State of Idaho
DEPARTMENT OF WATER RESOURCES
322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098
Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

GARY SPACKMAN
Director

C.L. "BUTCH" OTTER
Governor

June 13, 2013

RE: Notice of Petition for Appointment of Lateral Manager for the Ellis Subdivision Lateral

Dear Water User:

The enclosed Petition for Appointment of Lateral Manager ("petition") was submitted to the Idaho Department of Water Resources ("Department" or "IDWR") on June 10, 2013 pursuant to Section 42-1308, *Idaho Code*. The petition requests the Director of IDWR to appoint a lateral manager for the Ellis Subdivision Lateral for the remainder of this year to avoid imminent injury in the distribution of water. The petition further requests the Director to fix the compensation of the lateral manager and that the lateral manager exercise the duties of the association officers to make and collect assessments to achieve the proper allocation and distribution of water on the lateral. The petition did not request or suggest any candidates that may be appointed by IDWR.

Section 42-1308, *Idaho Code*, provides that the Director of IDWR may appoint and fix the compensation of a lateral manager, upon written petition of a water user. If the lateral is located within a water district established pursuant to Chapter 6, Title 42, *Idaho Code*, the director shall advise the district watermaster of the petition and invite the watermaster to make recommendations concerning the need for appointment of a lateral manger and the person to be appointed. By copy of this letter to Brian Keller, watermaster of State Water District 75D, the Director requests the recommendation of the watermaster in this matter.

The Director of IDWR is also required to make a reasonable effort to notify all persons having rights to the use of water from the lateral and provide fourteen (14) days for written response to the petition. The list of water delivery entities and water users receiving this notice is attached. The attached list was compiled using the water rights associated with the Ellis Subdivision point of diversion locations from Smout Creek. Please provide written comments to me within 14 days, or on or before June 28, 2013.

Sincerely,

Tim Luke
Chief, Water Compliance Bureau

Encl: Petition for Appointment of Lateral Manager with exhibits
List of water users

C: Brian Keller, Water District 75D Watermaster
IDWR Eastern Region

RECEIVED
JUN 10 2013
DEPARTMENT OF
WATER RESOURCES

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Attorneys for Jack and Diane Ellis and Lee and Ann Lieberman

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

IN THE MATTER OF THE APPOINTMENT OF LATERAL MANAGER FOR THE ELLIS SUBDIVISION LATERAL	**PETITION FOR APPOINTMENT OF LATERAL MANAGER OF THE ELLIS SUBDIVISION LATERAL PURSUANT TO IDAHO CODE § 42-1308**

JACK AND DIANE ELLIS AND LEE AND ANN LIEBERMAN, (hereinafter "Petitioners"), by and through their attorneys of record, Holden, Kidwell, Hahn & Crapo, PLLC, hereby petition the Director of the Idaho Department of Water Resources (hereinafter, the "Director") pursuant to Idaho Code § 42-1308 to appoint a lateral manager for the Ellis Subdivision Lateral (as described below) located in Lemhi County, Idaho. The Petitioners own water rights that are authorized for delivery through the Ellis Subdivision Lateral, along with other water right owners as described in the attached Exhibit 1.

A certain diversion diverts water from Smout Creek at a point of diversion located in the SW1/4NE1/4NE1/4 of Section 31, Township 23N, Range 23E, in Lemhi County, Idaho, into a common ditch system known as the "Ellis Subdivision Lateral." The Ellis Subdivision Lateral is more particularly described as follows:

1. An existing open earthen ditch commonly referred to as the "Upper Ditch", which originates at the Ellis Subdivision Lateral Diversion and continues in a generally southwesterly and easterly direction across

properties owned by non-Association Members John and Debbie Jakovac, and properties owned by Association Members Bessie Halverson, Jack and Diane Ellis, and Jerold Wallace. The Upper Ditch terminates at the irrigation device described herein as the "bubbler". There is a measuring device in the Upper Ditch upstream from the bubbler where the ditch crosses the common boundary between the properties owned by Association Members Jack and Diane Ellis and Association Member Jerold Wallace.

2. An existing irrigation device commonly referred to as the "bubbler", that was installed by Association Member Jerold Wallace's predecessor-in-interest as a modification to the existing system and is located on Jerold Wallace's property, which collects Smout Creek water conveyed through the Upper Ditch and waste water from the Keystone Ranch, and raises the commingled water level to create head pressure to deliver the commingled water to Association Members Jerold Wallace, Lucy Littlejohn, Andrea Clifton, and Lee and Ann Lieberman. The bubbler conveys the commingled water to the pipelines described below.
3. An existing pipeline, hereby designated as the "bubbler pipeline", which originates at the bubbler and extends in a southwesterly direction across Association Member Jerold Wallace's property to convey commingled water from the bubbler to the beginning of the mainline.
4. A mainline that begins at the downstream end of the bubbler pipeline and extends in a southerly direction to a buried pipeline that extends under a cul-de-sac to deliver water to Association Members Andrea Clifton and Lee and Ann Lieberman.
5. A buried pipeline under the cul-de-sac.
6. A surface mainline after the buried pipeline until the surface mainline ends on the common boundary of the properties owned by Association Members Andrea Clifton and Lee and Ann Lieberman.

