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MAY 17 2000

Law Offices

Department of Water Resources

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May 15, 2000

Ardee Helm, Jr.
Prosecuting Attorney for Bear Lake County
534 Washington Street
Montpelier, ID 83254

Brent R. Bunn
Bear Lake County Sheriff
Box 365
Paris, ID 83261

RE: State v. Tracy Baxter

Dear Mr. Helm and Mr. Bunn:

I represent Tracy Baxter in several matters, including the criminal complaints that have been filed by you in Bear Lake County. I sincerely believe that those complaints are not well founded, and by this letter, I hope to submit to you some documentation that may shed some light on a situation that apparently is deemed to be complicated by a lot of people. A Supreme Court Justice once said that there are times when a page of history is worth volumes of logic. I believe this is one of those cases, and I will try to set forth the history of this case with the documentation that I have available.

1. Tracy L. Baxter and Sharon L. Baxter (who lived at the time in Preston, Idaho) were given a Special Warranty Deed dated April 1, 1991, from Farm Credit Bank of Spokane, to what we will refer to in this report as "Baxter Ranch" see Exhibit 1 attached hereto.
2. The Baxter Ranch was part of the property of the Lazy C-H Ranch, Inc. (Kay Rigby, President and Joyce Rigby, Secretary). The Farm Credit Services (formally Federal Land Bank) had a first mortgage lien on the Baxter Ranch and Farmers Home Administration (FHA) had a second lien on the Baxter Ranch and a first lien on what is referred to hereinafter as the North Ranch and the South Ranch. FHA, by Quit Claim Deed, dated January 29, 1991 deeded its interest in the Baxter Ranch to Farm Credit Bank of Spokane. Lazy C-H Ranch, Inc., in a "Deed in Satisfaction of Mortgage Indebtedness" dated November 8, 1985, deeded its interest to Farm Credit Bank of Spokane, and Farm Credit Bank of Spokane sold the Baxter Ranch to the Baxters by deed identified as Exh. 1 above. Lazy C-H Ranch, Inc. also deeded the North and South

Ranches to FHA.* That deed was recorded in the records of Bear Lake County by instrument number 39683, on January 22, 1986. The North and South Ranches, referred to above, were eventually acquired by Dr. Nebeker and Mr. James Smith. I am not certain as to the relative interest in those properties by these two persons. I do believe that at least the North Ranch is owned by Nebeker and Smith together.

3. The deed from Farm Credit Bank of Spokane to the Baxters described the real property being sold to the Baxters and then recited that it was given by reason of the terms and conditions of the Sale Agreement and Receipt for Earnest Money dated March 11, 1991. Negotiations had preceded that sales agreement. The deed also conveyed to the Baxters, all "water rights." It did not spell out specifically what those water rights were.

4. Water District Number 11 (Water Master - Pete Peterson) began assessing water rights. The attached hereto are copies of the water users assessments made for 1990, 1991, 1992, 1993, and 1994 (Exhibits 2, 3, 4, 5, and 6). The 1991 assessment was included in the closing statement for the sale of the premises. Copies of the 1995 and 1996 assessments are not readily available, but the payments of those assessments are set forth in the next paragraph herein, and those payment notices include the assessments. **All of the assessments for all of the water on the Lazy C-H Ranch, Inc. (Kay Rigby) were made to the Baxters.**

5. Receipts of the payments made by the Baxters are attached hereto as Exhibits 7, 8, 9, 10, and 11. The payments made for those assessments are as follows:

The 1991 payment was included in the closing statement

3/30/1992 check number 622 \$68.21

4/05/1993 check number 1089 \$103.15

4/02/1994 check number 1050 \$51.72

3/08/1995 check number 2849 \$50.46

4/10/1996 check number 2553 \$80.08

6. Then in 1997 the assessments changed drastically. After FHA contacted the Water District, the Water District assessed Baxters for the Sorensen Ditch only in 1997. The Baxters check for \$20.00 paid on 4/4/1997 was returned because the District claimed it was over paid and assessed the Baxters \$5.71 which was paid on 4/13/97 by check number 2978. On 3/9/1998 another \$5.71 was paid by check number 3369. On 3/17/1999 \$7.31 was paid by check number 3562. The Baxters have those assessments and those canceled checks for anyone to see.

7. Sharon Baxter requested from G.L. Brown, secretary of Water District 11, a verification of the Baxters' water rights. I attach hereto, as Exhibit 12 a letter from Gerald L. Brown to Sharon Baxter, dated June 8, 1993, wherein Mr. Brown stated that he was confirming the water rights that he had in his records for Kay Rigby. He reported that on the Nuffer canal there is a 12.00 cfs right; on the Sorenson Ditch there is a 29.40 cfs right; and on the Lloyd Ditch there is an 11.00 cfs right. He further stated that is was his understanding that the Baxters had purchased some or all of these water rights and that is the reason for the inquiry. Then Sharon Baxter contacted the

Idaho Falls office of IDWR, and was advised that the Watermaster made the assessments and sent them to the IDWR. Then on the 1994 Notice of "Distribution of the Budget Among Users" the District transferred all of the Lazy C-H Ranch, Inc. (Rigby's) water rights to the Baxters. (See the assessment notices, Exhibits 2 - 11)

8. When the Baxters purchased the Baxter Ranch they soon found that it was impossible to get any water out of the Bear River through any of the canals, at any time during the year because the dams were in total disrepair. The Baxters, as well as Marriner Jensen, had contacted FHA about repairing the dams in the river. In conversations with FHA personnel, and other parties, the FHA, at that time, was not sure it had any water rights left on its property because of the number of years that had elapsed since the FHA property had been irrigated. This the Baxters and the Jensens understood because it was impossible to get any water out of the river without getting the dams repaired. As a matter of fact, I am personally aware of sales of property by FHA in this state wherein the property was sold without water rights, because of the failure to water the premises for over five years. When this issue became more intensified in the Bear Lake area and the question of forfeiture or loss of water due to prescriptive or adverse user by someone else the government attorney in Portland, Oregon took a position that the Federal Government does not lose any rights by virtue of state statutes of limitation. Inquiries were made, apparently by the purchasers of the North and South Ranches, of the state records. Mr. Luke would find a record of whatever water rights, were appurtenant to the respective properties, and since he was asked, he would also advise of criminal statutes that he found on the book. He did not, however, go in to the issue of loss of those water rights, and especially loss of the easement rights for canals or ditches over private property leading from the river to Lazy C-H lands. He did not instruct the prospective purchasers that they should file criminal actions. On the other hand, inquiry was made of the attorney for the department, Mr. Rassier, who stated that the water belonged to the state and the statute provided that the right to use it would continue so long as there was not a period of five years of non-use, and that that rule applied not only to individuals but to governments, including local, state, and federal. Both the Jensens and the Baxters are very confident they could prove that no water could be taken from the river, at any time after 1982, without the repairing of the dams in the river. That is why they had requested FHA to pay a share of those costs. However, on March 23, 1993 Mr. Jensen received a letter from the FHA County Supervisor's office, Mr. David R. Birch, stating that the FHA would not participate in the repair of the dams. **He also indicated that as the dam has not been in existence for the past ten to twelve years, there may be a question as to the legal right to build a dam.** This letter is marked as Exhibit 13 and is attached hereto.

9. The Baxters sincerely believe that the water rights belong to them and there existed no easements, for canals or ditches or any other purposed across their lands for anyone. Mr. Nebeker visited with the Baxters in their home before the sale of the North and South Ranches, and inquired as to the status of the dams and water rights on those two properties. Mr. Baxter informed Mr. Nebeker that the Baxters owned all the water rights of the Lazy C-H Ranch, Inc., that Baxters and Jensens had done all the repairs on the dams, that FHA had refused to help them repair the dams and FHA had informed Baxters that Baxters owned all the water rights of Lazy

C-H Ranch, Inc. Considerable efforts have been expended by the Jensens and the Baxters to get these matters settled. Particularly they wanted all prospective buyers to be advised as to Baxters claims to the water, and that there were no easements left for canals, ditches, or other purposes across the Baxters' property. Mr. Bruce Larson notified Mr. York, Mr. Rush, Mr. Munson, and Mr. Nelson on November 18, 1996, of the Baxters interest in the water rights diverted from the Lloyd Ditch, when there was a possible sale to Darren Stewart and wife. A copy of that letter by Bruce Larson is attached hereto as Exhibit 14.

