancelled, or issued in a way that will not prejudice the Rileys once the issue of water on the 160 Acre Parcel is properly placed before the Department.

DATED this 24th day of March, 1997.


Steven R. Parry
Attorney for the Rileys

PETITION FOR RECONSIDERATION -- 9

CERTIFICATE OF SERVICE

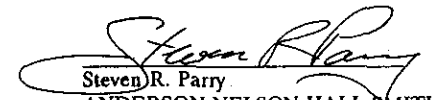
I HEREBY CERTIFY that I served a true and correct copy of the following described pleading or document on the persons listed below on this 24th day of March, 1997, by:

☐ Hand Delivering ☒ Mailing ☐ Telecopy

Document Served: PETITION FOR RECONSIDERATION IN RE: PERMIT 22-07792

Attorney Served:

Gregory W. Moeller
Rigby, Thatcher, Andrus,
Rigby, Kam & Moeller
P.O. Box 250
Rexburg, Idaho 83440


Steven R. Parry
ANDERSON NELSON HALL SMITH, P.A.

L:\SRP\2668\PETITION.REC

PETITION FOR RECONSIDERATION -- 10

MICROFILMED
MAR 26 2003



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

October 23, 2002

Gregory W. Moeller
Rigby, Thatcher, Andrus
Rigby, Kam & Moeller, Chartered
PO Box 250
Rigby, Idaho 83440

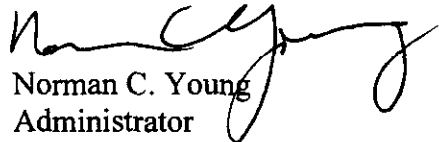
Re: Catherine Rowan – Water Permit No. 22-7792

Dear Mr. Moeller:

Thank you for your letter of October 17, 2002, providing a status report on litigation affecting this permit. The purpose of this letter, in response to your letter, is to confirm that the department is continuing to withhold further processing on the filing until litigation is completed, including any matters before the Snake River Basin Adjudication relative to other rights associated with the same place of use.

Please keep the department advised of any changes in the litigation status.

Sincerely,


Norman C. Young
Administrator
Water Management Division

- c. Steven R. Parry (including a copy of Moeller's 10/17/02 letter)
Eastern Region, IDWR

MICROFILMED

MAR 25 2003

RECEIVED

OCT 22 2002

Department of Water Resources

Law Offices

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

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

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

Telephone: (208) 356-3633
Fax: (208) 356-0768
E-Mail: Rexlaw@srv.net

October 17, 2002

Norm Young
Idaho Department of Water Resources
1301 North Orchard St.
Boise, Idaho 83706

Re: Catherine Rowan - Water Permit No. 22-7792

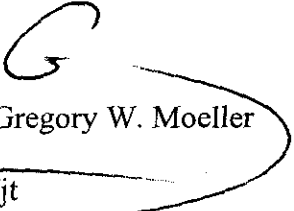
Dear Mr. Young:

I am writing on behalf of my client to update you on the status of Permit No. 22-7792. Her Permit was approved on January 30, 1997, with a proof due date of February 1, 1998. There were also some conditions for her approval, that included the installation of a measuring device. Because her land, water rights, and irrigation system were tied up in litigation with her neighbor, you indicated on several occasions, in writing, that this matter would be kept on hold until that litigation is complete.

The purpose of this letter is to advise you that the litigation is still ongoing. Catherine prevailed in the underlying court case but, it was appealed to the Supreme Court. Just a few months before it was set for oral argument, her neighbors, Norman and Robin Riley filed bankruptcy, which stayed the completion of the appeal. Based upon the correspondence I have been receiving in the interim, it looks like some time next year the matter will finally be adjudicated by the Supreme Court.

Thank you for your help and cooperation on this matter. If there is any action that needs to be taken before the litigation is completed, please don't hesitate to let me know.

Sincerely yours,


Gregory W. Moeller

/jt

HAWP6CMAROWAN.L21

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MAR 26 2003



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

March 6, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

Catherine Rowan
843 Three Fountains #258
Salt Lake City, UT 84107

Re: Permit No. 22-07792 In the Name of Catherine Rowan

Dear Ms. Rowan:

On November 30, 1997, the Department of Water Resources (department) sent you a Proof Due Notice for Water Right Permit No. 22-07792. Subsequently, on February 12, 1998, the department sent you a Lapse Notice for Permit No. 22-07792. These two letters were sent in error by the department and should be disregarded. The two letters were inappropriately sent because the status of the permit as issued on January 30, 1997, remains a preliminary order pursuant to the department's order of March 12, 1997.

Norman and Robin Riley (the "Rileys"), as non-parties to the proceeding on permit no. 22-07792 submitted comments in the form of a "Petition for Reconsideration" on March 26, 1997. The Rileys expressed a concern that permit no. 22-07792, as issued, causes potential injury or prejudice to the rights of the Rileys under Licensed Water Right No. 22-07280. To prevent the preliminary order from becoming final, the Rileys filed a "protective appeal" with the director on May 9, 1997, pursuant to department Rule of Procedure 730.02.b. On May 14, 1997, Department representatives met with the Rileys and their legal counsel, Mr. Steven Parry, and your attorney regarding permit no. 22-07792. At the meeting the parties orally agreed that the department should hold the matter of permit no. 22-07792 in abeyance until pending litigation between the parties in the Snake River Basin Adjudication is resolved. This litigation is presently pending appeal before the Idaho Supreme Court in Docket No. 24153.

Although the parties expressed an intent to file a written stipulation with the department agreeing to a stay of further proceedings on permit no. 22-07792, the stipulation has not yet been filed. By this letter, the department reiterates its intent to withhold further processing under permit no. 22-07792, pending further order of the department.

Sincerely,

L. GLEN SAXTON
Chief, Water Allocation Bureau

MICROFILMED

c: Gregory W. Moeller, Esq.
Steven R. Parry, Esq.

MAR 26 2003

DRAFT

NORMAN RILEY
CLON

N:\GLENLT_ROWAN.CAN

March 6, 1998

Catherine Rowan
843 Three Fountains #258
Salt Lake City, UT 84107

Re: Permit No. 22-07792 In the Name of Catherine Rowan

Dear Ms. Rowan:

On November 30, 1997, the Department of Water Resources (department) sent you a Proof Due Notice for Water Right Permit No. 22-07792. Subsequently, on February 12, 1998, the department sent you a Lapse Notice for Permit No. 22-07792. These two letters were sent in error by the department and should be disregarded. The two letters were inappropriately sent because the status of the permit as issued on January 30, 1997, remains a preliminary order pursuant to the department's order of March 12, 1997.

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Although the parties expressed an intent to file a written stipulation with the department agreeing to a stay of further proceedings on permit no. 22-07792, the stipulation has not yet been filed. By this letter, the department reiterates its intent to withhold further processing under permit no. 22-07792, pending further order of the department.

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MAR 25 2003

WARNING

CANCELLED OR LAPSED

This permit has been officially CANCELLED or LAPSED.

Ninety days following the date of official action this file will be DESTROYED.

February 12, 1998

CATHERINE ROWAN
843 THREE FOUNTAINS #258
SALT LAKE CITY UT 84107

LAPSE NOTICE

RE: PERMIT NO. 22-07792

Dear Permit Holder:

You are hereby notified that under the provisions of Section 42-218A, Idaho Code, the above referenced permit has lapsed and is of no further force nor effect. The department provided the proper forms to you in our proof due notice dated November 30, 1997. No further construction or additional development is authorized under this permit unless it is reinstated.

The permit can only be reinstated if you submit an acceptable proof of beneficial use or an acceptable request for extension of time to the department within sixty (60) days of the mailing of this lapse notice. An acceptable proof of beneficial use submittal must include the examination fee or a completed field examination report. A request for extension of time must be accompanied by a fifty dollar (\$50.00) fee.

Enclosed again for your use are a proof of beneficial use form and a request for extension of time form. Please note that only one extension of time can be granted unless the project has not been completed because of lack of a necessary approval by a government agency or by litigation which may bring title to the water in question.

L. GLEN SAXTON
Chief, Water Allocation Bureau

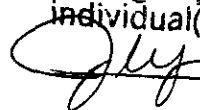
Enclosures

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MAR 2 5 2003

CERTIFICATION OF MAILING

I hereby certify that on 2/12/98
a copy/an original of this document was
deposited in the United States mail,
postage prepaid addressed to the
individual(s) named above.



November 30, 1997

CATHERINE ROWAN
843 THREE FOUNTAINS #258
SALT LAKE CITY UT 84107

PROOF DUE NOTICE

RE: PERMIT NO. 22-07792

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 February 1, 1998. (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.

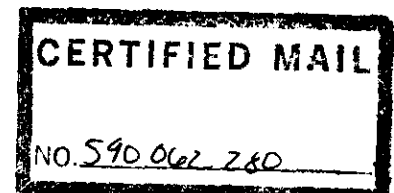
SINCERELY,

JULIE L. YARBROUGH
Senior Secretary

Enclosures

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MAR 2 5 2003



Anderson Nelson Hall Smith

Via Facsimile and
Regular Mail
(700) 327-7866

June 3, 1997

A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

490 MEMORIAL DRIVE
POST OFFICE BOX 51630
IDAHO FALLS, IDAHO 83405-1630
TELEPHONE (208) 522-3001
FAX (208) 523-7254

W. Joe Anderson
Douglas R. Nelson
Blake G. Hall
Marvin M. Smith
Scott R. Hall
Joel E. Tingey
Steven R. Perry
Brian T. Tucker
Allison C. Pugh

of counsel
John M. Sherr

*Also member of Utah bar

Eugene L. Bush
(1928-1986)
Arthur L. Smith
(1919-1986)

Norm Young
Department of Water Resources
1301 N. Orchard Street
State House Mail
Boise, Idaho 83720-9000

Re: *Rowan v. Riley*

Dear Mr. Young:

As you know, on May 14, 1997, we met with you and attorneys for Catherine Rowan regarding Water Right No. 22-07792 and Water Right No. 22-07280. The result of that meeting was a Stipulation to hold the pending matters in abeyance until the litigation pending in the SRBA was resolved. As agreed that day, I faxed a proposed Stipulation to Mr. Moeller on May 21, 1997, but have not yet received any type of response.

