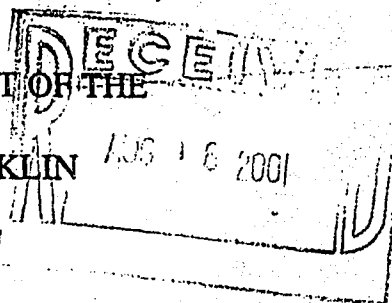


FILED
AUG 15 PM 2:55



IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

ROY G. PETERSON AND BEVERLY L.
PETERSON, husband and wife; RANDY
K. PETERSON and SUSAN PETERSON,
husband and wife,

Plaintiffs,

vs.

KAYLE G. RICHINS, CLAUDE L. RICHINS
and CLAUDE R. RICHINS, RICHINS
PARTNERSHIP,

Defendants.

Case No. CV 89-5253

DIRECTOR'S REPORT

This case was initiated by the filing of an amended complaint with the above-entitled court seeking a private adjudication pursuant to Idaho Code § 42-1404 of the rights of the above-named parties to the use of springs and ground water on their lands, which are located in the Bear River Basin.

On July 12, 1991, the court entered an order directing the parties to file notices of claims to water rights, and authorizing the Director of the Idaho Department of Water Resources (IDWR), to conduct an examination of the claims and the associated water systems, and to prepare a report.

The following information would normally be included in a supplemental report after the filing of objections. Since the issues are complicated and this is a contested proceeding, IDWR is

44 The evidence regarding the first date of beneficial use of Anderson Spring for irrigation and domestic use (and associated stock water use) at Richins' residence is meager, but if uncontradicted, the evidence is sufficient to support an inference of beneficial use as of May 12, 1885. A posted notice to water from Anderson Spring by J. Boyle and A. Clements, predecessors in interest to the Richins and the Mathews, supports an inference that an agreement to split the waters of Anderson Spring between the Mathews and Richins predecessors dates back to May 12, 1885, the date of the posted notice. The agreement to divide the waters half and half for domestic use in the residences currently owned by the Richins and the Mathews appears to date at least to 1944, when a pipeline was installed to enhance the delivery of water for domestic uses at the residences now owned by Richins and Mathews. From 1945 through 1975, use of Anderson Springs water for irrigation is evidenced by a notarized statement from Hyrum and Earl Ward, predecessors to the Richins. Some evidence of irrigation use from Anderson Spring on Richins' land prior to 1983 is also provided by the existence of some old ditches in disrepair from the natural drain of Anderson Spring to Richins' property. The Richins installed a gravity flow system from Anderson Spring to supplement the ground water irrigation on a portion of the Richin's property in 1983. As noted in paragraph Number 36, this system collects overflow from the pipeline used for domestic purposes (claim number 13-04283).

C. Standards for Beneficial Use

45. There are two quantity elements of a water right, diversion rate and diversion volume. Determination of diversion rate is required by statute (see paragraph number 56 below). Determination of diversion volume is reasonably required for the effective administration of rights in ground water other than small domestic uses as that term is defined by Idaho Code § 42-111.

07156B. This recommended right is used in combination with recommended rights numbered 13-07157, 13-04110C, and 13-04110D further described below.¹

80. Claim number 13-00526 (renumbered from claim number 13-04324): There is evidence sufficient to support an appropriation of 0.04 cfs from ground water for domestic use as of April 30, 1977. Thus, this claim is recommended as a water right claimed.

81. Claim number 13-00525: There is no evidence to support a finding of diversion and beneficial use of water from Anderson Spring for the domestic use (and associated stock water use) claimed by the Petersons prior to enactment of the mandatory permit statute for surface water. This claim is therefore recommended for disallowal.

82. Recommended rights numbered 13-04110A, 13-04110C, and 13-04110D are recommended to have a combined rate of diversion of 2.40 cfs.

83. Recommended rights numbered 13-07156B, 13-07157, 13-04110C, and 13-04110D are recommended to be rights to water from different sources with overlapping places of use for the irrigation of a total of 242 acres.

84. Claim number 13-07116: There is no evidence of partition or forfeiture, or evidence of an approved transfer that would result in any changes to the description of the ground water right as shown in the license.