10. At the request of the Baxters the undersigned sent letters both to Conrad Nebeker dated March 22, 1999 and to James Smith dated June 9, 1999. Both of those letters advised the prospective buyers of the claims of the Baxters and Jensens. In both instances these prospective buyers were advised that they were invited to visit with the Baxters and Jensens and see what, if any, understandings and agreements could be arrived at between them. Copies of those two letters, labeled Exhibits 15 and 16 are attached hereto.

11. There were no measuring devices on the Sorensen and Lloyd Ditches at the time the dams were being repaired, nor were there any measuring devices in the Sorensen and Lloyd Ditches when the Baxters purchased their property in 1991. This is further evidence that no water was coming from the river through any of these canals. The Watermaster, followed by the State Director, R. Keith Higginson, required that before the users of those canals took water from the Sorensen and Lloyd Ditches there must be installed measuring devices. The users were identified on Attachment "A" to the Order issued by Mr. Higginson as Tracy Baxter only. A copy of that Order and its attachment, dated April 28, 1992 labeled Exhibit 17 is attached hereto. After Baxters installed the measuring devices, they were inspected and approved by the Water Department. A contractor for the Baxters and Jensens blocked the Lloyd Ditch at the time of the repair of the North dam, in 1993, to prevent Baxters' water, which they were able to get by repairing the dam, from flowing on to the North Ranch. So this dam was in the Lloyd Canal from 1993 until in the spring of 1999 when Mr. Smith had the same removed and he went on up the canal with his equipment, without permission, burying Baxters' headgates with his backhoe, and making it impossible for Baxter to use his own water. Then when Baxters restored that dam, we understand that Mr. Smith and Dr. Nebeker went to the sheriff and the prosecutor's office to get a warrant issued for the arrest of Mr. Baxter. This was at a time when Mr. Smith's attorney, Randy Budge, was negotiating with Mr. Rigby, and the parties, to try to resolve all matters, and at a time when it appeared that much progress was being made. Neither Mr. Rigby or Mr. Budge knew of Smith and Nebeker's visit with the prosecutor. Mr. Rigby had called the sheriff and advised him that he and Mr. Budge were working to settle the disputes between the parties.

Baxters used the Lloyd Ditch for the watering of their own property continually from the time the dam was repaired in 1993, until 1999 when the dam in the Lloyd Ditch was removed by Mr. Smith. During that period of time, the Baxters know for certain that no water has been used on what is now the Smith property since 1991 through the Lloyd Canal. Jensen knows that no water has been used on the Smith property since approximately 1982 because no water could get down the Lloyd Canal on to the North Ranch after Baxters and Jensens had put the dam in that canal in

1993. Nevertheless, the part of the story you haven't received is that in 1999, long after five years of non-use of the canal, which is a private easement over the lands of the Baxters, that canal was not used, but Smith sent his equipment in there in 1999 and dug out the canal, as well as the dam in it, and in so doing, covered over all of Mr. Baxter's headgates and outlets, and making it impossible for Baxters to use any of their own water. Consequently, since more than five years had elapsed since the canal was used by what is now known as the North Ranch or the Smith Ranch, Baxters sincerely believe that Mr. Smith does not have an easement, or right-of-way over Baxters' land to take water from the river to the North or the Smith Ranch. Consequently, they want to know why they are being prosecuted, when Mr. Smith, knowing there was a title problem to the water and especially to the easement itself, with all the notices he had received, went upon this property of the Baxters and destroyed diversionary works of the Baxters, even while his attorney was negotiating with Mr. Rigby to see if the title problems could be resolved. When the Baxters left the area, they did leave instructions with their hired man to take out the dam in the Lloyd Canal. This all happened before the criminal complaint was filed.

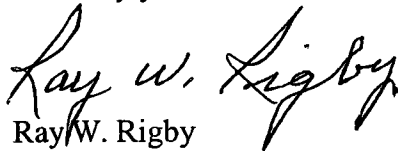
12. After all, the Baxters and Jensens have been assessed for all of the water rights, and those assessments were paid. The important thing is that those dams in the river had to be repaired or there would have been no water to fill anybody's rights. These people have spent over \$40,000.00 in repairing the dams. They requested FHA and the respective purchasers of the property for assistance, and have been denied any help. In a letter from Randy Budge, dated June 25, 1999, he said that Mr. Smith, under certain conditions, had indicated to Mr. Jensen that he was willing to pay his fair share of the costs of the dam repairs. Then on April 27, 2000 Mr. Smith, through Randy Budge, sends me a letter (a copy of which is attached hereto as Exhibit 18) which in effect requires that Baxters concede all arguments in favor of Mr. Smith and ends his letter by stating that if Mr. Baxter will do that, he will recommend to the County Prosecutor, that all pending criminal charges against Mr. Baxter will be dismissed. This is the strangest part of this whole dispute. It is obviously an attempt to use the criminal process to help resolve a civil matter. Mr. Nebeker and Mr. Smith believe they have raised issues of title and ownership in water rights and easements. If those matters can not be resolved by the parties, they should be tried in a civil court, and not in the criminal court. I was a county prosecuting attorney for fourteen years, myself, and have practiced law for fifty years, which included many years in the State Legislature. It has always been a common understanding that we do not try title by criminal cases. Look at the position it puts the Baxters in when they receive a letter that says, if you will agree to the terms as I want them, I will recommend that the criminal proceedings be dismissed. Mr. and Mrs. Baxter have been in their RV traveling around parts of the United States throughout the winter, and even though we have asked the parties to sit down and negotiate these matters, the criminal complaints have made it impossible for Mr. Baxter to come home and take care of his ranch and cattle, or even come back to sit down and talk with his attorney or with the parties involved, to avoid a civil quiet title action.

13. If anyone involved in these matters, including Mr. Smith and Mr. Nebeker, insist on using the criminal process in settling these matters, **then the Baxters hereby formally demand that criminal actions be immediately filed against Mr. Smith and Mr. Nebeker, and anyone else involved, for the violations of the Baxters' rights.** Further, the question of the violation of the

Mr. Helm & Mr. Bunn
May 15, 2000 - Page 6

civil rights of Mr. Baxter, as well as the defamation of his character, together with the continued harassment of the Baxters, such as the threat made recently that old established fence lines are going to be moved, shall be addressed by whatever legal action or actions the Baxters may take.

Sincerely yours,


Ray W. Rigby

RWR:ra
Enclosures

cc: Randy Budge
Tracy & Sharon Baxter
Tim Luke

152194

EXHIBIT 1

SPECIAL WARRANTY DEED

The Grantor, Farm Credit Bank of Spokane, successor by merger to The Federal Land Bank of Spokane, a corporation, for and in consideration of good and valuable consideration in hand paid, transfers and conveys to TRACY L. BAXTER and SHARON L. BAXTER, husband and wife, of 577 East 400 North, Preston Idaho, the Grantee, the following described real estate, situated in the County of Bear Lake, State of Idaho:

Township 14 South, Range 45 East, Boise Meridian:

Section 23: S1/2 S1/2
Section 24: SW1/4 SW1/4
Section 25: NE1/4 NE1/4; SW1/4 NW1/4
Section 26: E1/2; E1/2 NW1/4
Section 27: SE1/4 SE1/4
Section 34: NE1/4; E1/2 NW1/4; SW1/4 NW1/4
Section 35: N1/2 NE1/4; SE1/4 NE1/4; NE1/4 NW1/4; NE1/4 SE1/4;
and that part of the SW1/4 NE1/4, NW1/4 SE1/4, and SE1/4
SE1/4 lying East of the Union Pacific Railroad Right of Way.
Section 36: NW1/4 NW1/4

Township 14 South, Range 46 East, Boise Meridian:

Section 6: Lot 7, SE1/4 SW1/4
Section 7: Lots 1, 2, 3, 4; W1/2 NE1/4; E1/2 W1/2;
NW1/4 SE1/4
Section 18: Lots 1 and 2
Section 19: Lots 1 and 4; E1/2 W1/2
Section 30: Lot 2; NE1/4 NW1/4; and
ALSO: Beginning at the Southwest Corner of Lot 4 of said
Section 30, and running thence in a Northeasterly direction in
a straight line to the Northeast Corner of Lot 3 of Said Section
30; thence West along the North line of Lot 3 to the Northwest
Corner thereof, thence South along the West line of Section 30
to the Southwest Corner of Lot 4, the Point of Beginning.
EXCEPT THEREFROM: That portion thereof lying within
the boundaries of Highway No. 30 North.