On Friday, May 30, 1997, Tom Webster called my clients on multiple occasions threatening to install a water meter on behalf of either Catherine Rowan or the Department of Water Resources. I called Mr. Webster that day and informed him that if he came on the property it would be trespass, and that if he altered the Rileys' equipment it would be vandalism. Hopefully the law in this country remains that personal property cannot be altered without the owner's consent or due process in the event of government interference. I made it clear to Mr. Webster that if he wanted to take this action he would need to obtain a Court Order, thereby allowing the Rileys due process and the right to protect their property.

I have just been advised by my clients that Mr. Webster has installed a water meter on a railroad easement owned by the Rileys and on pipe that is clearly owned by the Rileys. The railroad easement is in the Rileys' name, and no others, and the pipe which goes under the easement was purchased by the Rileys' predecessors and is now owned by the Rileys. There can be no question that the Rileys own both the easement and the pipe upon which this water meter has been installed.

Although Mr. Webster may have thought that this bit of trickery would get around the prohibition that he not enter the Rileys' property, he has in fact now clearly disturbed the Rileys' property without their consent. More troubling is the fact that he appears to be taking the position that he has done this on behalf of the Department of Water Resources. As you know, the Department neither sought nor obtained the Riley's permission to disturb their personal property, and has not provided notice or a due process hearing regarding the invasion. Under the circumstances of our recent meeting, I am truly amazed that this action has taken place. Consequently, let me confirm to you that the Department of Water

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MAR 26 2003

June 3, 1997

Page 2

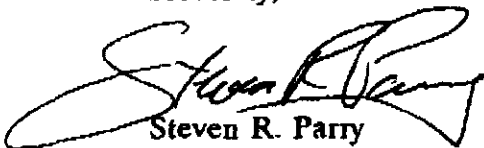
Resources did not and does not have the Rileys' permission to install or maintain a water meter on the Rileys' pipe for the purpose of proving any water on the 160 acre tract. Furthermore, we DEMAND to know whether Mr. Webster took this action on behalf of the Department as the Department's agent or whether he took it independently.

There are many complicated legal issues related to the water in question. However, there can be no doubt that the Rileys' claim whatever water rights are associated with the water that has been applied to the 160 acres South of the tracks. As you know, the Rileys own a Water License for water that is diverted from a well on their property (the "North Well"). What you may not know is that the water lines between the North and South well are joined together and that the 160 acres can be irrigated from either or both of these wells. Consequently, the Department has no right to assume from whence the water has come to irrigate the 160 acre tract. There is every bit as much an argument that the water has come through a spreading of the licensed water as opposed to a spreading of the permitted water. *Consequently, the Department is hereby put on notice that the only water that will be applied to the 160 acres tract during this irrigation season will be water coming from the North well on the property and water that is being spread from the Rileys' license*, as has occurred for numerous years in the past. The Rileys intend, in due course and once the ownership issues relating to the water are resolved, to take whatever action is necessary to secure their water rights to the 160 acre tract. Moreover, we hereby DEMAND that Department personnel make an appointment with the Rileys to come to the property and confirm that the water on the 160 acres is coming from the North well and the Rileys' Water License.

Please contact us immediately with the Department's intentions regarding the demands made in this letter. As you know, the ownership of the permit is set for trial in front of Judge Hurlbutt within two weeks and it should not be necessary for the Rileys to deal with these issues during the time when they are preparing for this trial.

We look forward to your response.

Sincerely,



Steven R. Parry

SRP/ks

cc: Norman and Robin Riley

Gregory W. Moeller

MICROFILMED

MAR 26 2003

6-4-97

CALL TO GREG MOELLER

9:15 PM

Re: Steve Parry letter of June 3, 97

1. Greg says that the Tom Webster named in Steve Parry's letter is the Idaho agent for Catherine Rowan who resides in Utah.
2. Greg says he could not confirm what action Tom may have taken, but he assumes that if a measuring device was installed it was to comply with the condition on the new permit issued to Rowan.
3. Greg said the stipulation reached at the meeting on May 14, 1997 was still acceptable to the Rowan side. The reason they have not responded to Steve Parry's proposed written stipulation of May 21, 1997 is because Michael KAM, the senior attorney on the case is on vacation in Hawaii. Greg said he would look into the matter and get some response to Parry.

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MAR 26 2003



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

June 6, 1997

Steven R. Parry
Anderson, Nelson, Hall & Smith
P.O. Box 51630
Idaho Falls, Idaho 83405-1630

Re: Rowan v. Riley

Dear Mr. Parry:

Your letter of June 3, 1997 asks for an immediate response to two "demands." Your first demand is "to know whether Mr. Webster took his action on behalf of the Department as the Department's agent or whether he took it independently." Mr. Webster is not an employee or contract representative of IDWR, and was not to my knowledge, acting directly on behalf of IDWR. However, the permit issued to Ms. Rowan earlier this year (22-07792) includes a condition to install a measuring device on the diverting works. This condition needs to be complied with prior to submitting proof of beneficial use. Perhaps this is the reason that the measuring device was being installed. The permit does not authorize trespass on the property or possessions of others.

The second demand is for IDWR "to make an appointment with the Rileys to come to the property and confirm that the water on the 160 acres is coming from the north well and the Rileys' Water License." I am willing to comply with this demand after notification to and concurrence of Ms. Rowan. However, I must caution you that the water rights and claims to water rights now in IDWR records do not authorize diversion of water from the north well for use on the 160 acre tract south of the tracks. This may create a rather difficult situation because as our water records now exist, we could be confirming diversion from the north well to an unauthorized place of use for water from that well. Ordinarily, this kind of information requires followup to prevent the unauthorized use.

Filing an amnesty-based claim on license 22-02223 is one possible way of showing a water right from the north well for the 160 acre parcel. The amnesty statute (§ 42-1426, Idaho Code) does not allow an increase in the rate of diversion from the original right. License 22-02223 is for 3.87 cfs and 319 acres. This license provides 0.012 cfs per acre. If an amnesty claim is made for an additional 160 acres, the rate of flow for each acre is 0.0081 cfs per acre; i.e., 3.87 cfs divided by 479 acres.

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MAR 26 2007

Steven R. Perry
June 6, 1997
Page 2

IDWR guidelines require a minimum diversion rate of 0.01 cfs per acre (1/2 miner's inch per acre) for recommending that a right be adjudicated. Without additional information to verify that the diversion rate is adequate to irrigate the expanded acreage, IDWR would either not recommend adjudication of an amnesty-based claim, recommend only part of the expanded area, or recommend a permissible place of use which would allow a part of the original/expanded place of use to be irrigated each year.

By copy of this letter, I am requesting Ron Carlson, Manager of IDWR's regional office in Idaho Falls, to have an IDWR field agent contact you and Greg Moeller to arrange the requested field examination.

Sincerely,



NORMAN C. YOUNG
Administrator
Water Management Division

c. Greg Moeller
Ron Carlson

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MAR 26 2003

Rowan Riley Meeting - 5/15/97

Norm Riley
Steve Porty
Greg Mochler
Michael Kam

Phil Rassen
Robin Riley
Keith Wilson

- Parties will enter into a stipulation
+ dept will respond with order putting
on hold.

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MAR 2 2001

RECEIVED

MAY 09 1997

Department of Water Resources

VIA FAX AND
REGULAR MAIL:
(700) 327-7866

Anderson Nelson Hall Smith

A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

490 MEMORIAL DRIVE
POST OFFICE BOX 51630
IDAHO FALLS, IDAHO 83405-1630
TELEPHONE (208) 522-3001
FAX (208) 523-7254

W. Joe Anderson
Douglas R. Nelson
Blake G. Hall
Marvin M. Smith*
Scott R. Hall
Joel E. Tingey
Steven R. Parry*
Brian T. Tucker
Allison C. Rich

of counsel
John M. Sharp*

*Also member of Utah bar

Eugene L. Bush
(1928-1988)
Arthur L. Smith
(1918-1988)

May 7, 1997

Mr. Karl J. Dreher, Director
Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720-9000

RE: Permit No. 22-07792 in the name of Catherine Rowan
In the Matter of License No. 22-07280 In the Name of Jim W. Howe and Lucille W.
Howe (both deceased)

PROTECTIVE APPEAL TO ADMINISTRATIVE HEAD

Dear Director Dreher:

By letter dated February 13, 1997, addressed to you and Mr. Saxton, I advised you of my clients' concerns regarding the above- referenced matters. By letter dated March 12, 1997, Mr. Saxton responded to that letter. By letter of March 24, 1997, I filed on behalf of Norman and Robin Riley the following Petitions in the above-referenced matters:

1. Petition for Reconsideration In Re: Permit 22-07792;
2. Petition for Disclosure of Ex Parte Communications; and
3. Petition for Disqualification of L. Glen Saxton as Hearing Officer.

On April 16, 1997, I was contacted by telephone by Deputy Attorney General Phillip J. Rassier with the request that all three of these petitions be put on hold so as to allow the parties and the Department to meet to discuss this matter to determine whether a negotiated resolution was possible. A meeting for that purpose has now been scheduled for May 14 here in Idaho Falls.

Although I assume that the meeting has been offered in good faith and that no intent exists to deprive the Rileys of any of their rights, I need to ensure that none of the Rileys' rights are lost due to the meeting and the associated delay requested by the Department. In

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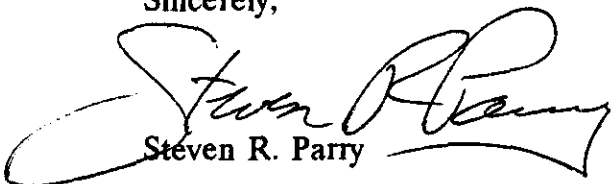
MAR 25 2003

February 13, 1997
Page 2

particular, Rule 730.02 provides that a Petition for Reconsideration is deemed denied within 21 days of receipt if no answer is provided. Based on the requested meeting and the fact that it was requested so as to avoid taking any action on the three petitions, I do not view this rule as being applicable. However, if either the Department or Rowan were to subsequently argue that any of the Petitions were deemed denied due to the lack of a ruling within the stated time period, the Rileys could potentially lose their ability to appeal this matter to the Courts. Consequently, as a protective matter, we find it necessary to appeal this matter to you as the Agency head and do hereby appeal pursuant to Rule 730.02.b. Assuming the ruling on our three petitions has been held in abeyance as represented, then this appeal will be unnecessary and we would be willing to withdraw it to allow for a ruling on the petitions prior to any appeal to you. Our hope, of course, is that the meeting will be productive and will result in a resolution of all or some of the pending issues.