85. Claim number 13-04283: There is evidence to support a finding of an appropriation by Richins' predecessors to water from Anderson Spring for irrigation by beneficial use prior to enactment of the mandatory permit statute. There is further evidence sufficient to support a finding

¹ D. Marcel Beckstead, the owner of the remainder of license number 13-07156, is not a party to this action, and any water rights owned by Mr. Beckstead are not determined herein. The remainder of license number 13-07156 will be designated as license number 13-07156A in IDWR's records.

of appropriation by Richins' predecessors of 1.06 cfs from Anderson Springs for irrigation, domestic and stock water use as of May 12, 1885, for claim number 13-04283. Because claim number 13-04283 is limited to the irrigation of 42 acres by transfer number 4796, the recommended flow rate for recommended right number 13-04283 is 0.90 cfs, which consists of 0.84 cfs for irrigation (at 0.02 cfs/acre), 0.02 cfs for stock water, and 0.04 cfs for domestic use.

86. Claim number 13-02242: This claim is recommended to be a water right as claimed and as approved in transfer number 4796. Recommended rights numbered 13-02242 and 13-07116 are recommended rights to ground water from the same source. Therefore, these rights are recommended as being limited to the pump's capacity; a combined diversion rate of 2.83 cfs.

87. Recommended rights numbered 13-02242 and 13-07116, and recommended right number 13-04283 are recommended rights to water from different sources with overlapping places of use for the irrigation of a total of 202 acres. Therefore, these rights are recommended with a combined annual diversion volume limitation of 707.0 acre feet.

88. Recommended rights numbered 13-02242 and 13-04283 are recommended rights to water from different sources with an overlapping place of use located within the 202 acre place of use stated above. The rights are therefore recommended with a combined annual diversion volume limitation of 185.5-acre-feet and a combined place of use limitation of 53.0 acres.

89. Diversion of ground water pursuant to recommended right number 13-07116 affects the flow of water from Dudley Springs, which at times causes injury to senior recommended water rights numbered 13-04110A, 13-04110C, and 13-04110D.

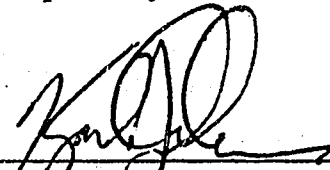
RECOMMENDATION TO THE COURT

The director makes the following recommendations to the court:

1. That the rights of the Petersons to water from Dudley Springs, Anderson Spring, an unnamed stream, and ground water be decreed as set forth in the Attachment A of the Director's report.
2. That the rights of the Richins to water from Anderson Spring and ground water be decreed as set forth in the Attachment B of the Director's report.
3. That any water right described in claims numbered 13-04110B, 13-04110E, 13-04009, and 13-00525 be determined not to exist as set forth in Attachment C and should be disallowed.
4. That the stipulation and agreement to provide replacement water submitted by the parties and IDWR, be incorporated into the decree and implemented as written.

Dated this 1st day of August, 2001.

Respectfully submitted,



Karl J. Dreher, Director

Idaho Department of Water Resources

RECEIVED
NOV 13 2003

Department of Water Resources
Eastern Region

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

CLAIM TO A WATER RIGHT

Under the provisions of Section 42-243, *Idaho Code*, any person claiming a water right established by diversion and application of water to beneficial use must file a claim with the Department of Water Resources. **The filing of this claim does not confirm the water right claimed.** Water rights represented by a valid permit, license, decree, or previous claim are exempt from this requirement, as are uses of water for domestic purposes as defined in Section 42-111, *Idaho Code*. A filing fee must be submitted with this claim. See the instruction sheet to determine the appropriate fee.

Notice is hereby given that Larry Matthews and Linda B. Matthews, husband and wife,

(Name of Claimant)
7405 N. Westside Hwy, Clifton, ID 83228 Telephone No: 208-747-3313
(Mailing Address) (Zip Code)

claims a right to the diversion and beneficial use of surface or ground water. The extent and nature of said claim is as follows:

1. Date of Priority: (When the water was first applied to beneficial use) 5/12/1885
A claim is not acceptable for the use of surface water with a priority later than May 20, 1971. A claim is not acceptable for the use of ground water with a priority date later than March 25, 1963, unless the water is used for domestic purposes as defined in Section 42-111, Idaho Code.