The Grantor warrants against encumbrances suffered or created by the Grantor, free
and clear of encumbrances except all taxes, assessments, and charges to be paid by the

152194

Grantee and any lien or encumbrance revived or placed on said premises by, through or under the Grantee and any other encumbrance or defect which the Grantee has assumed by reason of the terms and conditions of that certain Sale Agreement & Receipt for Earnest Money dated March 11, 1991.

Grantor hereby expressly grants and conveys unto Grantee, their successors and assigns forever, all water rights, oil, gas, hydrocarbons, coal or other minerals of whatsoever nature lying in or under the above described lands and all royalty interests as to oil, gas, and other minerals produced and saved therefrom which have not been previously reserved and which may be or upon said lands above described or any part thereof.

DATED This 1st day of April, 1991.

FARM CREDIT BANK OF SPOKANE

By Stephen D. Revis
STEPHEN D. REVIS
Sr. Credit Officer

STATE OF IDAHO)
 ss
County of Bonneville)

On this 1 day of April, 1991, before me, the undersigned Notary ^{swr}
Public in and for said county and state, personally appeared Stephen D. Revis, known or identified to me to be the Authorized Representative of The Farm Credit Bank of Spokane, the corporation that executed the foregoing instrument, and acknowledged to me that he executed the same on behalf of said corporation.

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

(SEAL)

Ken Bisk
NOTARY PUBLIC for Idaho

Residing at: Ord, ID

Commission Expires: 12-1-94

BEAR LAKE COUNTY RECORDER
JOAN F. EBOHN

152194

'91 APR 1 PM 1 36
Cynthia Jean #9.00
DEPUTY FEE

EXHIBIT 2

1990 WATER ASSESSMENTS - WATER DISTRICT #11 BEAR RIVER

Owner or Ditch	Decree Rights	Total 24 Hr. Sec. Ft.	Total Cost 1990
Miller Ditch	21.5	310	20.00
LaVoy Esterholt	3.45=16.05%		3.21
Grant Esterholt	3.45=16.05%		3.21
LaVoy Taylor	1.20=05.58%		1.12
Henry Rigby	13.40=62.32%		12.46
Nuffer Canal	28.30	1,220	68.20
Henry Rigby	7.40=26.15%		17.83
Larry Butler	3.00=10.60%		7.23
DeMar Romrell	4.50=15.90%		10.84
LaVoy Taylor	1.40=04.95%		3.38
Ream - Crockett	62.30	2,616	28.92
Jensen Ditch - Mariner Jen.	8.30	0	145.23
Dingle Irrigation	67.00	0	20.00
Black Otter Canal	121.00	5,067	20.00
Black Otter Irr.	103.50=85.54%	8,091	283.25
Peg Leg Irr.	17.50=14.46%		452.29
Preston Montperlier Irr.	75.90	4,106	386.89
LaRocco Kent Canal	16.25	224	65.40
Darrell Keetch	11.15=68.62%		229.53
Paul Keetch	03.80=23.38%		20.00
Larry Linford	01.30=08.00%		13.72
Pugmire Ditch	06.90	154	4.68
Westfork Irr.	160.00	10,108	1.60
Budqe Canal	28.50	1,224	20.00
Magee Harris	26.50=92.98%		565.04
Randy Panter	02.00=07.02%		68.47
Paul Kunz #1 & #2	07.50	47	63.62
Parley Kunz	01.66	0	4.80
Dean Kunz	06.18	22	20.00
S. & R. Kunz	01.74	36	20.00
Larry Alleman	02.10	0	20.00
Cloyd Wallentine	01.60	0	20.00
Wayne Kunz	02.89	69	20.00
Allen Phelps	01.17	49	20.00
L. Stevens	04.00	23	20.00
R. Christensen	03.08	98	20.00
TOTAL BEAR LAKE COUNTY		33,464	2,132.96
Last Chance Canal Co.	658.00	32,446	1,813.73
Gentile Valley Canal	71.20	5,477	306.16
Gentile Valley Canal	33.00=46.35%		141.91
Thatcher Irrigation	26.20=35.80%		112.67
Jim Elsmore	07.00=09.83%		51.58

Received: 11/ 7/90; 3:23PM;

208 547 2241 -> BAXTER RANCH; #1

Nov-07-96 14:21 Caribou Title

208 547 2241

P.01

BUDGET ADOPTED AT THE ANNUAL MEETING

OF THE WATER USERS

WATER DISTRICT No. 11

Estimated Amount for Watermaster's Salary	\$ 8,919.00
Estimated Amount for Assistant Watermaster	\$ 6,240.00
Estimated Amount for Other Expenses	\$ 20,298.00
TOTAL ESTIMATED EXPENSES FOR 19 <u>91</u>	\$ 35,457.00

DISTRIBUTION OF THE BUDGET AMONG USERS

Individual, Ditch or Canal Company, assessed	Water Right Ident. No.	Address	Amount of Budget
Grant Esterholt		Montpelier, Id 83254	\$ 3 21
LaVoy Esterholt		Montpelier, Id 83254	3 21
LaVoy Taylor		Montpelier, Id 83254	1 12
Henry Rigby		Montpelier, Id 83254	12 46
Henry Rigby		Montpelier, Id 83254	15 82
Larry Butler		Montpelier, Id 83254	6 41
Demarr Romrell		Montpelier, Id 83254	9 60
LaVoy Taylor		Montpelier, Id 83254	2 99
Kay Rigby		Montpelier, Id 83254	25 60
Sorensen Ditch-Kay Rigby		Montpelier, Id 83254	20 00
Jensen Ditch-Mariner Jensen		Montpelier, Id 83254	20 00
Lloyd Ditch-Kay Rigby		Montpelier, Id 83254	20 00
Dingle Irrigation Company		Montpelier, Id 83254	273 64
Black Otter Irrig Company		Montpelier, Id 83254	356 13
Peg Leg Island Irrigation		Montpelier, Id 83254	60 20
Preston Montpelier Irrig.		Montpelier, Id 83254	216 43
Darrell Keetch		Montpelier, Id 83254	13 72
Paul Keetch		Montpelier, Id 83254	4 68
Larry Linford		Montpelier, Id 83254	1 60
Ream Crockett Irrig. Co.		Dingle, Id 83233	122 37
Pugmire Ditch		Montpelier, Id 83254	20 00
Westfork Irrigation		Geneva, Id Id 83238	530 56
McGee Harris		Soda Sprgs, Id 83276	57 74
Randy Panter		Thatcher, Id 83283	4 36
Paul Kunz		Bern, Id 83220	20 00
Parley Kunz		Bern, Id 83220	20 00
Dean Kunz		Montpelier, Id 83254	20 00
Stephen Kunz		Bern, Id 83220	20 00
Larry Alleman		Bern, Id 83220	20 00
Cloyd Wallentine		Paris, Id 83261	20 00
Wayne Kunz		Montpelier, Id 83254	20 00
Allen Phelps		Montpelier, Id 83254	20 00
Lyle Stevens		Logan, Ut 84321	20 00
Stuart Crane		Bennington, Id 83254	20 00

Received: 11/ 7/98; 3:24PM;

208 547 2241 => BAXTER RANCH; #2

Nov-07-96 14:21 Caribou Title

208 547 2241

P.02 4

Individual, Ditch or Canal Company, assessed	Water Right Ident. No.	Address	Amount of Budget
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WATER DISTRICT #11
WATER USER NAME
1992 BUDGET