Thank you for your attention to this matter.

Sincerely,



Steven R. Parry

cc: Rileys
Gregory W. Moeller
Roger D. Ling
Phillip J. Rassier

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MAR 26 2003



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

April 17, 1997

KARL J. DREHER
DIRECTOR

Steven R. Parry
ANDERSON NELSON HALL SMITH, P.A.
P.O. Box 52630
Idaho Falls, ID 83405-1630

Gregory W. Moeller
RIGBY THATCHER ANDRUS
RIGBY KAM & MOELLER
P.O. Box 250
Rexburg, ID 83440

COPY

Re: Permit No. 22-07792 In the Name of Catherine Rowan

Dear Gentleman:

On March 12, 1997, the Department of Water Resources issued an order designating the issuance of Water Right Permit No. 22-07792 as a preliminary order pursuant to IDAPA Rule 37.01.01750 (Rule of Procedure 750). The order allowed fourteen (14) days for any potentially affected water user to submit comments to the department, or for any aggrieved party to petition for reconsideration.

Norman and Robin Riley (the "Rileys"), as non-parties to the proceeding on permit no. 22-07792 submitted comments in the form of a "Petition for Reconsideration" on March 26, 1997. The Rileys express a concern that permit no. 22-07792, as issued, causes potential injury or prejudice to the rights of the Rileys under Licensed Water Right No. 22-077280. Because the Rileys are not parties to the proceeding on permit no. 22-07792 a formal hearing on this issue is not appropriate. However, I and department legal counsel are available to meet jointly with the Rileys and their attorney and the permit holder and her attorney to gather available information relative to additional conditions that might be placed on permit no. 22-07792 to safeguard the interests of the Rileys.

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MAR 26 2003

Messrs. Parry & Moeller
April 17, 1997
Page 2

Please call the department's legal counsel, Deputy Attorney General Phillip J. Rassier at 327-7905 to confirm the dates in the first two weeks of May, 1997, that you would be available to meet. I hope that you will each be able to take advantage of this opportunity to meet and discuss with the department your views on this issue.

Sincerely

A handwritten signature in cursive script, appearing to read "Norman C. Young".

NORMAN C. YOUNG
Administrator
Water Management Division

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MAR 26 2003

Anderson Nelson Frail Smith

A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

490 MEMORIAL DRIVE
POST OFFICE BOX 51630
IDAHO FALLS, IDAHO 83405-1630
TELEPHONE (208) 522-3001
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Douglas R. Nelson
Blake G. Hall
Marvin M. Smith*
Scott R. Hall
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Steven R. Parry*
Brian T. Tucker
Allison C. Rich

of counsel
John M. Sharp*

*Also member of Utah bar

Eugene L. Bush
(1928-1986)
Arthur L. Smith
(1916-1988)

March 24, 1997

L. Glen Saxton, Chief
Water Allocation Bureau
Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720-9000

RECEIVED

MAR 26 1997

Department of Water Resources

Re: *Permit No. 22-07792 in the name of Catherine Rowan*
In the matter of License No. 22-07280 in the name of Jim W. Howe and Lucille
W. Howe (both deceased)

Dear Mr. Saxton:

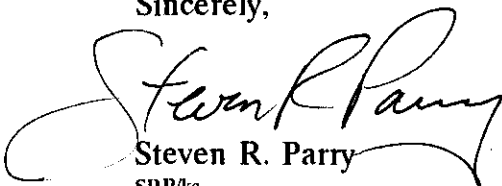
Thank you for your letter of March 12, 1997, which was accompanied by the Order designating a Preliminary Order. Inasmuch as the very issuance of License No. 22-07280, as well as material details of the license, is under protest in a hearing still pending before the department, we were surprised at the position taken in your letter. Our position in this regard has been set forth in the enclosed petitions.

Enclosed herein for filing with the department are the following:

1. Petition for Reconsideration In Re: Permit 22-07792;
2. Petition for Disclosure of Ex Parte Communications; and
3. Petition for Disqualification of L. Glen Saxton as Hearing Officer.

We look forward to receiving word on the disposition of these three petitions as soon as possible.

Sincerely,



Steven R. Parry

SRP/ks

Enclosures

cc: Rileys and

Gregory W. Moeller

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MAR 26 2003

RECEIVED

MAR 26 1997

Department of Water Resources

STEVEN R. PARRY
ANDERSON NELSON HALL SMITH, P.A.
490 MEMORIAL DRIVE
P.O. BOX 51630
IDAHO FALLS, IDAHO 83405-1630
TELEPHONE: (208) 522-3001
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ATTORNEYS FOR NORMAN & ROBIN RILEY

BEFORE THE IDAHO
DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF WATER RIGHT)
PERMIT NO. 22-07792 IN THE NAME)
OF CATHERINE ROWAN and IN THE)
MATTER OF LICENSE NO. 22-07280)
IN THE NAME OF JIM W. HOWE)
AND LUCILLE W. HOWE (both)
deceased))

PETITION FOR
DISQUALIFICATION OF
L. GLEN SAXTON AS
HEARING OFFICER

CATHERINE ROWAN,
Plaintiff,

v.

NORMAN RILEY AND ROBIN
RILEY, husband and wife,
Defendants.

Norman and Robin Riley, through their counsel of record, hereby Petition the Department of Water Resources (the "Department") to disqualify Mr. L. Glen Saxton as a hearing officer on both of the above captioned matters. The Rileys do not, by this Petition, intend in anyway to impugn Mr. Saxton's qualifications or integrity. However, under the

PETITION FOR DISQUALIFICATION -- 1

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circumstances imposed on Mr. Saxton and the issues remaining in both matters, it would be nearly impossible for Mr. Saxton to continue in either matter as an independent hearing officer.

Idaho Code Section 67-5252 provides that:

any party shall have a right to move to disqualify for bias, prejudice, interest, substantial prior involvement in the matter other than as a presiding officer, status as an employee of the agency hearing the contested case, lack of professional knowledge in the subject matter of the contested case, or any other cause provided in this chapter or any cause for which a judge is or may be disqualified.

Such petition must be brought "promptly upon discovering facts establishing grounds for disqualification...." I.C. 67-5252(2)(b).

Concurrently herewith, the Rileys have filed their Petition for Reconsideration In Re: Permit 22-07792 and their Petition for Disclosure of Ex Parte Communications. Both of these Petitions provide relevant background information to this Petition and are therefore incorporated herein by this reference. The facts upon which this Petition are based were discovered in connection with Mr. Saxton's March 12, 1997 letter to the Riley's attorney (Mr. Saxton's "Letter").

The Rileys believe that Mr. Saxton's actions in connection with the issuance of Permit No.22-07792 and his attitudes and perceptions as set forth in his Letter indicate that he would potentially be biased in any further actions in this matter. Again, the Rileys do not make this allegation as a personal attack upon Mr. Saxton, as the circumstances were imposed upon him by Rowan's attorneys. However, Mr. Saxton made statements in his Letter that suggest he would be unwilling to make any rulings that would alter License No. 22-07280 as originally issued. For example, despite the fact that the issuance of the license is under protest in the currently pending hearing (as well as almost all of the details of the license), Mr. Saxton states in the Letter that: "The license is in full force and effect and does not include irrigation of the 160 Acre Parcel." The referenced license is the same license under protest in the pending hearing in In Re: License No. 22-07280. Moreover, the issuance to Rowan of Permit 22-07792 is based on the assumption that the issuance of License No. 22-07280 will not be overturned and that no details in connection with the 160

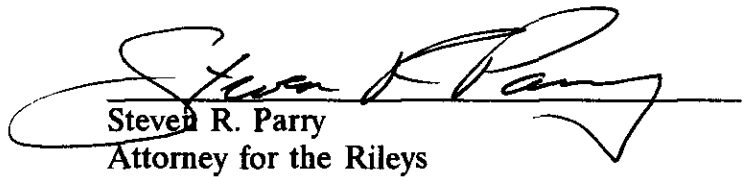
PETITION FOR DISQUALIFICATION -- 2

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MAY 26 2003

Acre Parcel will be changed. Given these statements, how could Mr. Saxton or any other person in his situation subsequently view these issues with independence. Consequently, the Rileys hereby request that Mr. Saxton either disqualify himself or be disqualified, and that a new, independent hearing officer be appointed.

Mr. Saxton has at all times conducted himself in a professional manner and is obviously very knowledgeable and competent, and but for the circumstances, would have been an appropriate hearing officer. However, disqualification under the circumstances is necessary and is respectfully requested.

DATED this 24th day of March, 1997.


Steven R. Parry
Attorney for the Rileys

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the following described pleading or document on the persons listed below on this 24th day of March, 1997, by:

☐ Hand Delivering ☒ Mailing ☐ Telecopy

Document Served: PETITION FOR DISQUALIFICATION OF L. GLEN SAXTON AS HEARING OFFICER

Attorney Served:

Gregory W. Moeller
Rigby, Thatcher, Andrus,
Rigby, Kam & Moeller
P.O. Box 250
Rexburg, Idaho 83440


Steven R. Parry
ANDERSON NELSON HALL SMITH, P.A.

L:\SRP\2668\DISQUALI.PET

PETITION FOR DISQUALIFICATION -- 4

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MAR 26 2003

MAR 26 1997

**STEVEN R. PARRY
ANDERSON NELSON HALL SMITH, P.A.
490 MEMORIAL DRIVE
P.O. BOX 51630
IDAHO FALLS, IDAHO 83405-1630
TELEPHONE: (208) 522-3001
FAX: (208) 523-7254**

BEFORE THE IDAHO
DEPARTMENT OF WATER RESOURCES

**PETITION FOR
DISCLOSURE OF EX PARTE
COMMUNICATIONS**

**NORMAN RILEY AND ROBIN
RILEY, husband and wife,
Defendants.**

Norman and Robin Riley, through their counsel of record, hereby Petition the Department of Water Resources (the "Department") to disclose all ex parte communications that have occurred between any of the Department personnel and the representatives for Catherine Rowan (including any attorney with the firm of Rigby, Thatcher, Andrus, Rigby,

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MAR 25 2003

Kam & Moeller) in relation to the above-captioned matters or Rowan's claimed water rights in general, specifically including but without limitation any communications relative to the issuance of water right Permit 22-07792.