2. Describe the source of water: (Name of stream, lake, spring, etc., or ground water)
Anderson Spring tributary to sinks

3. Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

(cfs or af)	(Irrigation, Domestic, Stock, Etc.)	(Both dates inclusive) (MM/DD) (MM/DD)
Quantity <u>0.04 cfs*</u>	Use _____	Period of Use From <u>1/1</u> to <u>12/31</u>
Quantity _____	Use _____	Period of Use From _____ to _____
Quantity _____	Use _____	Period of Use From _____ to _____
Quantity _____	Use _____	Period of Use From _____ to _____

4. 0.04 cfs* TOTAL QUANTITY USED. *50% of a flow from Anderson Spring
(cfs or af)

5. A) Location of point of diversion is _____ ¼ of NE ¼ of SW ¼, Govt. Lot _____
Sec. 5 Township 14 S. Range 38 E. B.M., Franklin County; additional points
of diversion, if any: _____

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch etc.). Give sizes and capacities. Be specific. Describe any changes in the system and give the date of the change.
Water flowing from Anderson Spring is collected in a 500 gallon plastic tank. A 2-1/2" pipe flowing from the tank splits into two (2) 1-1/2" pipes, one of which services Claimants' domestic use and the other serves the domestic use of Blake Atkins and water right number 13-04283, formerly owned by Claude and Kayle Richens decreed in Franklin County Case No. CV-89-5253 in the matter of Roy Peterson, et al, vs. Kayle G. Richens, et al.

6. A) Describe the place of use within each 40-acre tract in the appropriate box using the symbols listed below. If the use is for irrigation, describe the location by listing the number of irrigated acres within each 40-acre tract.
D - domestic, S - stockwater, M - municipal, C - Commercial, I - Industrial, X - other

Twp	Rge	Sec	NE¼				NW¼				SW¼				SE¼				TOTAL ACRES
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
14S	38E	4										D							

TOTAL ACRES _____

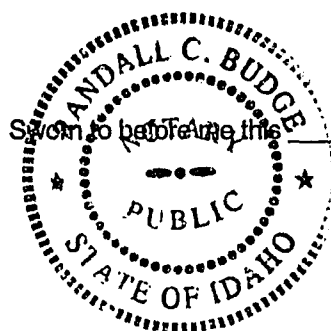
- B) If water is used for purposes other than irrigation, fully describe the use. Be specific.
Domestic for household and 1/2 acre irrigation of yards and garden.

NOTE: Include here the type and number of stock watered: _____

7. Remarks: See attached Warranty Deed of Claimants and of Richens reflecting each owned 50% of Anderson Spring. See also attached Director's Report in Franklin County Case No. CV-89-5253, pp. 13, 23, 24, 25.
8. Map - Attach an 8½"x11" map clearly identifying the point of diversion and the place of use by 40-acre subdivisions, section, township and range of the public land survey system. (A photocopy of a USGS 7½ minute topographic quadrangle map is preferred.) Attach an aerial photograph of the place of use if available.

State of Idaho)
County of Bannock) ss.

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the forgoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiant's knowledge.



10th

day of

Larry Matthews Linda B Matthews
Claimant's Signature (and title if claim is for an organization)

November

2003

Randall C. Budge
Notary Public

Residing at: Beauregard, Idaho

My commission expires: 10/11/2003

FOR DEPARTMENT USE ONLY

Received by Dennis Dunn Date 13 Nov 2003
Prelim. check by Dennis Dunn Date 1 Dec 2003
Fee 100 Receipt # E029364
Receipt prepared by SC Date 11/17/03

Published in Preston Citizen
Publication dates Dec 17 & 24, 2003
Publication checked by _____ Date _____
Exceptions filed by _____

158399

Received of the record of
Larry Don Matthews

MAR 5 1982

MICHAEL D. KUNG, RECORDER
By *Larry Don Matthews* Deputy
FRANKLIN COUNTY, IDAHO

Reception ☐
Indexed ☐

(DO NOT WRITE ABOVE THIS LINE)

WARRANTY DEED

For Value Received

JESS B. ELGAN and NANCY LEE ELGAN, husband and wife

the grantor(s) do hereby grant, bargain, sell and convey unto
LARRY DON MATTHEWS and LINDA BISHOP MATTHEWS, husband and wife
Clifton,
Idaho 83228

the grantees, the following described premises, in Franklin County, Idaho, to wit:

The Northwest Quarter of the Southwest Quarter of Section 4,
Township 14 South, Range 38 East of the Boise Meridian, Excluding
therefrom the Eastern 330 feet thereof. Also, retaining for the
grantors a Right-of-Way from highway D-1 to the eastern edge of
the property. (Containing 30 acres more or less).