ACTUAL
BILL
THIS YR

**LEVOY ESTERHOLT	412 N 5, MONTPELIER ID 83254	8.95
**GRANT ESTERHOLT	160 S 2, MONTPELIER ID 83254	8.95
**FLOYD BENTON	MONTPELIER, ID 83254	3.12
**HENRY RIGBY	49 CANAL LN, MONTPELIER ID 83254	34.70
**HENRY RIGBY	49 CANAL LN, MONTPELIER ID 83254	17.54
**LARRY BUTLER	MONTPELIER, ID 83254	7.11
**DEMAR ROMRELL	6000 PEGRAM RD, MONTPELIER ID 83254	10.67
**FLOYD BENTON	MONTPELIER, ID 83254	3.51
**KAY RIGBY	MONTPELIER ID 83254	28.21
REAM CROCKETT IRRIG. CO.	4854 DINGLE RD, DINGLE ID 83233	144.86
SORENSEN DITCH-KAY RIGBY	MONTPELIER, ID 83254	20.00
JENSON DITCH-MARINER JENSEN	8989 US HWY 30 MONTPELIER, IDAHO 83254	0.00
LLOYD DITCH-KAY RIGBY	MONTPELIER, ID. 83254	20.00
DINGLE IRRIG. CO.	MONTPELIER, ID 83254	258.29
**BLACK OTTER IRRIG. CO.	MONTPELIER, ID 83254	250.84
**PEG LEG ISLAND IRRIG	MONTPELIER, ID 83254	42.39
PRESTON MONTPELIER IRRIG	MONTPELIER, ID 83254	188.36
**DARRELL KEETCH	327 S. 7 MONTPELIER, ID 83254	13.72
**PAUL KEETCH	1052 DINGLE ROAD DINGLE ID 83233	4.68
**LARRY LINFORD	3163 DINGLE ROAD MONTPELIER, ID 83254	1.60
PUGMIRE DITCH	MONTPELIER, ID 83254	20.00
WESTFORK IRRIG.	GENEVA ID 83238	553.54
**MCGEE HARRIS	1501 EIGHT MILE RD SODA SPRINGS ID 83276	64.36
**RANDY PANTER	1488 N HWY 34 THATCHER, ID 83283	4.85
PAUL KUNZ #1 & #2	491 MAIN BERN, ID 83220	40.00
PARLEY KUNZ	BERN, ID 83220	20.00
DEAN KUNZ	MONTPELIER, ID 83254	20.00
STEPHEN & R KUNZ	198 MAIN BERN, ID 83220	20.00
LARRY ALLEMAN	1630 LOWER BERN ROAD BERN, ID 83220	0.00
CLOYD WALLENTINE	104 E 2ND N PARIS, ID 83261	20.00
WAYNE KUNZ	866 ADAMS MONTPELIER, ID 83254	20.00
ALLEN PHELPS	MONTPELIER, ID 83254	20.00
LYLE STEVENS	LOGAN, UT 84321	20.00
STUART CRANE	87 S 1 EAST, BENNINGTON 83254	20.00

TOTAL BEAR LAKE COUNTY

1910.25

OVER

Received: 11/ 7/96; 3:24PM;

208 547 2241 => BAXTER RANCH; #3

Nov-07-96 14:21 Caribou Title

208 547 2241

P.03

DISTRIBUTION OF THE BUDGET AMONG USERS

WATER DISTRICT #11
WATER USER NAME
1993 BUDGET

Water
Right
Ident. No.

Address

Amount of Budget

NET AMT
TO BILL
THIS YR

**LEVOY ESTERHOLT
**GRANT ESTERHOLT
**LAVOY TAYLOR
**HENRY RIGBY

412 N 5, MONTPELIER ID 83254
160 S 2, MONTPELIER ID 83254
MONTPELIER, ID 83254
49 CANAL LN, MONTPELIER ID 83254

-5.20
-5.20
-1.83
-20.19

**HENRY RIGBY
**LARRY BUTLER
**DEMAR ROMRELL
**LAVOY TAYLOR
**KAY RIGBY
REAM CROCKETT IRRIG. CO.
SORENSEN DITCH-KAY RIGBY
JENSON DITCH-MARINER JENSEN
LLOYD DITCH-KAY RIGBY
DINGLE IRRIG. CO.

49 CANAL LN, MONTPELIER ID 83254
MONTPELIER, ID 83254
6000 PEGRAM RD, MONTPELIER ID 83254
MONTPELIER, ID 83254
MONTPELIER ID 83254
4854 DINGLE RD, DINGLE ID 83233
MONTPELIER, ID 83254
8989 US HWY 30 MONTPELIER, IDAHO 8325
MONTPELIER, ID. 83254
MONTPELIER, ID 83254

32.71
13.26
19.89
5.95
53.33
214.98
38.76
0.00
20.00
243.24

**BLACK OTTER IRRIG. CO.
**PEG LEG ISLAND IRRIG
PRESTON MONTPELIER IRRIG

MONTPELIER, ID 83254
MONTPELIER, ID 83254
MONTPELIER, ID 83254

339.65
57.43
254.46

**DARRELL KEETCH
**PAUL KEETCH
**LARRY LINFORD
PUGMIRE DITCH
WESTFORK IRRIG.

327 S. 7 MONTPELIER, ID 83254
1052 DINGLE ROAD DINGLE ID 83233
3163 DINGLE ROAD MONTPELIER, ID 83254
MONTPELIER, ID 83254
GENEVA ID 83238

13.72
4.68
1.60
20.00
498.36

**MCGEE HARRIS
**RANDY PANTER
PAUL KUNZ #1 & #2
PARLEY KUNZ
DEAN KUNZ
STEPHEN & R KUNZ
LARRY ALLEMAN
CLOYD WALLENTINE
WAYNE KUNZ
ALLEN PHELPS
LYLE STEVENS
STUART CRANE

1501 EIGHT MILE RD SODA SPRINGS ID 83276
1488 N HWY 34 THATCHER, ID 83283
491 MAIN BERN, ID 83220
BERN, ID 83220
MONTPELIER, ID 83254
198 MAIN BERN, ID 83220
1630 LOWER BERN ROAD BERN, ID 83220
104 E 2ND N PARIS, ID 83261
866 ADAMS MONTPELIER, ID 83254
MONTPELIER, ID 83254
RT # 2, MONTPELIER ID 83254
87 S 1 EAST, BENNINGTON 83254

205.85
15.55
40.00
20.00
20.00
20.00
20.00
0.00
20.00
20.00
20.00
20.00

TOTAL BEAR LAKE COUNTY

2221.00

Received: 11/ 7/96; 3:25PM;

208 547 2241 => DAXTER RANCH; #4

Nov-07-96 14:22 Caribou Title

208 547 2241

P.04

DISTRIBUTION OF THE BUDGET AMONG USERS

WATER DISTRICT #11
WATER USER NAME
1994 BUDGET

ADDRESS

NET AMT
TO BILL
THIS YR

MILLER DITCH	412 N 5TH, MONTPELIER ID 83254	-4.78
**LAVOY ESTERHOLT	160 SOUTH 2ND, MONTPELIER ID 83254	-4.78
**GRANT ESTERHOLT	EMMAUS FUND, 1734 MILLBROOK RD, SLC UT 84106	-1.68
**LAVOY TAYLOR	49 CANAL LN, MONTPELIER ID 83254	-18.56
**HENRY RIGBY		
NUFFER CANAL	49 CANAL LN, MONTPELIER ID 83254	14.04
**HENRY RIGBY	MONTPELIER ID 83254	5.69
**LARRY BUTLER	6000 PEGRAM RD, MONTPELIER ID 83265	8.53
**DEMAR ROMRELL	EMMAUS FUND, 1734 MILLBROOK RD, SLC UT 84106	2.42
**LAVOY TAYLOR	TRACY BAXTER 3000 PEGRAM RD MONTPELIER ID 83254	23.05
**KAY RIGBY	TRACY BAXTER 3000 PEGRAM RD, MONTPELIER ID 83254	8.67
SORENSEN DITCH-KAY RIGBY <i>Tracy Baxter</i>	8989 US HWY 30, MONTPELIER ID 83254	31.38
JENSON DITCH-MARINER JENSEN *	TRACY BAXTER 3000 PEGRAM RD, MONTPELIER ID 83254	20.00
LLOYD DITCH-KAY RIGBY	MONTPELIER ID 83254	291.16
DIXIE IRRIG. CO.		
BLACK OTTER CANAL	MONTPELIER ID 83254	424.07
**BLACK OTTER IRRIG. CO.	MONTPELIER ID 83254	71.70
**PEG LEG ISLAND IRRIG	MONTPELIER ID 83254	300.29
PRESTON MONTPELIER IRRIG		
LAROCCO KENT CANAL	327 S 7TH, MONTPELIER ID 83254	13.72
**DARRELL KEETCH	1052 DINGLE RD, DINGLE ID 83233	4.68
**PAUL KEETCH	3163 DINGLE RD, MONTPELIER ID 83254	1.60
**LARRY LINFORD	MONTPELIER ID 83254	20.00
PUGMIRE DITCH	GENEVA ID 83238	405.27
WESTFORK IRRIG.		
BUDGE CANAL	1501 EIGHT MILE RD, SODA SPRINGS ID 83276	19.00
**MCGEE HARRIS	14885 N HWY 34, THATCHER ID 83283	1.00
**RANDY PANTER	491 MAIN, BERN ID 83220	40.00
PAUL KUNZ #1 & #2		0.00
PARLEY KUNZ	MONTPELIER ID 83254	20.00
DEAN KUNZ	198 MAIN, BERN ID 83220	20.00
STEPHEN & R KUNZ	1630 LOWER BERN RD, BERN ID 83220	20.00
LARRY ALLEMAN	104 E 2ND N, PARIS ID 83261	0.00
CLOYD WALLENTINE	866 ADAMS, MONTPELIER ID 83254	20.00
WAYNE KUNZ	MONTPELIER ID 83254	20.00
ALLEN PHELPS	RT # 2, MONTPELIER ID 83254	20.00
LYLE STEVENS	STUART CRANE 87 S 1 E, BENNINGTON ID 83254	20.00
R. CHRISTENSEN	4854 DINGLE RD, DINGLE ID 83233	311.40
REAM-CROCKETT		