This Petition is filed in conjunction with the Rileys' Petition for Reconsideration in Re: Permit 22-07792, which is incorporated herein by this reference. As described in the Petition for Reconsideration, it is apparent that Rowan's attorneys have had ex parte communications with Department personnel, including the hearing officer. The water rights that are the subject of Permit No. 22-07792 are subject to the hearing currently pending before the Department in In Re: Permit No. 22-07280. Consequently, in addition to improperly issuing Permit 22-07792 without regard to the pending hearing, the Department failed to disclose the ex parte communications. Because Permit No. 22-07792 was actually signed by the hearing officer in In Re: Permit No. 22-07280 (Mr. L. Glen Saxton), communications to all Department personnel must be disclosed as having been either directly or indirectly made to Mr. Saxton.

IDAPA Rule 37.01.417 provides the following:

Unless required for the disposition of a matter specifically authorized by statute to be done ex parte, a **presiding officer serving in a contested case shall not communicate, directly or indirectly, regarding any substantive issue in the contested case with any party, except upon notice and opportunity for all parties to participate in the communication.** The presiding officer may communicate ex parte with a party concerning procedural matters (e.g., scheduling). Ex parte communications from members of the general public not associated with any party are not required to be reported by this rule. However, **when a presiding officer becomes aware of a written ex parte communication regarding any substantive issue from a party or representative of a party during a contested case, the presiding officer shall place a copy of the communication in the file for the case and order the party providing the written communication to serve a copy of the written communication upon all parties of record.** Written communications from a party showing service upon all other parties are not ex parte communications. (Emphasis added.)

The issuance of Permit 22-07792 directly impacts issues pending in the contested case in In Re: Permit 22-07280, and surreptitiously provided Rowan with an advantage in that matter to the Rileys' prejudice. Consequently, the communications from Rowan's representatives

PETITION FOR DISCLOSURE -- 2

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that led to the issuance of that permit were clearly ex parte in violation of the above-quoted rule. In addition, the ex parte communications violated I.C. 67-5253 which provides:

Unless required for the disposition of ex parte matters specifically authorized by statute, a presiding officer serving in a contested case shall not communicate, directly or indirectly, regarding any substantive issue in the proceeding, with any party, except upon notice and opportunity for all parties to participate in the communication.

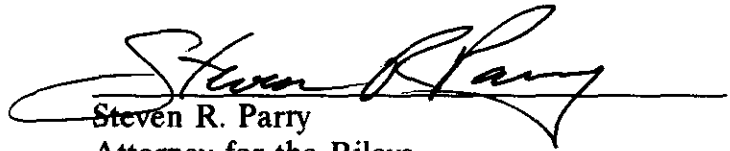
The prohibition against ex parte communications is well known to the parties and the hearing officer as it was one of the issues raised in the Rileys' Motion for Continuance of Hearing dated March 6, 1996. Although Rowan's attorneys indicated in response that the earlier communications were inadvertent, the recent communications could not have been inadvertent. The Rileys' concerns regarding these ex parte communications must be viewed in light of the circumstances surrounding this case. As stated in the Rileys' Motion for Continuance of Hearing, they have been very concerned that one of the attorneys in the firm representing Rowan is a member of the Department's board. This fact is compounded by the multiple rumors which the Rileys have heard that the Department is in essence working against them and in favor of Rowan. Just recently the Rileys were told (through rumor) that Rowan had taken care of her water problems and that it was a "done deal" clear up "to the top." That rumor was heard just weeks before Rowan's attorney disclosed in Judge Herndon's chambers that Rowan had secured a Permit from the Department. How are the Rileys expected to ignore such rumors when the events unfold that seem to support them? Under the circumstances (with the issue having already arisen once and with Mr. Rigby's membership on the board), one would expect an abundance of caution on this issue so as to preserve the integrity of the process. Whether or not any impropriety has occurred, the perception of independence has certainly been completely shattered. Consequently, it is imperative that the Rileys be provided with detailed information regarding all such ex parte communications.

The Rileys specifically request that they be provided with (1) copies of all written correspondence to or from the Department (including any of its employees) that is from or to Rowan or any of her representatives (including her attorneys and Gary Ball) regarding

either of the above-captioned matters (or her claimed water rights generally) occurring after January 13, 1995, and (2) a description of all oral communications between the Department (including any of its employees) and Rowan or any of her representatives (including her attorneys and Gary Ball) regarding either of the above-captioned matters (or her claimed water rights generally) occurring after January 13, 1995, such description to include the names of the persons to the conversation and the general content of each such conversation. Only by having this information can the Rileys assess the events that have occurred and take action to protect their legal rights.

Therefore, the Rileys respectfully request that such information be provided to them at the earliest time possible.

DATED this 24th day of March, 1997.


Steven R. Parry
Attorney for the Rileys

MAR 26 1997

**STEVEN R. PARRY
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TELEPHONE: (208) 522-3001
FAX: (208) 523-7254**

BEFORE THE IDAHO
DEPARTMENT OF WATER RESOURCES

**PETITION FOR
RECONSIDERATION
IN RE: PERMIT 22-07792**

v.

**NORMAN RILEY AND ROBIN
RILEY, husband and wife,
Defendants.**

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MAY 26 2003

reconsideration of the issuance of water right Permit No. 22-07792 (the "Rowan Permit"), which was designated as a preliminary order of the Department by the Designation Order.

The Rowan Permit should be cancelled until the issues pending in In Re: License No. 22-07280 have been resolved, or alternatively, the name on the Rowan Permit should be changed to the Rileys or to a designation that will not prejudice the Rileys. As set forth below, the issuance of the Rowan Permit directly impacts the Rileys and the issues pending in In Re: License No. 22-07280, and the Rowan Permit should not have been issued pursuant to the ex parte actions of Rowan's attorneys. The statements made by Mr. Saxton in his March 12, 1997 letter to the Rileys' attorney make it clear that the Department issued the Rowan Permit on the erroneous assumption that License No. 22-07280 was in final form and that water to the 160 acres south of the railroad tracks (the "160 Acre Parcel") was no longer an issue. The record will show unequivocally that the water rights on the 160 Acre Parcel are still at issue in the pending hearing over License No. 22-07280, as is the issuance and details of License No. 22-07280, and therefore that the Rowan Permit was improperly issued.

Background

Litigation between Rowan and the Rileys began August 16, 1993, when Rowan brought an action against the Rileys in the District Court for Madison County (Madison County Case No. CV-93-00350). On January 3, 1995, Judge Herndon ruled the Court did not have jurisdiction over the water right issues and the parties moved the water dispute to the Department. Rowan filed her Memorandum of Law and Authorities dated January 13, 1995, and the Rileys filed their Brief dated January 13, 1995. The record will show that the parties came to the Department for a decision on who owned water permit 22-7280. Despite this expressed purpose, the Department issued License No. 22-07280 without deciding the ownership issue, opting instead to issue the license in the names of two deceased persons. Both parties objected to various aspects of License No. 22-07280, and the Rileys objected to the very issuance of the License. NONE OF THESE OBJECTIONS HAVE BEEN RESOLVED OR RULED UPON BY THE DEPARTMENT, AND ALL OF THESE OBJECTIONS ARE STILL PENDING IN IN RE: LICENSE NO. 22-07280. After the

PETITION FOR RECONSIDERATION -- 2

*Suggestion;
condition
permit so that
it must be
reviewed following
expiration of L.C.
93 >*

preliminary hearing, the Rileys filed a Motion to Dismiss and a Motion for Continuance of Hearing. On March 19, 1996, the Department issued its Order Denying Motion to Dismiss and Granting Continuance.

Detailed Analysis

The Rowan Permit purports to grant Rowan certain rights to use water on the 160 Acre Parcel. Rowan has no basis for obtaining water rights on the property because she has never placed any water on the property, either before or after the designation of the Eastern Snake River Plain Moratorium. Rather, the 160 Acre Parcel has been irrigated by the Rileys or their predecessors in interest, all in conjunction with Water Permit No. 22-7280. In fact, the water line to the 160 Acre Parcel goes through a pipe under the railroad, and both the pipe and the railroad lease are owned by the Rileys. However, even if Rowan had any right to claim a new permit for water on the 160 Acre Parcel, that was clearly an issue to be decided in the pending hearing on License 22-07280. This position is supported by the following excerpts from the record:

1. The Rileys' Petition Regarding Water Right 22-07280 and Request for Hearing dated December 20, 1995, filed with the Department, states:

6. The allocations on the place of use are inaccurate and are not consistent with either the Permit or the Field Report. The allocation should be made with the Petitioners' input as the owners of the Permit. Petitioners request that the Department set forth its basis for the allocation as listed on the License. **Included in the Petitioners' concerns are the fact that water was being used on leased ground at the time that is not included in the allocation, including the 160 acres south of the rail road tracks and 90 acres that were previously leased from Lionel Jensen. These factors need to be taken into consideration when allocating the water. (Emphasis Added.)**

Hence, the Rileys raised the issue of water on the 160 Acre Parcel immediately after Water License 22-07280 was issued. In addition, it should be noted that the Rileys also objected "in its entirety to the issuance of the Water Right License for Water Right No. 22-07280." Because the hearing on these issues has been continued, the Rileys still have pending before the Department the issue of whether Water License No. 22-07280 was properly issued, as well as the issue of water rights on the 160 Acre Parcel.

2. Likewise, Rowan's Objection to Motion to Dismiss; Objection to Motion for Continuance dated March 13, 1996, and filed with the Department, makes the following statements:

This matter has been before this Department for a considerable amount of time. Changing forums at a time when other issues remain unresolved is prejudicial and uneconomical. It would [be] extremely wasteful and result in additional delays to abandon the present proceedings when these issues remain unresolved. These issues are of tremendous interest to both parties. These issues include length of season, amount of water under the license, the number of acres to be irrigated under the license, and other conditions relevant to the use of the license. The parties efforts can serve to maximize the amount of water and acreage that [may] subsequently be divided by the SRBA. . . .

....
At the prehearing conference, the Department made it clear that it would not determine the ownership issue. It was clear that both Plaintiffs and Defendants had other issues which needed to [be] resolved. As a means of resolving these remaining issues, the Department urged the parties to come together with an agreement that might have the effect of maximizing the amount of water available under the license. . . . (Emphasis added.)