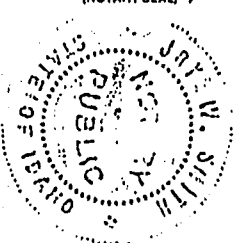
Together with all of the seller's interest in the culinary spring
now servicing the above property excluding therefrom culinary water
which flows through a one and one-half inch (1½) pipe to a home located
in the Southeast Quarter of the Southeast Quarter of Section 5,
Township 14 South, Range 38 East of the Boise Meridian; and 21
shares of Oxford Ditch, 14 plow shares and 7 meadow shares.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee S,
their heirs and assigns forever. And the said Grantor(s) do hereby covenant to and with the said
Grantee S, that they are the owner in fee simple of said premises; that they are free from all in-
cumbances

and that they will warrant and defend the same from all lawful claims whatsoever.

Dated: May 15, 1977

Jess B. Elgan
Nancy Lee Elgan
(NOTARY SEAL)



State of Idaho } ss On the 20th day of May A.D. 19 77
County of FRANKLIN }

personally appeared before me
Jess B. Elgan and Nancy Lee Elgan, husband and wife

the signer(s) of the within instrument, who duly acknowledged to me that they
executed the same.

Ray M. Smith
(NOTARY PUBLIC)

Residing at: Preston, Idaho

My Commission expires:

Mail deed to:

Mail tax notice to:

187655 1-2

Recorded at Request of _____
at _____ M. Fee Paid \$ _____
by _____ Dep. Book _____ Page _____ Ref.: _____
Mail tax notice to _____ Address _____

WARRANTY DEED

FRANK L. HART AND ALETHEA T. HART, his wife
of LAYTON, County of DAVIS, State of Utah, hereby
CONVEY and WARRANT to
CLAUDE L. RICHINS & JOYCE P. RICHINS, his wife AND KAYLE G. RICHINS & YVONNE M.
RICHINS, his wife as joint tenants with full rights of survivorship.

of SALT LAKE CITY, UTAH
***TEN AND NO/100'S-----
AND OTHER VALUABLE CONSIDERATION
the following described tract of land in
State of ~~Utah~~ Idaho: FRANKLIN County,
grantee s
for the sum of
DOLLARS,

(EXHIBIT "A" attached hereto)

Recorded at the request of
Claude L. Richins

a.m. FEB 23 1993 2:40 p.m.

LARAE E. JOHNSON, RECORDER
By Ruth K. Rawlings Deputy
FRANKLIN COUNTY, IDAHO

WITNESS, the hands of said grantors, this SEVENTH day of
MAY, A. D. 1976

Signed in the Presence of

Frank L. Hart
FRANK L. HART
Alethea T. Hart
ALETHEA T. HART, his wife

STATE OF UTAH,
County of Salt Lake ss.

On the 7th day of May, A. D. 1976
personally appeared before me Frank L. and Alethea T. Hart
the signers of the within instrument, who duly acknowledged to me that they executed the
same.



Sandra J. Chaffin
Notary Public.

187655 22

EXHIBIT A

Township 13 South, Range 38 East of the Boise Meridian
Section 32: S1/2 SW1/4.

Township 14 South, Range 38 East of the Boise Meridian
Section 3: SW1/4 NW1/4 and LOT THREE (3)
Section 4: S1/2 NW1/4, LOT ONE (1), and the S1/2 NE1/4.
Section 5: LOTS TWO (2), THREE (3), and FOUR (4),
S1/2 NW1/4, S1/2 NE1/4, NE1/4 SW1/4,
N1/2 N1/2 SE1/4.

Together with all water and water rights, ditches and ditch rights used thereon or appurtenant thereto, including but not limited to 14-1/2 shares (Farm) and 10 shares (Meadow) of the stock of the Oxford Irrigation Company and also including but not limited to rights to ground waters produced from a well or wells located and to be located on the subject property, especially such water under Application No. G-37852, Permit No. G29897, by the Idaho State Reclamation Engineer on July 11, 1961. ALSO, including all irrigation and well equipment of every kind now owned by the Seller and used in the irrigation of the subject property, especially but not limited to, such equipment which has and will be acquired to be attached to the irrigation well and used under authority of State Permit No. G-29897.

W.R. No
13-04283 [ALSO, including 50% right to Spring currently being used for culinary purposes in Section 5 of said Township.
ALSO, all rights under Permit No. 13-7116 for 7.88 second feet of water.