TOTAL BEAR LAKE COUNTY

2128.34

*Mr.
Jones*

EXHIBIT 7

COUNTY TREASURER'S

WATERMASTER TAX RECEIPT

BEAR LAKE COUNTY, IDAHO

Water District No. 11

SEASON OF 1992

PARIS, IDAHO April 1, 19 92

Assessed Against Tracy Baxter

Paid by _____

Address _____

Budget \$ 68.21

\$ _____

Total Tax Paid _____ \$ _____

Interest from _____ \$ _____

Total Tax Paid _____ \$ 68.21

This receipt is issued subject to collection where payment is tendered in form other than cash.

Nola Jones
Treasurer of Bear Lake County, Idaho

WATER ASSESSMENT

TO: Tracy Baxter
3000 Pegram Rd.
Montpelier, ID 83254

Feb. 18, 1992 WATER DIST. NO. 11

ASSESSED AGAINST (Kay Rigby), Sorensen Ditch
and Lloyd Ditch

AMOUNT DUE: \$68.21

AMOUNTS TO BE COLLECTED AND REMITTED TO
WATER DISTRICT # 11 BY APRIL 1st, 1992
OR NO WATER WILL BE ALLOWED.

PLEASE SEND PAYMENT TO:

NOLA F. JONES, TREASURER
BEAR LAKE COUNTY
P. BOX 55
PARIS, ID 83261

Hayd Ditch 20 -
Javison Ditch 20 -
Truffert 28.25 (21)

211 # 622
3/30/92

WATER ASSESSMENT

TO: Tracy Baxter

3000 Pegram Road

Montpelier, ID 83254

DATE February 8, 1993 WATER DIST. NO. 11

ASSESSED AGAINST Sorensen Ditch-Kay Rigby

AMOUNT DUE: \$38.76

AMOUNTS TO BE COLLECTED AND REMITTED TO
WATER DISTRICT # 11 BY APRIL 1, 1993
OR NO WATER WILL BE ALLOWED.8% interest will be charged on unpaid accounts.
PLEASE SEND PAYMENT TO:NOLA F. JONES, TREASURER
BEAR LAKE COUNTY
P. O. BOX 55
PARIS, ID 83261

COUNTY TREASURER'S

WATERMASTER TAX RECEIPT

BEAR LAKE COUNTY, IDAHO

Water District No. 11

SEASON OF 1993

PARIS, IDAHO 4-7, 1993

Assessed Against

Tracy Baxter

Paid by

Same

Address

Budget \$ 103.58

Total Tax Paid

Interest from

Total Tax Paid

\$ 103.58

This receipt is issued subject to collection where
payment is tendered in form other than cash.Nola Jones (Signature)
Treasurer of Bear Lake County, Idaho

WATER ASSESSMENT

TO: Tracy Baxter

3000 Pegram Road

Montpelier, ID 83254

DATE February 8, 1993 WATER DIST. NO. 11

ASSESSED AGAINST Lloyd Ditch-Kay Rigby

AMOUNT DUE: \$20.00

AMOUNTS TO BE COLLECTED AND REMITTED TO
WATER DISTRICT # 11 BY APRIL 1, 1993
OR NO WATER WILL BE ALLOWED.

8% interest will be charged on unpaid accounts.
PLEASE SEND PAYMENT TO:

NOLA F. JONES, TREASURER
BEAR LAKE COUNTY
P. O. BOX 55
PARIS, ID 83261

*58-
103.
CR # 1044
3/29/93*

*Dee Brown
CPA
District 11
547-3305*

WATER ASSESSMENT

TO: Tracy Baxter

3000 Pegram Road

Montpelier, ID 83254

DATE February 8, 1993 WATER DIST. NO. 11

ASSESSED AGAINST Kay Rigby

(Malwe Ditch)

AMOUNT DUE: \$44.82

AMOUNTS TO BE COLLECTED AND REMITTED TO
WATER DISTRICT # 11 BY APRIL 1, 1993
OR NO WATER WILL BE ALLOWED.

8% interest will be charged on unpaid accounts.
PLEASE SEND PAYMENT TO:

NOLA F. JONES, TREASURER
BEAR LAKE COUNTY
P. O. BOX 55
PARIS, ID 83261

WATERMASTER TAX RECEIPT

BEAR LAKE COUNTY, IDAHO

Water District No. 11SEASON OF 1994PARIS, IDAHO April 5, 1994Assessed Against Nuffer Canal - \$23.05Sorenson Ditch - 8.67Paid by Lloyd Ditch - 20.00

Address _____

Budget \$ 51.72

\$ _____

Total Tax Paid _____ \$ _____

Interest from _____ \$ _____

Total Tax Paid _____ \$ 51.72

This receipt is issued subject to collection where
payment is tendered in form other than cash.

Nola Jones
Treasurer of Bear Lake County, Idaho

WATER ASSESSMENT

TO: TRACY BAXTER3000 PEGRAM RD.MONTPELIER, ID 83254DATE FEB. 17, 1994 WATER DIST. NO. 11ASSESSED AGAINST NUFFER CANAL - \$23.05* SORENSON DITCH - 8.67AMOUNT DUE: \$51.72 * LLOYD DITCH - 20.00

AMOUNTS TO BE COLLECTED AND REMITTED TO
WATER DISTRICT # 11 BY APRIL 1st 1994
OR NO WATER WILL BE ALLOWED.

8% Interest will be charged on unpaid accounts.
PLEASE SEND PAYMENT TO:

NOLA F. JONES, TREASURER
BEAR LAKE COUNTY
P. O. BOX 55
PARIS, ID 83261

WATER ASSESSMENT

TO: TRACY BAXTER
3000 PEGRAM RD.
MONTPELIER, ID 83254

DATE FEB. 16, 1995 WATER DIST. NO. 11

ASSESSED AGAINST NUFFER CANAL 7.58 -
SORENSEN DITCH 13.28 -
JENSEN DITCH 20.00 -
LLOYD DITCH 20.00 -

AMOUNT DUE: \$60.86

AMOUNTS TO BE COLLECTED AND REMITTED TO
 WATER DISTRICT # 11 BY APRIL 5, 1995
 OR NO WATER WILL BE ALLOWED.

8% interest will be charged on unpaid accounts.