Both parties were concerned that the 160 Acre Parcel was left out of the license as issued and that more water had been applied than reflected in the license, but the hearing officer clearly indicated that if the parties cooperated, the Department could work with them on the 160 Acre Parcel because the water had been applied prior to the Moratorium. Both parties wanted to pursue this issue, and the Department gave every indication that arrangements could be made to correct the fact that the underlying permit did not include the 160 Acre Parcel, especially in light of the Field Exam which established that the 160 Acre Parcel had been watered. Yet, by issuing the Rowan Permit, the Department has now allowed Rowan through ex parte actions to usurp all of the benefit of these additional rights without any opportunity for the Rileys to protect their interests therein.

3. The fact that the water rights, inchoate as they were, on the 160 Acre Parcel were an issue in the hearing (which has been continued, but is still pending) is confirmed without doubt by the Rileys' Response to Objections to Motion to Dismiss and Motion for Continuance dated March 17, 1996, filed with the Department, which states:

PETITION FOR RECONSIDERATION -- 4

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The Objection correctly states that the parties were encouraged at the Prehearing Conference to "come together with an agreement that might have the effect of maximizing the amount of water available under the license." In fact, such agreement would be essential for the hearing to proceed smoothly. However, it is now apparent that the parties do not and will not be agreeing on the key issue of allocation of water and other issues on which agreement would be imperative to maximize the amount of water available. Hence, the issues are in fact far more complex and perilous to the parties and it is reckless for the Plaintiff to push for a premature hearing wherein the Defendants will have no choice but to argue against the allocation of water to the southern 160 acres.

One of the key issues regards the 160 acres south of the railroad tracks. If the Defendants own all of the water rights as tenants on Plaintiff's property, then they may be agreeable to spreading water down to the 160 acres assuming they would have the right to move the water if they lost the lease. If, however, the Defendants do not own all of the water rights, then they will oppose moving any of the water from the north to the south because doing so would potentially result in their ultimately owning less water. Consequently, holding the hearing prior to determining ownership will put the Defendants at odds with the Plaintiff with respect to the treatment of the 160 acres. Putting the parties in this situation is unjust and contrary to the promise made by the Department's prior director in his letter, a copy of which is attached, of November 7, 1994 which states:

The field examination indicates that more land is irrigated than authorized under the permit. The list of land confirmed to be irrigated under the license will depend upon a selection by the owner(s) of the water right. For this reason, IDWR will not issue the license while the parties are seeking a determination by the court of the ownership of the water right. Should the parties, or the court on its own initiative, elect not to proceed with a judicial determination of ownership of the water right, IDWR is prepared to address the issue in an administrative proceeding subject to judicial review. (Emphasis added).

By issuing the license without deciding the ownership issue, the Department has put the Defendants in the very position that should be avoided. Due process simply requires that the Defendants know what rights they own before being asked to forego or to defend those rights. It is this complexity that needs more review if in fact the Defendant is placed in such an untenable position. However, this complexity is easily solved if the parties are allowed to proceed to the SRBA for an adjudication as to ownership and then to

return to the Department for a resolution of the licensing details. (Emphasis added.)

One of the parties' primary hopes was that the Department would allow for the permitting of additional water based on its beneficial use on the 160 Acre Parcel prior to the Moratorium. Certainly the Rileys anticipated that the Department would eventually grant them a permit relative to the 160 Acre Parcel inasmuch as they (and their predecessors) had developed and applied water to that land prior to the Moratorium. The Rowan Permit shows the Department was willing to address this issue by issuing a new permit, but the permit should not have been issued until after the ownership of the rights relating to the 160 Acre Parcel was established. How could the Department determine, without notice to the Rileys, that Rowan owned the right to seek and eventually obtain the Rowan Permit? Based upon the actual application of the water, the Rileys developed and therefore should be deemed to own whatever water rights may exist in relation to the 160 Acre Parcel--but this is obviously a disputed claim that was to be and should be decided in In Re License No. 22-07280.

4. The Department, in its Order Denying Motion to Dismiss and Granting Continuance dated March 19, 1996, recognized that the "appropriateness of the acreage" under the license was being contested as indicated by the following statement:

In addition to the question of ownership of the water right, the issues identified concern the **appropriateness of the acreage**, diversion rate, season of use and other conditions of approval contained in the license. (Emphasis added.)

Obviously the 160 Acre Parcel was at issue in connection with the "appropriateness of the acreage." The Order further states that:

The Rileys also ask that the setting of any hearing to be held by the department pursuant to section 42-1701A(3), Idaho Code, be indefinitely continued until the parties have resolved the ownership of the water right before the district court. **The Rileys persuasively argue that their interests in the department hearing may vary depending upon the extent of their ownership of water right no. 22-07280.** The department desires to minimize rather than add to the expense of the parties in resolving this dispute. For that reason the hearing officer will approve an indefinite continuance of the

NO Application
for permit was
filed by the
Rileys. P12

**42-1701A(3) hearing previously requested by both parties to this proceeding.
(Emphasis added.)**

As set forth above in Section 3, the Rileys' arguments were centered on the treatment of water rights for the 160 Acre Parcel, and that was one of the primary reasons the hearing was continued as stated in the Order. How then can the Department issue the Rowan Permit on the 160 Acre Parcel while this hearing is still pending?

5. Mr. Saxton's letter of March 12, 1997 states that "The department does not view its issuance of the [Rowan] permit to have altered the relative positions of the parties in the ongoing water right dispute generally summarized below." Surely the Department knows that the Rileys' position would have been improved had the Rowan Permit been issued to them. How, then, does the Department think its actions have not benefitted Rowan and thereby "altered the relative positions of the parties"? Under the circumstances, the statement is incredible and suggests the Department is advocating Rowan's position rather than attempting to maintain a neutral position. Certainly Rowan believes she has "altered the relative positions of the parties" as the issuance of the Rowan Permit was disclosed to Judge Herndon (and the Rileys' attorney) in chambers prior to the most recent hearing in the Madison County Case and was presented as having given Rowan rights to water on the 160 Acre Parcel that were not recognized previously.

Despite the pending hearing, Mr. Saxton's letter repeatedly refers¹ to the license as if its terms were final and binding. For example, his letter states that:

The license as issued does not recognize irrigation of the additional 160 acres owned by Rowan even though water has been applied to the land.

The "license as issued" is not relevant to the propriety of issuing the Rowan Permit because the "license as issued" is the subject of the pending protest, including a protest on the very issuance of the license and on the water rights for the 160 Acre Parcel. Moreover, either

¹ Elsewhere the letter also states:

"Issuance of the Rowan permit does not conflict with the ongoing ownership question of the license because the land identified under the permit is different than the land on the license."

party may choose to appeal the Department's ultimate decision on the license as it will be subject to judicial review. Yet, the Department relies upon the "license as issued" to take additional actions which are prejudicial to the Rileys, and without notice to the Rileys. Oddly, the letter states:

IDWR does not perceive any circumstance under which approval of the Rowan permit will prejudice the Riley's claim of license ownership or the use of water under Riley's rights. The Rowan permit was issued subject to all prior water rights including the license.

Yet, two paragraphs later the letter states:

IDWR could not issue a permit to the Rileys to irrigate the 160 acre parcel without Rileys obtaining ownership of the parcel or **showing evidence of other rights to develop and hold a water right on the land**. Further, IDWR would not issue a second permit for use on the same lands.

There, in short, is the prejudice that the Department has imposed on the Rileys. The Department will now not issue a similar permit to the Rileys because they have issued one to Rowan all without any ruling on who had the underlying right to seek such a permit in the first place. Moreover, the Department issued the permit to Rowan despite that fact that she has never paid for, developed or applied any of the water to the 160 Acre Parcel. One of the purposes of the hearing (which as stated above is still pending) is to allow the Rileys to show "evidence of other rights to develop and hold a water right on the [160 Acre Parcel]." The primary point being that the Department took this action while the issue was pending in a hearing before the Department, without any notice to the Rileys or any other attempt to give them due process before eliminating their rights with respect to the 160 Acre Parcel.

Mr. Saxton's letter again relies upon the license as issued to justify the Department's actions with the following statement:

The department is aware that you are seeking judicial determination of the ownership of the licensed water right. If Rileys are found to own all of the license, **the department may need to issue an amended license**. The Department does not perceive that issuing the permit to Rowan for lands **not now covered by the license** will affect the Riley's potential ability to control all of the water authorized to be diverted under the existing license. (Emphasis Added.)

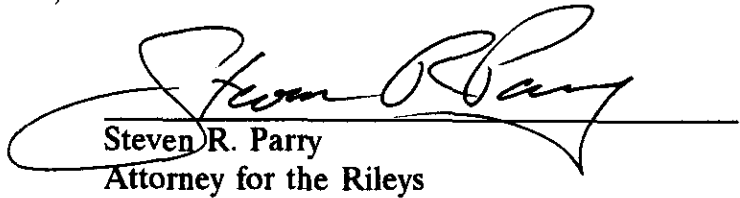
After the ownership issue is decided by the SRBA Court, the pending hearing will resume and the Rileys will pursue their water rights arising from the fact that they have applied water to the 160 Acre Parcel. If there is additional water to license, then the right to license that water should belong to the Rileys. That determination, however, should be made after SRBA has ruled upon the ownership issue.

Finally, the letter states that "the license is in full force and effect and does not include irrigation of the 160 Acre Parcel." The license is under protest, even as to its very issuance, is subject to a pending hearing in front of the Department, and will not be in "full force and effect" until the Department holds the hearing, rules upon the issues related to the license, and those decisions are subjected to judicial review. This statement makes it apparent that the Department has somehow overlooked the fact that the license is under protest in the pending hearing, and confirms that the Department was premature in issuing the Rowan Permit.

Conclusion

The license for right 22-07280 is the subject of a hearing pending before the Department, one of the issue in which relates to the water rights on the 160 Acre Parcel. Consequently, the Department should not have taken any action on the 160 Acre Parcel water rights without providing notice to the Rileys. Likewise, the communications that occurred between the Department and Rowan's attorneys in this matter were ex parte thereby violating the Rileys' due process rights. Therefore, the Rowan Permit should be cancelled, or issued in a way that will not prejudice the Rileys once the issue of water on the 160 Acre Parcel is properly placed before the Department.

DATED this 24th day of March, 1997.