Lonn Litchfield #7922
ATKIN & HAWKINS, P.C.
136 South Main, 6th Floor
Salt Lake City, UT 84101
Phone: (801) 533-0300
Fax: (801) 533-0380

Attorneys for Protestant

RECEIVED

JAN 02 2004

Department of Water Resources
Eastern Region

**PROTEST AND EXCEPTION TO A
CLAIM TO A WATER RIGHT OF
LARRY MATTHEWS AND LINDA B.
MATTHEWS, HUSBAND AND WIFE**

Claim No. 13-7648

This protest is made by the Atkin Family Trust through its trustee, Blake S. Atkin
("Atkin") through their attorneys Atkin & Hawkins, P.C.

Protestant objects to THE CLAIM on the following grounds:

1. The Matthews made a claim to a flow diverted from one of the springs that constitute Anderson Springs. The Matthews claim that the water has historically been delivered through a 2 ½ inch pipe that split into two 1 ½ inch pipes, the one serving the Matthew's predecessor, Jess Elgin and the other serving Atkin's predecessor. Thus, the most the applicant can claim is the flow from a 1 ½ inch pipe. However, the warranty deed from Jess Elgin to the Matthews shows that he "excluded therefrom culinary water which flows through a one and one-half inch (1 ½) pipe to a home located in the southeast quarter of the southeast quarter of section 5, township 14 south, range 38 east of the Boise Meridian." Thus, none of the water right

Receipt #
ED 29442

belonging to Jess Elgin was conveyed to Matthews because his entire right was reserved in the deed.

2. The Matthews claim a priority date of May 12, 1885 when there is no evidence of domestic use of water by Matthew's predecessor prior to 1944.

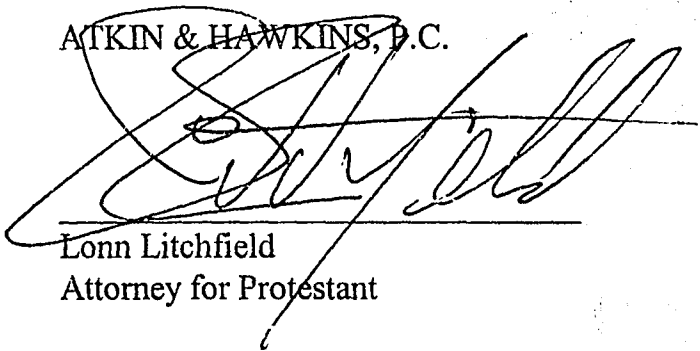
3. The application claims water from "Anderson Springs" when the evidence is that water for domestic use has historically been diverted from a particular spring which may be only a part of the larger complex known as Anderson Spring. Indeed, the warranty deed dated March 5, 1982, attached as an exhibit to the claim describes the source as "Seller's interest in the culinary spring now serving the above property." It would be improper for the claim to expand rights into the larger Anderson Springs.

4. The Matthews claim .04 cfs or $\frac{1}{2}$ of the flow from Anderson Springs. As shown above the Matthews owns none of this water. At the very least, the amount claimed must be substantially diminished as a result of the reservation in the deed.

5. The Matthews claim domestic use and irrigation of $\frac{1}{2}$ acre of ground, however, Matthews has begun using water in a commercial greenhouse and use of water should not be allowed or should be metered.

DATED this 31st day of December, 2003

ATKIN & HAWKINS, P.C.


Lonn Litchfield
Attorney for Protestant

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST**

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 42-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

RECEIVED

1. Matter being protested 13-7648 JAN 13 2004
2. Name of protestant Randy K Peterson Department of Water Resources
3. Protestant's representative for service (If different than protestant)

4. Service mailing address 7239 N Westside Hwy Clifton ID 83228
5. Service telephone no. 208-747-3358
6. Basis of protest (including statement of facts and law upon which the protest is based)
a Real Estate Contract, and the Matthews trespassed on our property
to put more water into the box, they also removed + destroyed trees.
(The real Estate Contract was between the Matthews + Jess Elgar, previous
owner of our place)
- (additional pages may be attached to describe the nature of the protest)
7. What would resolve your protest? We get our line of water back as
evidence by 13-4282

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 31 day of December, 12 2003.

Randy K Peterson
PROTESTANT

PROTESTANT'S REPRESENTATIVE

*Received 12/31/2003
Receipt
#E029441*

NOTE:

A protestant is required to timely file a protest with the department together with a \$25.00 protest fee for each application being protested in order for the protestant to be considered a full party by the department. In addition, the department's Rule of Procedure, IDAPA 37.01.01203, requires a protestant to send a copy of a protest to the applicant.