The approximate location of the Ellis Subdivision Lateral is depicted on the map attached as Exhibit 2.

Disputes have arisen between the Association Members regarding use of the Ellis Subdivision Lateral and the distribution of water from the Ellis Subdivision Lateral.[1] Attempts have been made by counsel for Mr. Wallace and counsel for Petitioners to execute formal articles of organization for the lateral ditch water users association outlining its operations, but no

[1] For example, Jerold Wallace unilaterally disconnected the surface mainline described above because he believed others down the system were over-diverting. The surface mainline remained disconnected for all of 2012, and was only recently reconnected last month to allow deliveries to begin once again to Littlejohn, Lieberman, and Clifton.

agreement on these articles has been reached, and it is not anticipated that any agreement will be reached this year. No association officers have therefore been appointed.

In addition, because the properties serviced by the Ellis Subdivision Lateral were initially all part of a single property with a single common irrigation system, most of the properties have water rights with the same priority date.[2] This has led to disputes over how water is to be distributed during periods of low flow, the result of which has been injury to the Petitioners because water is not being apportioned and distributed properly among the Ellis Subdivision Lateral users (Idaho Code § 42-1308(1)).

Brian Keller initially volunteered to serve as the Ellis Subdivision Lateral manager on the condition that a rotation schedule be established (among other conditions), which the Petitioners were in favor of, but other association members would not agree to such a rotation. With no other individuals known to the Petitioners willing to serve as lateral manager, and with a great need to have a lateral manager to manage the system for 2013, Petitioners have no other choice but to petition the Director for appointment of a lateral manager.

Therefore, Petitioners request that:

1. The Director appoint a lateral manager for the Ellis Subdivision Lateral and fix his compensation (Idaho Code § 42-1308(1));
2. That such lateral manager exercises the duties of the association officers to make and collect assessments to achieve the proper allocation and distribution of water from the Ellis Subdivision Lateral. (Idaho Code § 42-1308(2));
3. That such appointment last until the end of the irrigation season (Idaho Code § 42-1308(3)).

DATED this 6th day of June, 2013.

Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

[2] The only exception to this is Andrea Clifton.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the following described pleading or document on the parties listed below by hand delivery, email, mail, or by facsimile, with the correct postage thereon, on this 6th day of June, 2013.

DOCUMENT SERVED: **PETITION FOR APPOINTMENT OF LATERAL MANAGER OF THE ELLIS SUBDIVISION LATERAL PURSUANT TO IDAHO CODE § 42-1308**

ORIGINAL TO: Gary Spackman
Director, Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-0098

ATTORNEYS AND/OR INDIVIDUALS SERVED:

Daniel V. Steenson (Attorney for Jerold Wallace and Lucy Littlejohn)
Sawtooth Law Offices, PLLC
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Boise, ID 83707
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(✓) Email

Andrea Clifton
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Salmon, ID 83467
flyingalongthemilkyway@yahoo.com

(✓) First Class Mail
( ) Hand Delivery
( ) Facsimile
( ) Overnight Mail
(✓) Email

DATED this 6th day of June, 2013.

Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C

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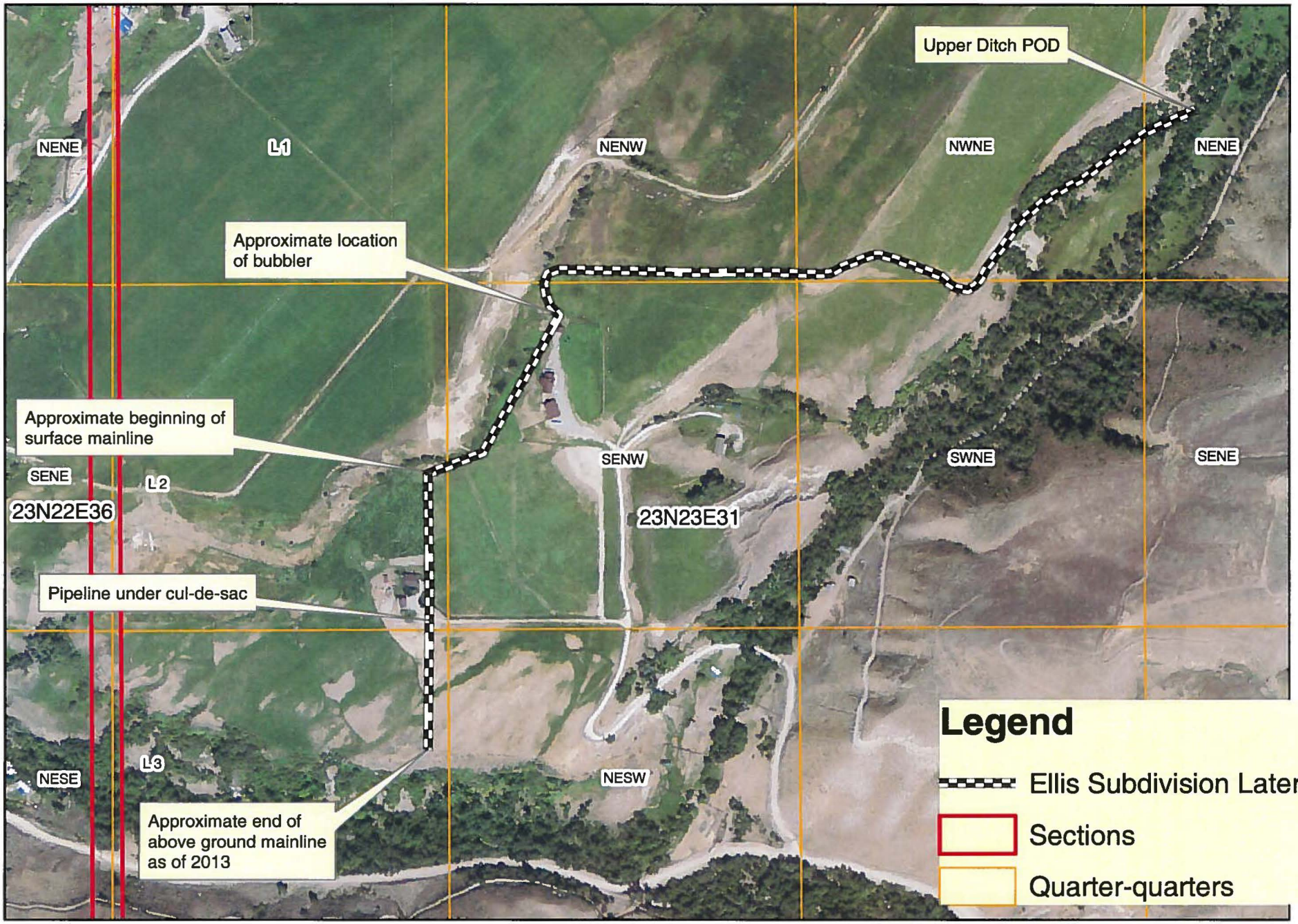
EXHIBIT 1: ELLIS SUBDIVISION LATERAL ASSOCIATION MEMBERS

Water Right No.	Owner	Priority Date	Div. Rate (cfs)	Combined Div. Rate (cfs)	Authorized Irr. Acres	% of Total Water Rights	% of Water Rights on Sub-Lateral	LDWUA Votes (1 per .02 cfs)
75-14768	ELLIS, DIANE M; ELLIS, JACK F	5/1/1915	0.12	0.36	12	0.21	0.90	18
75-14356		9/7/1940	0.24					
75-14769	HALVERSON, BESSIE Y	5/1/1915	0.04	0.04	3.8	0.02	0.10	2
75-14011	WALLACE, JEROLD W	5/1/1915	0.23	0.49	12	0.28	0.36	24.5
75-14009		9/7/1940	0.26					
75-14183	LITTLEJOHN, LUCY HINCKLEY	5/1/1915	0.19	0.38	9.3	0.22	0.28	19
75-14017		9/7/1940	0.19					
75-14353	LIEBERMAN, ANN; LIEBERMAN, LEE	5/1/1915	0.081	0.243	8.1	0.14	0.18	12.15
75-14357		9/7/1940	0.162					
75-14034	CLIFTON, ANDREA C	9/7/1940	0.24	0.24	12	0.14	0.18	12
		TOTALS	**1.753**	**1.753**	**57.2**			**87.65**

EXHIBIT 2: ELLIS SUBDIVISION LATERAL



BETH ANNE O CONNOR WALLACE
11920 NARCISSUS RD
JACKSON CA 95642

BESSIE Y HALVERSON
25 W 300 N
RUPERT ID 83350

KEVIN A AND ANDREA C AVERY
51 HWY 28
SALMON ID 83467

JEROLD W WALLACE
PO BOX 126
CARMEN ID 83642

LEE AND ANN LIEBERMAN
PO BOX 180
CORA WY 82925

LUCY HINCKLEY LITTLEJOHN
PO BOX 193
CARMEN ID 83462-0193

JACK F AND DIANE M ELLIS
PO BOX 301
SALMON ID 83467

KEVIN J AND MARY J KELLER
PO BOX 36
CARMEN ID 83462