Steven R. Parry
Attorney for the Rileys



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

March 12, 1997

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

Steven R. Parry
ANDERSON, NELSON, HALL & SMITH
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho
83405-1630

RE: PERMIT No. 22-07792 IN THE NAME OF CATHERINE ROWAN

Dear Mr. Parry:

I have reviewed your letter dated February 13, 1997 regarding the above referenced permit which the department recently issued to Catherine Rowan. The department does not view its issuance of the permit to have altered the relative positions of the parties in the ongoing water right dispute generally summarized below.

Two parties, Catherine Rowan (Rowan) and Norman and Robin Riley (Riley) claim ownership of all or part of Permit No. 22-07280. Based on a field examination, the Idaho Department of Water Resources (department or IDWR) issued License No. 22-07280 (license) providing for the diversion of 9.18 cfs of groundwater for use upon land partly owned by Rowan and partly owned by Riley. In addition to the licensed place of use, the water has been used on additional land (approximately 160 acres) owned by Rowan south of the licensed land. The license as issued does not recognize irrigation of the additional 160 acres owned by Rowan even though water has been applied to the land.

Both Rowan and Riley requested a hearing before the department in connection with the issuance of the license. After reviewing motions filed by Rowan and Riley, the department on March 19, 1996 issued an order denying Riley's motion to revoke the license and indefinitely continuing the requested hearing in order to let the parties resolve the question of ownership of the license in district court. Once ownership is established by the court, the parties will be able to pursue any appropriate changes to the licensed right before the department.

A specific response to each of your questions follows:

Letter - Pg 1

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MAR 26 2003

Question 1.a. What actions have been taken by the Department with respect to the 160 Acre Parcel? Has any type of water right been granted to Rowan with respect to the 160 Acre Parcel? If so, when and where was the notice published.

On January 30, 1997 the department issued Permit No. 22-07792 (Rowan permit) in the name of Catherine Rowan. A copy of the permit is enclosed. The permit authorizes the diversion of 3.0 cfs of groundwater to be diverted from a well located within the SW1/4SW1/4 Section 11, T5N, R40E, B.M. for the irrigation of 150.5 acres of land within parts of sections 14, 15 and 23, T5N, R40E, B.M.

The legal notice was published in the REXBURG STANDARD-JOURNAL on November 7, 1996 and on November 14, 1996. No protests were received against approval of the application.

Question 1.b. Why were the Rileys not informed of this action in light of the pending hearing?

The department provided the notice of the application as required in Section 42-203A, Idaho Code. Neither the Idaho Code nor department rules require individual party notification in connection with applications to appropriate water.

Enclosed is an order designating the issuance of Permit No. 22-07792 as a preliminary order in accordance with IDAPA Rule 37.01.01750 (IDWR Rule of Procedure 750). Although Riley is not a party to the permit proceeding, the department will consider any comments submitted within fourteen (14) days of issuance of the order designating the permit as a preliminary order.

Question 2. Will the action taken prejudice the Rileys in any way? Specifically, Department personnel have previously indicated to the Rileys that the water actually used on the 160 Acre Parcel (as evidenced by the beneficial use report) could potentially be included in a revised or new permit. Will the department issue a similar permit to the Rileys as they have issued to Rowan?

IDWR does not perceive any circumstance under which approval of the Rowan permit will prejudice the Riley's claim of license ownership or the use of water under Riley's rights. The Rowan permit was issued subject to all prior water rights including the license. Condition No. 5. of the permit is intended to limit Rowan's diversion of water under the permit and the license to not exceed a combined total diversion rate of 7.47 cfs. The license is considered to be the primary water right and shall be allocated water first under the 7.47 cfs portion of the license.

It is possible that following the court action the parties will ask the department to reconfigure the license to include the lands within the 160 Acre Parcel provided that no more than a total of 734 acres are irrigated in any one season under the license. This type of reconfiguration would cause an overlap with the Rowan permit which would need to be resolved before the Department would approve the reconfiguration.

IDWR would not issue a permit to the Rileys to irrigate the 160 acre parcel without Rileys obtaining ownership of the parcel or showing evidence of other rights to develop and hold a water right on the land. Further, IDWR would not issue a second permit for use on the same lands.

Question 3. Will issuance of the permit to Rowan in any way limit or restrict the Riley's ability to own all of the water provided for in their permit (now in the form of a license)?

The license is appurtenant to the place of use described on it. The department is aware that you are seeking judicial determination of the ownership of the licensed water right. If Rileys are found to own all of the license, the department may need to issue an amended license. The Department does not perceive that issuing the permit to Rowan for lands not now covered by the license will affect the Riley's potential ability to control all of the water authorized to be diverted under the existing license.

Question 4. How could any action on the 160 Acre Parcel be taken while a hearing on this issue (among others) is pending before the Department?

Issuance of the Rowan permit does not conflict with the ongoing ownership question of the license because the land identified under the permit is different than the land on the license.

With regard to "spreading water down to the 160 acres" as described in your letter, the license authorizes the irrigation of a total of 734 acres. The Department will not issue a license or amended license that will result in the irrigation of more than 734 acres in any one year under terms of the license.

The Department issued the Rowan permit upon a finding 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. The license is in full force and effect and does not include irrigation of the 160 Acre Parcel. Approval of the Rowan permit was necessary to allow for the continued irrigation of the 160 acre parcel pending resolution of

Letter - Pg 3

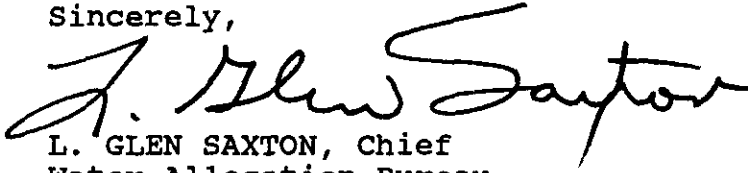
MICROFILMED

MAR 26 2003

the license ownership issue.

Please advise the department of the court's determination of ownership in order that the department can determine appropriate changes, if any, needed relative to the license.

Sincerely,



L. GLEN SAXTON, Chief
Water Allocation Bureau

Encl: 2

c: IDWR - E. Region
Jim Johnson
Gregory W. Moeller
Roger D. Ling

Anderson Nelson Hall Smith

RECEIVED

FEB 18 1997

Department of Water Resources

A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

490 MEMORIAL DRIVE
POST OFFICE BOX 51630
IDAHO FALLS, IDAHO 83405-1630
TELEPHONE (208) 522-3001
FAX (208) 523-7254

W. Joe Anderson
Douglas R. Nelson
Blake G. Hall
Marvin M. Smith*
Scott R. Hall
Joel E. Tingey
Steven R. Parry*
Brian T. Tucker
Allison C. Rich

of counsel
John M. Sharp*

*Also member of Utah bar

Eugene L. Bush
(1928-1988)
Arthur L. Smith
(1916-1988)

February 13, 1997

Mr. Karl J. Dreher, Director
Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720-9000

L. Glenn Saxton, Chief
Water Allocation Bureau
Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720-9000

RE: In the Matter of License No. 22-07280 In the Name of Jim W. Howe and Lucille W. Howe (both deceased)

Dear Director Dreher and Mr. Saxton:

I represent Norman and Robin Riley in the above-referenced matter, which is currently pending before the Idaho Department of Water Resources (the "Department"). Associated lawsuits are pending in Madison County before Judge Herndon and in the Snake River Basin Adjudication before Judge Hurlbutt. This matter has been in litigation for over three and one-half years, involves hundreds of thousands of dollars, and is naturally very important to my clients.

Just recently, during in-chamber discussions with Judge Herndon prior to a hearing in the Madison County case, it was disclosed to me by Greg Moeller, the attorney for Catherine Rowan, that Rowan had obtained from the Department a water permit for her 160 acre parcel south of the railroad tracks (the "160 Acre Parcel"), and that the basis for this permit was the fact that water had been applied to the property for years. A few days prior to this hearing, my clients were informed that the Department had assigned a person by the name of Shelly King to work with Rowan to secure the water rights on her 160 Acre Parcel.

I am, of course, extremely perplexed how any type of water right could be issued to Rowan under the circumstances, and am concerned that this action by the Department will affect the outcome of the hearing pending before the Department and seriously prejudice the

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MAR 26 2003

Riley's interest therein. The only water that has been applied to the 160 Acre Parcel during the 1980s and 1990s has been applied by my clients (or their predecessors) as tenants on Rowan's land. Although my clients are extremely concerned that actions have been taken without their knowledge that will prejudice their interests, I have encouraged them to wait for an explanation from the Department. The purpose of this letter is to request such an explanation, and assurances from the Department that the Rileys have not been prejudiced by the Department's actions. More specifically, we request that we be advised:

1. What actions have been taken by the Department with respect to the 160 Acre Parcel? Has any type of water right been granted to Rowan with respect to the 160 Acre Parcel? If so, when and where was notice published and why were the Rileys not informed of this action in light of the pending hearing?
2. Will the action taken prejudice the Rileys in anyway? Specifically, Department personnel have previously indicated to the Rileys that the water actually used on the 160 Acre Parcel (as evidenced by the beneficial use report) could potentially be included in a revised or new permit. Will the Department issue a similar permit to the Rileys as they have issued to Rowan?
3. Will the issuance of the permit to Rowan in anyway limit or restrict the Riley's ability to own all of the water provided for in their permit (now in the form of a license)?
4. How could any action on the 160 Acre Parcel be taken while a hearing on this issue (among others) is pending before the Department?

For your convenience, a short history of this matter is set forth below. Trial regarding ownership of the permit/license has been set in June in the SRBA, and we are therefore very anxious to receive an explanation as requested above. Under the circumstances, we trust that you will agree with the urgent nature of this matter and will understand why my clients and I are so concerned that there may have been action taken without our knowledge that could potentially impact the outcome of the pending hearing.

Background

Early on in this matter, an attempt was made to coordinate the activities relating to the water dispute between the Rileys and Rowan. In his November 7, 1994 letter, R. Keith Higginson, the then director of the Department, stated the following:

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MAR 26 2003

The field examination indicates that more land is irrigated than authorized under the permit. **The list of land confirmed to be irrigated under the license will depend upon a selection by the owner(s) of the water right.** For this reason, IDWR will not issue the license while the parties are seeking a determination by the court of the ownership of the water right.