INSTRUCTIONS

1. The matter being protested must be clearly identified. A typical matter is identified by the application number such as "Application for Permit No. _____ in the name of _____" or "Application for Transfer No. _____ in the name of _____."
2. Show the name of the protestant. Only one (1) protestant may be shown per protest form. If this protest form is signed by more than one person, the hearing officer will consider the first signer as the official protestant and the representative for service of documents.
3. If the protestant is represented by an attorney or other authorized representative, show the representative's name. The department then will serve documents on the representative and upon the protestant if specifically requested.
4. Show the address where the department is to serve the documents. This should be the address of the authorized representative unless the protestant does not designate a representative.
5. Show the telephone number of the authorized representative unless the protestant does not designate a service representative.
6. Specifically describe the nature of the protest.
7. Describe the relief being sought by the protestant.

FOR DEPARTMENT USE ONLY

Received by E029441-KAW Date 12/31/2005 Time 1535 hrs
\$25.00 fee Received by KAW # E029441 Date 12/31/2005

158399

Received at the request of
Larry Don Matthews

MAR 5 1982 4:00 pm

MICHAEL D. KING, RECORDER
By *Larry Don Matthews* Deputy
FRANKLIN COUNTY, IDAHO

Reception ☐
Indexed ☐

(DO NOT WRITE ABOVE THIS LINE)

WARRANTY DEED

For Value Received

JESS B. ELGAN and NANCY LEE ELGAN, husband and wife

the grantors do hereby grant, bargain, sell and convey unto

LARRY DON MATTHEWS and LINDA BISHOP MATTHEWS, husband and wife
Clifton,
Idaho 83228

the grantees, the following described premises, in Franklin County, Idaho, to wit:

The Northwest Quarter of the Southwest Quarter of Section 4,
Township 14 South, Range 38 East of the Boise Meridian, Excluding
therefrom the Eastern 330 feet thereof. Also, retaining for the
grantors a Right-of-Way from highway D-1 to the eastern edge of
the property. (Containing 30 acres more or less).

Together with all of the seller's interest in the culinary spring
now servicing the above property excluding therefrom culinary water
which flows through a one and one-half inch (1½) pipe to a home located
in the Southeast Quarter of the Southeast Quarter of Section 5,
Township 14 South, Range 38 East of the Boise Meridian; and 21
shares of Oxford Ditch, 14 plow shares and 7 meadow shares,

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee S,
their heirs and assigns forever. And the said Grantors do hereby covenant to and with the said
Grantee S, that they are the owner in fee simple of said premises; that they are free from all in-
cumbrances

and that they will warrant and defend the same from all lawful claims whatsoever.

Dated:

May 15, 1977

Jess B. Elgan
Nancy Lee Elgan



State of Idaho }
County of FRANKLIN } ss On the 20th day of May A.D. 19 77

personally appeared before me
Jess B. Elgan and Nancy Lee Elgan, husband and wife

the signer(s) of the within instrument, who duly acknowledged to me that they
executed the same.

Ray H. Smith
NOTARY PUBLIC

Residing at: Preston, Idaho

My Commission expires:

Mail deed to:

Mail tax notice to:

142103

RECORDED 0
INDEXED 00

Recorded at the request of

MAY 20 1977

MICHAEL D. KUNZ, RECORDER

By Larry D. Matthews
FRANKLIN COUNTY, IDAHO

NOTICE OF REAL ESTATE CONTRACT

NOTICE is hereby given that JESS B. ELGAN and NANCY LEE ELGAN, husband and wife, are selling to LARRY DON MATTHEWS and LINDA BISHOP MATTHEWS, husband and wife, under a contract, the following described real property located at Franklin County, State of Idaho, to-wit:

The Northwest Quarter of the Southwest Quarter of Section 4, Township 14 South, Range 38 East of the Boise Meridian. Excluding therefrom the Eastern 230 feet thereof. Also, retaining for the grantors a right-of-way from highway D-1 to the eastern edge of the property. (Containing 30 acres more or less).

Together with all of the seller's interest in the culinary spring now servicing the above property excluding therefrom culinary water which flows through a one and one-half inch (1½) pipe to a home located in the Southeast Quarter of the Southeast Quarter of Section 5, Township 14 South, Range 38 East of the Boise Meridian; and 21 shares of Oxford Ditch, 14 plow shares & 7 meadow shares.