PLEASE SEND PAYMENT TO:

NOLA F. JONES, TREASURER
 BEAR LAKE COUNTY
 P. O. BOX 55
 PARIS, ID 83261

86
 60.86
 - 20.86
 40.00

CK#2049
 3/8/95

COUNTY TREASURER'S

WATERMASTER TAX RECEIPT

BEAR LAKE COUNTY, IDAHO

Water District No. 11

SEASON OF 1995

Assessed Against

Nuffer Canal - \$7.58 Sorensen Ditch - \$13.28
Lloyd Ditch - \$20.00

Paid by

Address

Budget \$ 40.86

Total Tax Paid

Interest from

Total Tax Paid

This receipt is issued subject to collection where
 payment is tendered in form other than cash.

Nola Jones
 Treasurer of Bear Lake County, Idaho

COUNTY TREASURER'S

WATERMASTER TAX RECEIPT

BEAR LAKE COUNTY, IDAHO

Water District No. 11

EXHIBIT 11

SEASON OF 1996

PARIS, IDAHO 4.10, 1996

Assessed Against Tracy Baxter

Paid by _____

Address _____

Budget \$ 40.08

Total Tax Paid _____

Interest from _____

Total Tax Paid _____

\$ 80.08

Nuffer
Roghy 40.08
Sorenson
Nitch 20.00
Lloyd
Ditch 20.00

Nola F. Jones
Treasurer of Bear Lake County, Idaho

This receipt is issued subject to collection where payment is tendered in form other than cash.

WATER ASSESSMENT

TO: TRACY BAXTER

3000 PEGRAM RD.

MONTPELIER ID 83254

DATE FEB. 13, 1996 WATER DIST. NO. 11

ASSESSED AGAINST NUFFER CANAL - 40.08
SORENSEN DITCH - 20.00
LLOYD DITCH - 20.00

AMOUNT DUE: 80.08

AMOUNTS TO BE COLLECTED AND REMITTED TO
WATER DISTRICT # 11 BY APRIL 1, 1996
OR NO WATER WILL BE ALLOWED.

8% interest will be charged on unpaid accounts.

PLEASE SEND PAYMENT TO:

NOLA F. JONES, TREASURER
BEAR LAKE COUNTY
P. O. BOX 55
PARIS, ID 83261

3552770
96-10-11
2
(B)

GERALD L. BROWN
CERTIFIED PUBLIC ACCOUNTANT

VOICE (208) 547-3305

P.O. BOX 378
SODA SPRINGS, ID 83276-0378

FAX (208) 547-3305

June 8, 1993

Sharon Baxter
3000 Pegram Road
Montpelier, ID 83254

Dear Sharon,

As per your request I am confirming the water rights that I have in my records for Kay Rigby. On the Nuffer Canal there is a 12.00 cfs right. On the Sorensen Ditch there is a 29.40 cfs right. On the Lloyd Ditch there is a 11.00 cfs right. It is my understanding that you have purchased some or all of these water rights. You were unsure on which ones. These figures are what I show and as far as I know they are correct. However, I cannot guarantee that these amounts are correct or that you actually own them. As I suggested you may wish to contact the Idaho Department of Water Resources in Boise for further clarification. Please let me know when you find out which rights you own and if these amounts are correct.

Sincerely yours,



Gerald L. Brown,
Certified Public Accountant

pc Pete Peterson



United States
Department of
Agriculture

Farmers
Bureau
Administration

139 East 2nd South, No. 3
Soda Springs, Idaho 83278

EXHIBIT 13

March 23, 1993

Mr. Marriner Jensen
8989
US HWY 30
Montpelier, ID 83254

Dear Mr. Jensen:

We have finally received a response back from our State Office concerning the dam you are rebuilding.

They have decided that FmHA will not participate in the repair of the dam. They have indicated that as the dam has not been in existence for the past 10 to 12 years, there may be a question as to the legal right to build the dam. Also, there is no water users agreement existing documenting the responsibilities and rights of the landowners involved.

If you have any questions, please contact this office.

Sincerely,

DAVID R. BIRCH
Assistant County Supervisor

A. BRUCE LARSON • Attorney at Law

241 S. Main • P.O. Box 608 • Soda Springs, ID 83276 • (208) 547-2186 • Fax (208) 547-2297

November 18, 1996

William A. York
 United States Department of Agriculture
 Farm Service Agency
 Idaho State FSA Office
 3220 Elder Street
 Boise, ID 83705-4711
VIA FAX (208) 378-5678

John Bennett Munson
 FSA Attorney
 1724 Federal Building
 1220 SW 3rd Avenue
 Portland, OR 97204-2825
VIA FAX (502) 326-3807

Richard R. Rush
 State Executive Director
 Farm Service Agency
 Idaho State FSA Office
 3220 Elder Street
 Boise, ID 83705-4711
VIA FAX (208) 378-5678

Dennis Nelson
 Agriculture Credit Director
 Idaho State FSA Office
 3220 Elder Street
 Boise, ID 83705-4711
VIA FAX (208) 378-5678

Gentlemen:

I represent Tracy and Sharon Baxter. I am sure you are all well aware that Baxters purchased certain property which is located in Pegrarn, Idaho and is bordered on the north and south by property in which the Farm Service Agency (hereinafter "FSA") claims an interest. Based upon information my client received, the property to the north of Baxters, together with a water right of 11 cfs (diverted from the Lloyd Ditch), is in the process of being sold to a John and Lelsy Stewart. The property bordering the Baxters to the south has been advertised for sale at a public auction on the 20th of November, 1996. The advertisement claims that there is an existing 12 cfs water right that will be sold along with the property.

Baxters have a bona fide interest in the water rights being sold by FSA. Baxters purchased all water rights appurtenant to their real property from Farm Credit Bank of Spokane on or about April 1, 1991. The water is administered by the Bear River Water Master and the use of the water is within a recognized water district. The Bear River Water Master has assessed and the Baxters have paid tax assessments on the water rights which FSA is now trying to sell. Farm Service Agency has not used any water on the two parcels in question for a period in excess of five (5) years, resulting in a statutory forfeiture of those rights (see Idaho Code §42-222(2)). FSA has refused to participate in any of the costs associated with maintenance of canals, diversions, or measuring devices. Baxters have used all water available through the

William A. York
John Bennett Munson
Richard R. Rush
Dennis Nelson
November 18, 1996
Page 2

various diversions for a period of five years, the diversions and canals do not have the capacity to transport any greater volumes of water than is being used by Baxters. The water master has monitored and approved the diversions, measuring devices, and the volume of water being used by Baxter since 1991.

Baxters intend to file an action for the adjudication of the water rights in question and if necessary to show the forfeiture of any claim FSA may have to the disputed water rights.

Baxters are requesting that Farm Service Agency cancel the sale scheduled on November 20, 1996 in order to allow time to resolve this problem to avoid involving the successful bidder at the auction. Because this issue is likely to impact any subsequent purchasers of the property Baxters will file a *lis pendens* and to the extent possible provide actual notice of their claim to any other persons who may claim some interest in the water. In the event Baxters do not receive notice that the sale has been cancelled on or before 10:00 a.m., November 19, 1996, my clients will have no other recourse other than to file an action to determine their interest in the water prior to the time of the sale.

Yours very truly,

A. Bruce Larson

ABL:pc

cc: Steve Hardesty, Attorney at Law
Tracy and Sharon Baxter

Law Offices

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

Ray W. Rigby
Gordon S. Thatcher
G. Rich Andrus
Jerry R. Rigby
Michael S. Kam
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

March 22, 1999

Conrad Nebeker
1750 Kershaw
Ogden, UT 84409

Re: Water Right and Easement

Dear Mr. Nebeker:

Recently you purchased land from the United States of America in the Pegram area. Tracy and Sharon Baxter own property adjoining that property. Several years ago a portion of the property that you acquired was being irrigated with water from the Bear River through a canal and/or ditch that crossed a portion of the Baxter's land. A dam, known as the North Dam, in the Bear River was necessary to force the water through said diversionary canal for the irrigation of the Baxter's land, and the Mariner Jensen land as well as the land you acquired from the government.

Prior to 1991 the persons owning or operating the land you have acquired ceased irrigating your land and ceased using the canal or maintaining said canal or the dam. The Baxters and the Mariner Jensens were denied any assistance from the government or anyone, even though the dam had deteriorated to such a point that it was impossible to get water sufficient to irrigate even their own property. No assessments were paid on the water rights except by the Baxters. They were told they had all of the water but the government always advertised the land for sale, with water rights.