The primary parcel being watered in addition to the land stated in the permit was the 160 Acre Parcel. The water on the 160 Acre Parcel has been one of the key issues from the beginning. To coordinate action and information regarding the permit, Mr. Higginson also took the following action in his November 7, 1994 letter:

By copy of this letter to IDWR staff and to others known to be interested in this matter, I am notifying all concerned that for now Mr. Jim Johnson is the designated contact person in IDWR. IDWR employees will refer all contacts to Jim and involve Jim in any matters involving this permit.

Given the pending hearing and Mr. Johnson's prior designation as the contact person to coordinate action on the permit, we do not understand how a new permit could be issued to Rowan on the subject land without notice to the Rileys.

Because the Department indicated it was willing to decide the ownership issue, the parties agreed (after Judge Herndon ruled he lacked jurisdiction to decide the issue) to take the matter to the Department first, rather than to the SRBA. However, when the license was issued by the Department, it was issued in the name of two deceased persons and the ownership issue was not addressed at all. Both Rowan and the Rileys contested the terms of the Water License as issued, and the Rileys contested the very issuance of the license. On December 20, 1995, the Rileys filed with the Department their Petition Regarding Water Right 22--7280 and Request for Hearing. In addition to objecting to the issuance of a license without deciding the ownership issue or receiving input from the Rileys, the Petition specifically addressed in paragraph 6 thereof the water used on the 160 Acre Parcel. *Rowan's*

Subsequent to the prehearing conference on both parties' petitions, the Rileys filed their Motion for Continuance of Hearing, one of their primary concerns being the need to know who owned the permit before the allocation of water was decided. In fact, in the Rileys Response to Objections to Motion to Dismiss and Motion for Continuance dated March 17, 1996, the Rileys stated:

One of the key issues regards the 160 acres south of the railroad tracks. If the Defendants own all of the water rights as tenants on Plaintiff's property, then they may be agreeable to spreading water down to the 160 acres assuming they would have the right to move the water if they lost the lease.

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MAR 26 2003

February 13, 1997

Page 4

If, however, the Defendants do not own all of the water rights, then they will oppose moving any of the water from the north to the south because doing so would potentially result in their ultimately owning less water. Consequently, holding the hearing prior to determining ownership will put the Defendants at odds with the Plaintiff with respect to the treatment of the 160 acres.

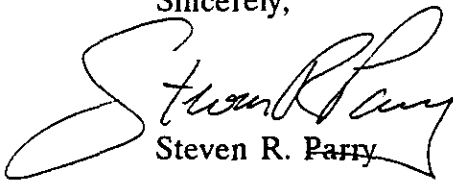
In the Department's Order Denying Motion to Dismiss and Granting Continuance dated March 19, 1996, Hearing Officer Saxton continued indefinitely the hearing, and therefore **the hearing is still pending**. It is obvious from the record that one of the pending issues regards the water rights on the 160 Acre Parcel. Consequently, it is truly perplexing to us how any action could be taken on these water rights without providing notice to the Rileys.

We are hopeful that the Department's explanation will satisfy all of our concerns. If, however, the water right granted to Rowan will in anyway infringe on the Rileys rights under their permit/license, or the Department's ability or willingness to grant additional rights to the Rileys for applying water to the 160 Acre Parcel, then we request that the Department also advise us immediately what steps will be taken to cure these problems.

We appreciate your time and attention to this complicated issue. I am sending this letter to Mr. Saxton because he is the hearing officer for the pending hearing, and to Director Dreher because I assume the actions taken with regard to the 160 Acre Parcel have been taken by other Department personnel without Mr. Saxton's knowledge.

We look forward to your response as soon as possible. If you have additional questions, please advise and I will attempt to address them.

Sincerely,



Steven R. Parry

cc: Rileys
Gregory W. Moeller
Roger D. Ling

MICROFILMED

MAR 26 2003



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

January 30, 1997

CATHERINE ROWAN
843 THREE FOUNTAINS #258
SALT LAKE CITY UT 84107

PERMIT APPROVAL NOTICE

RE: PERMIT NO. 22-07792

Dear Permit Holder:

Enclosed is a copy of your approved application for permit. Please be sure to thoroughly review the "Conditions of Approval and Remarks" listing on the permit.

Enclosed is a form entitled "Instructions for Proof of Beneficial Use". Please read the instructions carefully since you must take further action to develop this permit into a licensed water right. Also enclosed is a form entitled "Proof of Beneficial Use". If your project is already completed, you should complete and submit this form immediately.

Also, please note that as of July 1, 1996, water right owners are required to report any change of water right ownership and any change of mailing address to the department. If you have acquired a water right or have changed your mailing address PRIOR TO July 1, 1996, you have until July 30, 1998, to notify the department. If you acquire a water right or change your mailing address AFTER July 1, 1996, you must notify 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 to obtain the proper reporting form.

Sincerely,

Shelley W. Keen
Water Rights Supervisor

SK:ph

Enclosures

MICROFILMED
FEB 07 1997

MEMORANDUM

Date: January 17, 1997

To: File

From: Jim Johnson

Subject: Confirmation of payment for application of permit

=====
During the review of this application a question arose as to confirmation that a check had in fact been received for this application. To verify this a receipt summary is attached showing that on 12/06/1996 a receipt had been issued for \$160.00 for this application. If the check for the fee had "bounced" another entry would be made to update the record as had been done on the first bounce dated 10/09/1996. I have checked with staff in the fiscal section and they have no record that the check had been returned to IDWR.

It is presumed that payment for the application is resolved and the permit should be issued.

REPROFILMED
FEB 07 1997

SD-1603-2

Idaho Department Of Water Resources
Receipt Summary QueryDate: 01/17/97
Time: 11:09:22

Rec/No	From	Date	Fee	Ar/No	Status
E005025	ROWAN COLLEEN	12/07/1988	25.00		W/ /
W016469	ROWAN LAND CO	07/02/1993	25.00		W/ /
C036463	ROWAN, CATHERINE	09/04/1996	160.00		/ /O
C036463	ROWAN, CATHERINE	10/09/1996	-160.00		/ /B
C037133	ROWAN, CATHERINE	12/06/1996	160.00		/ /
C012209	ROWAN, CRAIG OR TENS	10/13/1989	75.00		W/ /
W020699	ROWAN, JOSEPH L	04/11/1996	25.00		W/ /
C002318	ROWAN, PHILIP	08/23/1988	10.00		/ /
N000885	ROWAN, PHILIP	08/03/1988	25.00		W/ /
E017444	ROWBERRY, RUSSELL	06/04/1992	35.00		/ /
E008544	ROWBURY, FLOYD C.	06/01/1989	25.00		W/ /
E002085	ROWBURY, JOYCE	09/07/1988	25.00		W/ /
E007129	ROWBURY, NINA	05/03/1989	95.00		W/ /
C009095	ROWDEN, TOM R.	08/08/1989	50.00		/ /
M003106	ROWDEN, TOM R.	03/30/1989	30.00		/ /O

(Enter=Continue)

(GOLD7=Selection Screen)

(GOLD8=Cancel)



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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

MEMORANDUM TO: Staff
FROM : R. Keith Higginson *RKH*
DATE : July 1, 1992
SUBJECT : Snake River Basin Moratorium Application Processing #54

As expected, the moratorium on new uses of surface and ground water of the Snake River Basin upstream from the Weiser gaging station has generated several questions concerning intent.

You will recall that the moratorium provided several exceptions:

- domestic uses
- nonconsumptive uses
- drought wells
- drilling permits to replace or deepen.

It appears that a number of situations have been identified where applications for permits have been filed to cover presently existing uses of water. I see no reason to hold up the processing and approval of such permits since it will make no difference on the quantity of water that is being withdrawn in the basin during this drought period. If we are not going to consider issuing permits to cover such existing uses then we need to issue cease and desist orders to stop the use. I don't want to take that action where there is an alternative.

Therefore, the purpose of this memo is to advise that it is the intent of the moratorium order issued on May 15, 1992 to hold up the issuance of permits authorizing new or expanded uses of water within the Snake River Basin. The moratorium may be interpreted to allow the continued processing and approval of applications proposing to cover an existing use. Such existing use must predate the start of the Snake River Basin Adjudication in November 1987.

MICROFILMED

FEB 07 1997

APPLICATION FOR PERMIT
STATE OFFICE REVIEW

11/96

by Cindy Zimmerman 1/12/97 1/29/97

No.: 22-7791 Name: Rowan Date: 12/17/96 Ad OK? ☒ ☒ Gvmt Lts: ☒

AREA OF CONCERN? ^{pre 1987} use - No/Yes: ESRP Mor / GWMA / Trust / Non-trust

PROTESTED: - 020 (Protest Agreement)

SYSTEM COMPLETED:

Yes/proof filed - NA
1 year/no proof - P16
+1 year - 26A-P17

GROUNDWATER: <✓ FLO-CH>

+ 0.2 cfs - ~~01M~~ use 001 instead
=/- 0.2 cfs - No MD
=/+ 5 a. - ~~01M, 005~~ (if GW use SW 1st)

DRILLING PERMIT:

Existing well - NA (pre 7/1/87)
Included w/permit - Permit No. _____, P99
No WD permit? - 046-46B-P23 (post 7/1/87)
irr. in WD - P05 (new well)

SURFACE WATER <✓ FLO-CH> (Surface water that doesn't sink is regulated):

Water District (~~dom~~) - 005 (req) WD # _____ <SEE MAP & LISTING>
+ 0.2 cfs - 01J (meas dev)-P08
=/- 0.2 cfs - 01H (lock dev)-P01 or No MD
In-WD + 0.2 cfs - 01M or No MD (in-stream stock or domestic)
- 0.2 cfs - No MD
=/+ 5 a. irr. - 01M

RIVER BASINS (*Surface water):

Snake R (01) - 11A-P04, NA
(02/03-irr) - 007-P07 (w/ remark *WB9- Weiser), NA
Boise River (63) - 05A (if WD), 11E (not 42-111 use), NA
Payette River (65) - 064 (regulated uses), 047-P04 (Payette Lake), NA

USE:

Domestic (surface) - *WB5 (Boise River above Star Bridge); 27A (Payette River); NA
Fish Propagation - 07A-042 (req)-010/06A/09E (WQ)-P10; 044 (North of 1000 Springs)
Irr <POU> =/- 5 a - 057 (0.03 cfs/acre)
+ 5 a - 03A (0.02 cfs/acre)
Mining - 054 (req) & 06A/010/09E-P10
Power - 08A-17K-025-027-028-01F(P19)-09E(P10);
+25 cfs-P18; 17G (FERC) or 17M (FERG); 18B-P09
Storage (✓3 compo.) - 072 (req); 18A (multiple MD within district), 18B-P09 (+10' dam),

LOCATION:

42-248 area - In 20/30/40/50/60/70/80 (87) basin? P84
Boise Front LoGeo - 058 (-85° GW temp only)
In-stream dev. - P52 (stream channel alteration)
Irr Dist/Canal Co. - 023 (Twin Falls area)
Swan Falls Flag - 8 <SEE CODE CHART>
Trust - 051-052-053-P74 (Consumptive Uses), NA
Non-Trust <1> ^{pre '84} - 048-049 (Consumptive Uses), NA

OWNERSHIP: Non-owner

OTHER CONDITIONS:

STANDARD REMARKS:

BENEFICIAL USE DUE:

COMMENTS:

- ~~074 068 per JJ~~
- ~~074 068 per JJ~~ w 35/7.47 cfs / 22-7280
- 21-1-1998

Dist. for staffing 9-9-96
Submitted for advertising _____

Form No. 202
4/87

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATIONS FOR PERMIT ANALYSIS PERMIT

INITIAL REVIEW BY HWJ DATE 9-9-96 APPLICATION NO. 22-7792

REQUIRED INFORMATION

- ☒ Name (If applicant is a corporation or partnership, names must be provided for the director, officers, & other partners.)
☒ Address
☒ Source (See USGS Quad for names of water sources)
☒ Point of Diversion (10 acres for spring, lot & block descriptions for subdivisions, local name, flow and/or volume)
☒ County
☒ Quantity (flow and/or volume)
☒ Period of Use
☒ Nature of proposed use (Include description of use.)
☒ Description of diverting works
☒ Time required for beneficial use of water
☒ Place of use or acres irrigated
☒ Map
☒ Signature (If applicant is corp., partnership, or municipality, title of signatory is required)
☒ Fee
☒ Yes _____ No* In form to receipt

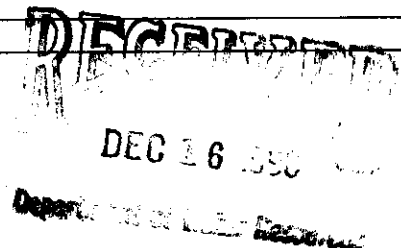
ADDITIONAL INFORMATION

- _____ Overlapping place of use (Describe source & relationship to present application on the back.)
☒ Overlapping point of diversion
Yes _____ No _____ Field check required
_____ Field check by _____
Yes _____ No _____ Field report attached
Yes _____ No _____ Critical groundwater area
Yes _____ No _____ Groundwater management area
Yes _____ No _____ Send dam safety information
Yes _____ No _____ Send power requirement letter
Yes _____ No _____ Send fish farm requirement letter
Yes _____ No _____ Power residency affidavit
Yes _____ No _____ Power efficiency form
Yes _____ No _____ Within trustwater boundary (If yes, attach trust water supplementary analysis sheet.)
Yes _____ No _____ Diversion greater than 5 cfs or 500 acre ft. (If yes, attach large diversion supplementary analysis sheet.)

See reverse side for additional information

*REQUEST THE FOLLOWING ADDITIONAL INFORMATION FROM THE APPLICANT _____

_____ Date Requested _____



PROCESSING

☒ Yes ☐ No In form for advertising
☐ Yes ☒ No Statewide advertising
☒ Yes ☐ No Fee amount, receipt date & No. recorded on application

SEND COPIES TO *NONE*

☐ Idaho Dept. of Health & Welfare ☐ U.S. BLM
☐ Idaho Dept. of Fish & Game ☐ U.S. Forest Service
☐ Idaho Dept. of Lands ☐ Water District
☐ Adjudication Bureau Unit ☐ Other _____

FINAL REGIONAL PROCESSING REVIEW

☒ Yes ☐ No Affidavit of publication received
☒ Yes ☐ No Application published correctly. If not, record action taken _____

☒ Yes ☐ No Publication dates & paper, recorded on application
☐ Yes ☒ No Protests received
Final date for protest 11-25-96
☐ Yes ☐ No Protests, dates, resolution of protest, recorded on application
☐ Yes ☐ No Recommendations attached
☐ Yes ☐ No Measuring device required
☒ Yes ☐ No Access port required
☐ Yes ☒ No Will water be delivered by watermaster? If yes, what Dist. _____
☐ Yes ☒ No Special conditions of approval or cover letter below.

Date of priority recommended _____

9-4-1996

By: _____

Date: 12-8-96

STATE OFFICE REVIEW

By _____

Date: _____

ADDITIONAL INFORMATION

Appears to be same as 95 22-7280

LOCAL PUBLIC INTEREST

Comments received from

_____City	_____Idaho Fish & Game	_____Irrigation Dist.
_____County	_____Idaho Health & Welfare	_____Canal Company
_____Reservations	_____Div. of Environment	_____Other_____

Project impacts/implications report

COMMENTS

[illegible]

INTER-DEPARTMENT MEMO

TO: File 22-7792

SUBJECT: Prior irrigation

FROM: H.W. JONES

DATE: 12-9-1995

A Field exam for permit 22-07280 showed that an extra 150 acres was being irrigated over and above the 734 acres licensed by that exam. This 150 acres appears to qualify for special review by the Director for possible approval since the use predated Nov. 19, 1987.

Please see original field exam for 22-07280 now in Boise!

☒ For your information

☐ Response required

MICROFILMED

FFB 0 7 1997

H.W. Jones
signature



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 15, 1996

Catherine Rowan
843 Three Fountains Dr.
Salt Lake City, UT 84107

RECEIVED

NOV 21 1996

Department of Water Resources
Eastern Region

RE: Application for Permit No. 22-07792 / Check No. 8769

Dear Ms. Rowan:

I have returned check no. 8769 which you submitted to this department on August 31, 1996, to cover the cost of filing Application for Permit No. 22-07792. Our accounting department has attempted to cash this check twice and it was rejected for insufficient funds each time.

The department has stopped processing your application for permit and will reject the application unless payment is received from you within **30 days** from the date of this letter. Please submit a money order or cash in the amount of \$160.00 and direct your correspondence to my attention.

Please contact me at (208)327-7900 if you have any questions regarding this matter.

Sincerely,

JULIE L. YARBROUGH
Senior Secretary

Enclosure

C: IDWR - Eastern Region

MICROFILMED

FEB 07 1997

THE STANDARD JOURNAL
Rexburg, Idaho

RECEIVED

DEC 02 1996

AFFIDAVIT OF PUBLICATION

Department of Water Resources
Eastern District Office

STATE OF IDAHO
County of Madison

I, TERRY T. WEATHERSTON being first duly sworn, depose and say, that I am the printer of THE STANDARD-JOURNAL, a semi-weekly newspaper printed and published semi-weekly at Rexburg, Madison County, Idaho; and I do solemnly swear that the NOTICE OF WATER RIGHT #22-07792 ROWAN a copy of which notice appears attached hereto, was published in the regular and entire issue of said newspaper, and not in any supplement issue thereof for TWO consecutive issues, the first publication having been made on NOVEMBER 7, 1996 and the last publication having been made on NOVEMBER 14, 1996.

Further, that said newspaper is one of general circulation in said county; that it is a legal newspaper, conforming to legal specifications under the Idaho Statutes; that it has at least two hundred bona fide subscribers living within the county of publication; and that it has been continuously and uninterruptedly published in said county during a period of seventy eight consecutive weeks prior to the first publication of the said notice.

Terry Weatherston

STATE OF IDAHO)

COUNTY OF MADISON)

On this 15TH day of NOVEMBER in the year of 1996, before me, a Notary Public, Personally appeared Terry Weatherston, 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.

Robert J. Porter

Notary Public for Idaho
Residing at Rexburg, Idaho
My commission expires: May 21, 1999

NOTICE OF PUBLICATION
FOR WATER RIGHT #22-07792 ROWAN
The following newspaper(s) has been filed to publish the notice of water right in the State of Idaho:
NEWSPAPER: THE STANDARD-JOURNAL
COUNTY: MADISON
PUBLISHED: NOVEMBER 7 and 14, 1996

MICROFILMED

FEB 07 1997

22-07792

ROWAN, CATHERINE
843 THREE FOUNTAINS #258
SALT LAKE CITY, UT 84107

Source: GROUNDWATER

Diversion Pt: SWSW Sec 11 T 05N R 40E in MADISON County.

Use: IRRIGATION (3.000 CFS)
Total Diversion: (3.000 CFS)

Date Filed: 9/ 4/1996

In: MADISON County				
T05N R40E S14	SWNW	SENW	NESW	NWSW
	SWSW	SESW	SWSE	
S15	NESE	SESE		
S23	NWNE	NENW	NWNW	

150.5 ACRES TOTAL

THIS LAND WAS DEVELOPED CONCURRENTLY WITH PERMIT NO. 22-07280.
THE LAND HAS BEEN IRRIGATED EVERY YEAR SINCE 1978.

MICROFILMED
FEB 07 1997

The permit(s) will be subject to all prior water rights. Protests must be filed with the applicant and the Director, Dept. of Water Resources, along with a \$25.00 filing fee, Eastern Region, 900 N Skyline, Idaho Falls, Idaho 83402 on or before NOVEMBER 25, 1996.

KARL J. DREHER, Director

Published: 11/ 7/1996 & 11/14/1996

MICROFILMED
FEB 07 1997



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Idaho Falls, Idaho 83402-1718 - (208) 525-7161 - Fax (208) 525-7177

EASTERN REGION

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

OCTOBER 31, 1996

Legal Notices Department
THE REXBURG STANDARD-JOURNAL
P.O. BOX 10
REXBURG, ID 83440

Gentlemen:

Enclosed you will find a legal notice which we wish to have published on the dates indicated (once a week for two consecutive weekly issues) in your newspaper. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Your cooperation is appreciated.

Please send the affidavit of publication and publication billing to this office before NOVEMBER 25, 1996.

Yours truly,

Rita Bodell
Secretary

Encl.

MICROFILMED

FEB 12 1997