DATED This 20th day of May, 1977.

STATE OF IDAHO)
COUNTY OF FRANKLIN) SS

On this 20th day of May, 1977, before me, the undersigned, a notary public in and for the State of Idaho, personally appeared Jess B. Elgan and Nancy Lee Elgan, husband and wife, and Larry Don Matthews and Linda Bishop Matthews, husband and wife, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

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

Quinn J. Smith
Notary Public for Idaho
Residing at Preston, Idaho
My Commission Expires: April 1, 1981

LAW OFFICES OF

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

CENTER PLAZA-CORNER FIRST & CENTER
POST OFFICE BOX 1391
POCATELLO, IDAHO 83204-1391

TELEPHONE (208) 232-6101
FACSIMILE (208) 232-6109

SENDER'S E-MAIL ADDRESS: rcb@racinelaw.net

LOUIS F. RACINE, JR.
WILLIAM D. OLSON
W. MARCUS W. NYE
RANDALL C. BUDGE
JOHN A. BAILEY, JR.
JOHN R. GOODELL
JOHN B. INGELSTROM
DANIEL C. GREEN
BRENT O. ROCHE
KIRK B. HADLEY
FRED J. LEWIS
MITCHELL W. BROWN
ERIC L. OLSEN
DAVID E. ALEXANDER
LISA M. CHRISTON
RICHARD A. HEARN, M.D.
LANE V. ERICKSON
PATRICK N. GEORGE
SCOTT J. SMITH
LISA A. WOOD, CPA
STEPHEN J. MUHONEN
BRENT L. WHITING

BOISE OFFICE

CONRAD J. AIKEN
THEODORE C. PETERS
DEBORAH L. LEHOSIT

101 SOUTH CAPITOL
BOULEVARD, SUITE 208
BOISE, IDAHO 83702
TELEPHONE: (208) 395-0011
FACSIMILE: (208) 433-0167

IDAHO FALLS OFFICE

477 SHOUP AVENUE
SUITE 203A
IDAHO FALLS, ID 83402
TELEPHONE: (208) 528-8101
FACSIMILE: (208) 528-6109

November 12, 2003

RECEIVED

NOV 13 2003

Department of Water Resources
Eastern Region

Idaho Department of Water Resources
Eastern Division
900 N. Skyline Drive
Idaho Falls, Idaho 83402

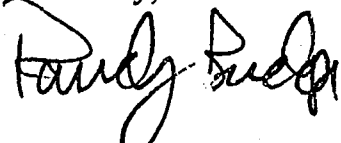
Re: *Larry Matthews and Linda B. Matthews - Claim to a Water Right*

To Whom It May Concern:

Enclosed please find for filing the original and extra copy of Form 243-Claim to a Water Right we are submitting on behalf of Larry and Linda B. Matthews, together with their check in the amount of \$100 for filing fees. Please conform stamp the claim number and receipt date on the extra copy and return it to me with the receipt. Thank you.

Also enclosed is a copy of the letter sent on behalf of the Matthews to Blake Atkin, the current owner of Water Right No. 13-04283, which relates to and further supports the Matthews' water rights as set forth in the Form 243 - Claim to a Water Right.

Sincerely,



RANDALL C. BUDGE

RCB:rr

Enclosures

cc: Larry and Linda Matthews (w/encl.)

Dunn, Dennis

From: Randy Budge [rcb@racinelaw.net]
Sent: Monday, December 01, 2003 4:59 PM
To: 'Dunn, Dennis'
Cc: Randy Budge (Randy Budge)
Subject: RE: 243 Claim for Larry and Linda Matthews

Thanks. I have dropped them a note to supply the information requested and will get it to you ASAP.

Randy

-----Original Message-----

From: Dunn, Dennis [mailto:ddunn@idwr.state.id.us]
Sent: Monday, December 01, 2003 11:29 AM
To: 'rcb@racinelaw.net'
Subject: 243 Claim for Larry and Linda Matthews

Good Morning Randy,

I have data entered the 243 claim for the Matthews. I need a map showing the point of diversion, 500 gallon storage tank, pipeline, and the Matthews' home.

Thanks
Dennis M. Dunn
Sr. Water Resources Agent
I.D.W.R.