Commencing in 1991 the Baxters paid the water assessments and used the water exclusively, to the exclusion of the prior owners and/or operators of the land you purchased. That use was open, adverse, and with a claim of right from that time up until the present time, except that the U.S. Government paid assessments, even though the Baxters had already paid them on the water right for the last year or two. The cost of rebuilding the dam and bringing the canal up to a proper state of maintenance was considerable. All of that cost was paid by the Baxters and the Mariner Jensens.

Section 42-222.2 of the Idaho Code provides as follows;

All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated. . .

This statute is not the regular statute of limitations found in the laws of the states. Under the Constitution and Laws of the State of Idaho the water belongs to the state. It is subject to appropriation by diversion and application to a beneficial use, subject to certain rules and regulations imposed by statute and Idaho Department of Water Resources. The state recognizes that right to use the water until the right holder fails to use the water for a period of five (5) years. According to the attorney for the Idaho Department of Water Resources the state of Idaho has always taken the position that this rule applies to every water user, public or private, government or citizen. Therefore, since the water right to the property you purchased was not used for more than five (5) years it has been lost and forfeited.

As to the canal easement across the Baxter's land and the dam itself, the water right is acquired from the state. That water right, by itself, does not entitle the right holder to an easement across another person's property, it only provides reason for obtaining such an easement. As a matter of fact, under Idaho Law, one cannot initiate a water right in trespass upon another person's property. The canal easement can be acquired by an instrument in writing wherein the land owner conveys an easement to an individual, or it can be obtained by prescriptive use for a period of at least five (5) years. It also can be lost, independent of the question of ownership of the water right, by non use for a period of five (5) years, under Idaho law. I understand there is no question but that the canal has not been used by the predecessors in title of the property you purchased, or operators in their behalf, for over five (5) years. Therefore, the easement, whatever it was, since no instrument in writing has been found, for the crossing of Baxter's property, with a canal, has been lost and forfeited, and the dam in the Bear River, having been totally reconstructed by the Baxters and Jensens, is claimed as their property exclusively and that you would have no right to the use of it.

There is also another dam known as the South dam. It is located on the Bear River on or near the FHA property, purchased by you. That dam is used to divert water into a canal, for approximately 100 ft to a head gate and another smaller dam where the canal washed out. Baxters installed the measuring devices. (there is an order, April 28, 1992, from the Dept of Water requiring Baxters, not Baxters and FHA, to install measuring devices on the Sorensen-south dam and the Lloyd-north dam). The Baxters have correspondence from the IDWR, stating that Baxters were not getting all the water they were entitled to through the head gate.

Baxters have maintained both dams and the entire canal since 1991 and paid all assessments to 1997 when the canal company returned Baxters check, because the company had made an apportionment of assessments. This canal runs north across (FHA) your property for approximately ¼ mile to the Baxter property. FHA has refused to help maintain dams and canals and Baxters have been so advised in writing.

I understand Mr. Nebeker, you've warned Baxters not to enter your property to maintain this

canal or dams, or to go on your land to open the head gate and do maintenance on the canal and dams.

Baxters assert that they have a right to do so and that they have been doing so continuously since they purchased their ranch in 1991. FHA knew Baxters were maintaining the dams and canal.

For your information I'm sending you a copy of Idaho Code sections 42-1102 and 42-1204 on water course easements.

This letter is being written before the irrigation season begins, so that you would be given a clear understanding of the legal position that the Baxters and Jensens take on this matter. By the same token, you are invited to visit with the Baxters and Jensens at any time, to see what, if any, understandings and agreements can be arrived at between you and the Baxters and Jensens concerning the canals and dams.

Yours very truly,

Ray Rigby

sj

CC: Bruce Larson
Baxters
Jensens

BAXTER1.LTR

EXHIBIT 16

Law Offices

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

*Ray W. Rigby
Gordon S. Thatcher
G. Rich Andrus
Jerry R. Rigby
Michael S. Kam
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*

June 9, 1999

James Smith
Smith & Edwards
3936 N. Highway 126
Farr West, UT 84404

Sent Via Facsimile: 1-801-731-2113

Re: Baxter and Jensen

Dear Mr. Smith:

Recently you purchased land from the United States of America in the Pegram area. Tracy and Sharon Baxter, and Mr. and Mrs. Marriner Jensen own property adjoining that property. Several years ago a portion of the property that you acquired was being irrigated with water from the Bear River through a canal and/or ditch that crossed a portion of the Baxter's land. A dam, known as the North Dam, in the Bear River was necessary to force the water through said diversionary canal for the irrigation of the Baxter's land, the Jensen land and the land you acquired from the government.

Prior to 1991, and since about 1985, the persons owning or operating the land you have acquired ceased irrigating your land and ceased using the canal or maintaining said canal or the dam. The dam was built in 1980-81. It was in very serious need of repair. But the Baxters and the Jensens were denied any assistance from the government or anyone, even though the dam had deteriorated to such a point that it was impossible to get water sufficient to irrigate even their own property. (See attached copy of letter from David R. Birch, Assistant County Supervisor at Soda Springs, Idaho) No assessments were paid on the water rights for your property except by the Baxters. They were told they had all of the water but the government always advertised the land for sale, with water rights.

Commencing in 1991 the Baxters paid the water assessments and used the water exclusively, to the exclusion of the prior owners and/or operators of the land you purchased. That use was open, adverse, and with a claim of right from that time up until the present time, except that the U.S. Government paid assessments, even though the Baxters had already paid them on the water right

James Smith
June 9, 1999
Page - 2

for the last year or two. The cost of rebuilding the dam and bringing the canal up to a proper state of maintenance was considerable. All of that cost was paid by the Baxters and the Jensens.

Section 42-222.2 of the Idaho Code provides as follows;

All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated. . .

This statute is not the regular statute of limitations found in the laws of the states. Under the Constitution and Laws of the State of Idaho the water belongs to the state. It is subject to appropriation by diversion and application to a beneficial use, subject to certain rules and regulations imposed by statute and Idaho Department of Water Resources. The state recognizes that right to use the water until the right holder fails to use the water for a period of five (5) years. According to the attorney for the Idaho Department of Water Resources the state of Idaho has always taken the position that this rule applies to every water user, public or private, government or citizen. Therefore, since the water right to the property you purchased was not used for more than five (5) years it has been lost and forfeited.

As to the canal easement across the Baxter's land and the dam itself, the water right is acquired from the state. That water right, by itself, does not entitle the right holder to an easement across another person's property, it only provides reason for obtaining such an easement. As a matter of fact, under Idaho Law, one cannot initiate a water right in trespass upon another person's property. The canal easement can be acquired by an instrument in writing wherein the land owner conveys an easement to an individual, or it can be obtained by prescriptive use for a period of at least five (5) years. It also can be lost, independent of the question of ownership of the water right, by non use for a period of five (5) years, under Idaho law. I understand there is no question but that the canal has not been used by the predecessors in title of the property you purchased, or operators in their behalf, for well over five (5) years. Therefore, the easement, whatever it was, since no instrument in writing has been found, for the crossing of Baxter's property, with a canal, has been lost and forfeited, and the dam in the Bear River, having been totally reconstructed by the Baxters and Jensens, is claimed as their property exclusively and that you would have no right to the use of it.

For your information I'm sending you a copy of Idaho Code sections 42-1102 and 42-1204 on water course easements.

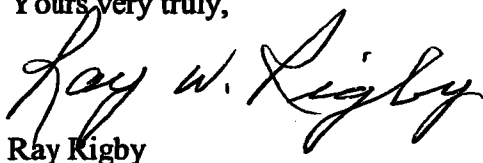
I am advised that you or your agents or employees recently entered the Baxter property, which had been prominently posted with "No Trespassing" signs, and despite being advised before you entered, by Mr. Tracy's hired man, not to enter the Tracy property, and that you had no right to enter same, and you attempted to restore a ditch or canal across the Tracy property. This action is in violation of the property rights of Mr. Tracy and was done knowingly and without

James Smith
June 9, 1999
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claim of right on your part. Further, you are using the dam that was built by Tracy and Jensen in spite of the fact that your predecessors in title (former owners and the FHA) refused to assist in any way the rebuilding of the dam.

This letter is being written so that you would be given a clear understanding of the legal position that the Baxters and Jensens take on this matter. The Baxters and Jensens intend to take every action allowed them under the law to protect their property and to require you to account for your willful trespass, and use and destruction of their property. By the same token, you are invited to visit with the Baxters and Jensens at any time, to see what, if any, understandings and agreements can be arrived at between you and the Baxters and Jensens concerning the canals and dams.

Yours very truly,


Ray Rigby

sj

CC: Bruce Larson
Baxters
Jensens

Enclosures

SMITHEDW.LTR

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF REQUIRING MEASURING DEVICES
AND ORDERING WATERMASTER CONTROL OVER ALL
HEADGATES, CONTROLLING WORKS AND OUTLET GATE
CONTROLS ON THE BEAR RIVER WHICH COMPRISES
WATER DISTRICT 11.

ORDER

This matter having come before the Idaho Department of Water Resources (Department) as a result of a request from the watermaster of Water District 11, the Department finds as follows.

FINDINGS OF FACTS

1. Certain rights to use the waters of the Bear River above Montpelier, Idaho have been determined by a decree of the District Court of the State of Idaho in the case of Preston-Montpelier Irrigation Co. vs. Dingle Irrigation Co. dated March 7, 1924.

2. Water District 11, which includes the Bear River and its tributaries is an active water district under the laws of Title 42, Chapter 6, Idaho Code.

3. During low flow periods, the watermaster of Water District 11 must measure the flows diverted from the Bear River and regulate all diversions by setting the headgates and/or controlling works.

4. Not all the diversions from the Bear River are equipped with adequate measuring devices and/or controlling works.

CONCLUSIONS OF LAW

1. Section 42-701, Idaho Code, provides:

42-701. Maintenance by appropriators--Procedure upon failure to maintain.-- The appropriators or users of any public waters of the state of Idaho shall maintain to the satisfaction of the department of water resources suitable headgates and controlling works at the point where the water is diverted, which shall be of such construction that it can be locked and kept closed by the water master or other officer in charge, and shall also be of such construction as to regulate the flow of water at the diversion point and such appropriator shall construct and maintain when required by the department, a rating flume or other measuring device at such point as is most practical in such a canal or ditch for the purpose of assisting the watermaster or department in determining the amount of water that may be diverted into said ditch from the stream. Plans for such headgates, rating flumes or other measuring devices shall be approved by the department of water resources: provided, that should any appropriator or user of the public waters of the state of Idaho neglect or refuse to construct or maintain such headgates, controlling works or measuring devices, upon receiving ten (10) days notice from the department of water resources within which to begin to remedy such defects as exist in accordance with said notice, then the department of water resources may order the duly qualified and acting water master of the water district to shut off and refuse to deliver at the point of diversion, the water claimed by such appropriator or user until he does construct and maintain such headgates, controlling works or measuring devices or remedy the defects which exist: provided that such appropriators or users of the public waters of the state of Idaho shall be given a reasonable time within which to complete construction of such headgates, controlling works or measuring devices, depending upon the size and extent thereof, when due diligence has been used in the prosecution of such work.

2. To properly distribute the waters of the Bear River, the watermaster must measure the flow and have complete control over all the headgates and controlling works at all diversions, dams and reservoirs on the Bear River.

3. Proper measuring devices, headgates and controlling works have not been maintained in a suitable condition to adequately measure flows on all diversions, dams and reservoirs on the Bear River.

4. Section 42-701, Idaho Code, authorizes the Department to order the installation and maintenance of measuring devices, headgates and/or controlling works.

ORDER

IT IS HEREBY ORDERED:

1. That those water users identified in Attachment A of this order who divert water from the Bear River through the Sorensen and Lloyd Ditches are required to install and maintain measuring devices and lockable controlling works of a type acceptable to the Department prior to May 10, 1992.

2. That the watermaster shall have complete control of all headgates and controlling works at all points of diversion on the Bear River, including the Sorensen and Lloyd Ditches.

3. The watermaster of Water District 11 shall not deliver water after May 10, 1992 from the Bear River to the Sorensen and Lloyd Ditches if said diversions do not have adequate measuring devices, headgates and/or lockable controlling works as determined by the watermaster.

Dated this 28th day of April, 1992


R. KEITH HIGGINSON
DIRECTOR

ATTACHMENT A

Tracey Baxter
3000 Pegram Rd.
Montpelier, ID 83254

LAW OFFICES OF

**RACINE, OLSON, NYE, BUDGE & BAILEY
CHARTERED**

LOUIS F. RACINE, JR.
WILLIAM D. OLSON
W. MARCUS W. NYE
RANDALL C. BUDGE
JOHN A. BAILEY, JR.
JOHN R. GOODELL
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LANE V. ERICKSON

***ALSO MEMBER AIA BAR
***ALSO MEMBER I.L. BAR
***ALSO MEMBER D.C. BAR

***ALSO MEMBER I.L. & WY BARS

SENDER'S E-MAIL ADDRESS: rndy-b@racnelaw.net

April 27, 2000

Ray W. Rigby
RIGBY, THATCHER, ANDRUS, RIGBY,
KAM & MOELLER, CHARTERED
P.O. Box 250
Rexburg, Idaho 83440

Transmitted Via Fax:
356-0768

RE: *Jim Smith v. Tracy Baxter/Marriner Jensen*

Dear Ray:

This will confirm our April 24, 2000 phone conversations and set forth our client Jim Smith's offer to enter into a binding agreement with Tracy Baxter for the purpose of compromising and settling pending disputes between them over their water rights and easements as follows:

1. Baxter will acknowledge and agree that Smith's water rights appurtenant to his property in Bear Lake County are valid and existing. Further, that Smith's water rights have not been abandoned or forfeited by him or his predecessors in interest and are not subject to any ownership claims by Baxter based upon adverse possession, prescriptive use or otherwise.

2. Smith and Baxter will execute such change of ownership and transfer documents as may be required by IDWR to accurately reflect their proportionate ownership of any jointly owned water rights based upon the acres of land owned by each to which such water rights are appurtenant and the records of IDWR. North Ranch Water Right Nos. 11-00946 and 11-00947 will be pro rated as between Smith (42.8 percent), Baxter (28.6 percent) and Jensen (28.6 percent) in accordance with Tim Luke's letter of August 3, 1999. South Ranch Water Rights will be similarly determined and pro rated.

3. The parties acknowledge that each has a valid and existing right-of-way and easement to use the existing diversion structures and Lloyd ditch to transport their water rights to their respective properties. Neither will interfere with the other's use of their respective water rights, Lloyd ditch and diversion structures.

4. Future expenses of operating and maintaining the diversion structure and Lloyd ditch

Ray Rigby
April 27, 2000
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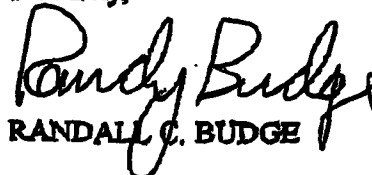
will be shared by the parties on a pro rata basis based upon their water rights. Maintenance and repair expenses to be shared will be mutually agreed upon before they are incurred. The parties will meet at a mutually convenient time and place to be arranged for the purpose of negotiation of the terms and conditions of an agreement providing for the future maintenance and repair expenses on the diversion structures and ditch. Smith makes no agreement or commitment to reimburse Baxter for past maintenance and repair expenses.

5. Neither will interfere with the normal agricultural operations of the other. Accordingly, Smith and Baxter agree to recognize all old established common boundary fences which will not be removed or relocated without signed written agreement.

6. Upon execution of this letter, Smith will make a recommendation to the Bear Lake County Prosecutor that all pending criminal charges against Baxter arising out of their water dispute be dismissed. For the purpose of facilitating a meeting between the parties in Idaho for the purpose of negotiating a final settlement and reducing the same to a binding written agreement, Smith is willing to instruct the Bear Lake County Sheriff not to serve any pending criminal complaint and any warrants upon Baxter to enable him to attend such a meeting.

The parties' approval and acceptance of this Agreement is to be indicated by their signatures where provided below.

Sincerely,


RANDALL C. BUDGE

RCB:rr

cc: Jim Smith (Fax: 801-731-2113)

APPROVED AND ACCEPTED:


JIM SMITH

Date: 4/27/00

TRACY BAXTER

Date: _____