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, ID 83402-1718 • Phone: (208) 525-7161 FAX: (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

December 10, 2003

Legal Notice Department
PRESTON CITIZEN
PO BOX 472
PRESTON ID 83263

RE: Statutory Claim No. 13-7648

Dear LEGAL NOTICE DEPARTMENT:

Enclosed you will find a legal notice which we wish to have published in your newspaper on the dates indicated (once a week for two consecutive weekly issues). 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. Please send the affidavit and bill to this office before January 5, 2004. Your cooperation is appreciated.

Sincerely

Sharla Cox
Administrative Assistant

Mailed
12/10/03
sc

The following claim(s) have been filed based on diversion and beneficial use of water:

13-7648

LARRY MATTHEWS
LINDA B MATTHEWS
7405 N WESTSIDE HIGHWAY
CLIFTON ID 83228

Point(s) of Diversion: NESW S5 T14S R38E, FRANKLIN County

Source ANDERSON SPRING, Tributary To SINKS

Use: DOMESTIC 01/01 To 12/31 0.04 CFS

Total Diversion: 0.04 CFS

Priority Date: 5/12/1885

Place Of Use: DOMESTIC

T14S R38E S4 NWSW

Exceptions to a claim may be filed with the Department of Water Resource, Eastern Region, 900 N Skyline Dr Ste A, Idaho Falls
ID 83402 together with an exception fee of \$25.00.

KARL J DREHER, Director

Published on December 17 and 24, 2003



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, ID 83402-1718 • Phone: (208) 525-7161 FAX: (208) 525-7177

EASTERN REGION
December 10, 2003

DIRK KEMPTHORNE
Governor
KARL J. DREHER
Director

LARRY MATTHEWS
7405 N. WESTSIDE HIGHWAY
CLIFTON ID 83228

RE: Water Right Claim No 13-7648

Dear Claimant(s):

The Department of Water Resources acknowledges receipt of your water right claim. Please refer to the above referenced number in all future correspondence regarding this application.

A legal notice of the claim has been prepared and is scheduled for publication in the Preston Citizen on December 17 and 24, 2003. If exceptions to the claim are filed you will be sent a copy of the exceptions(s).

The filing and advertising of the claim does not confirm the water right claimed. It will serve to record and preserve the information and the evidence, including any exceptions, regarding the claim.

If, at a later date, you find that you have additional information or supporting evidence that you would like to have included with the claim, you may have the information or evidence added at any time. Corrections to the claim may be made by filing an amended claim; no additional filing fees are required to amend a claim.

Also, please note that water right owners are required to report any change of water right ownership and/or mailing address to 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 or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

We are enclosing a copy of the claim for your records. Please feel free to contact this office if you have any questions.

Sincerely,

W Roger Warner
Water Rights Supervisor

WRW:sc

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. GOODSELL
JOHN B. INGELSTROM
DANIEL C. GREEN
BRENT O. ROCHE
KIRK B. HADLEY
FRED J. LEWIS
MITCHELL W. BROWN
ERIC L. OLSEN
DAVID E. ALEXANDER
LISA M. CHRISTON
RICHARD A. HEARN, M.D.
LANE V. ERICKSON
PATRICK N. GEORGE
SCOTT J. SMITH
LISA A. WOOD, CPA
STEPHEN J. MUHONEN
BRENT L. WHITING

CENTER PLAZA-CORNER FIRST & CENTER
POST OFFICE BOX 1391
POCATELLO, IDAHO 83204-1391

TELEPHONE (208) 232-6101
FACSIMILE (208) 232-6109

SENDER'S E-MAIL ADDRESS: rcb@racinelaw.net

BOISE OFFICE

CONRAD J. AIKEN
THEODORE C. PETERS
DEBORAH L. LEHOSIT

101 SOUTH CAPITOL
BOULEVARD, SUITE 208
BOISE, IDAHO 83702
TELEPHONE: (208) 395-0011
FACSIMILE: (208) 433-0167

IDAHO FALLS OFFICE

477 SHOUP AVENUE
SUITE 203A
IDAHO FALLS, ID 83402
TELEPHONE: (208) 528-6101
FACSIMILE: (208) 528-6109

December 11, 2003

RECEIVED

DEC 12 2003

Department of Water Resources
Eastern Region

Idaho Department of Water Resources
Eastern Division
900 N. Skyline Drive
Idaho Falls, Idaho 83402

Re: *Larry Matthews and Linda B. Matthews - Claim to a Water Right*

To Whom It May Concern:

Per your request, enclosed please find a map prepared by the Matthews showing the point of diversion, location of storage tank, pipeline and their house.

Sincerely,

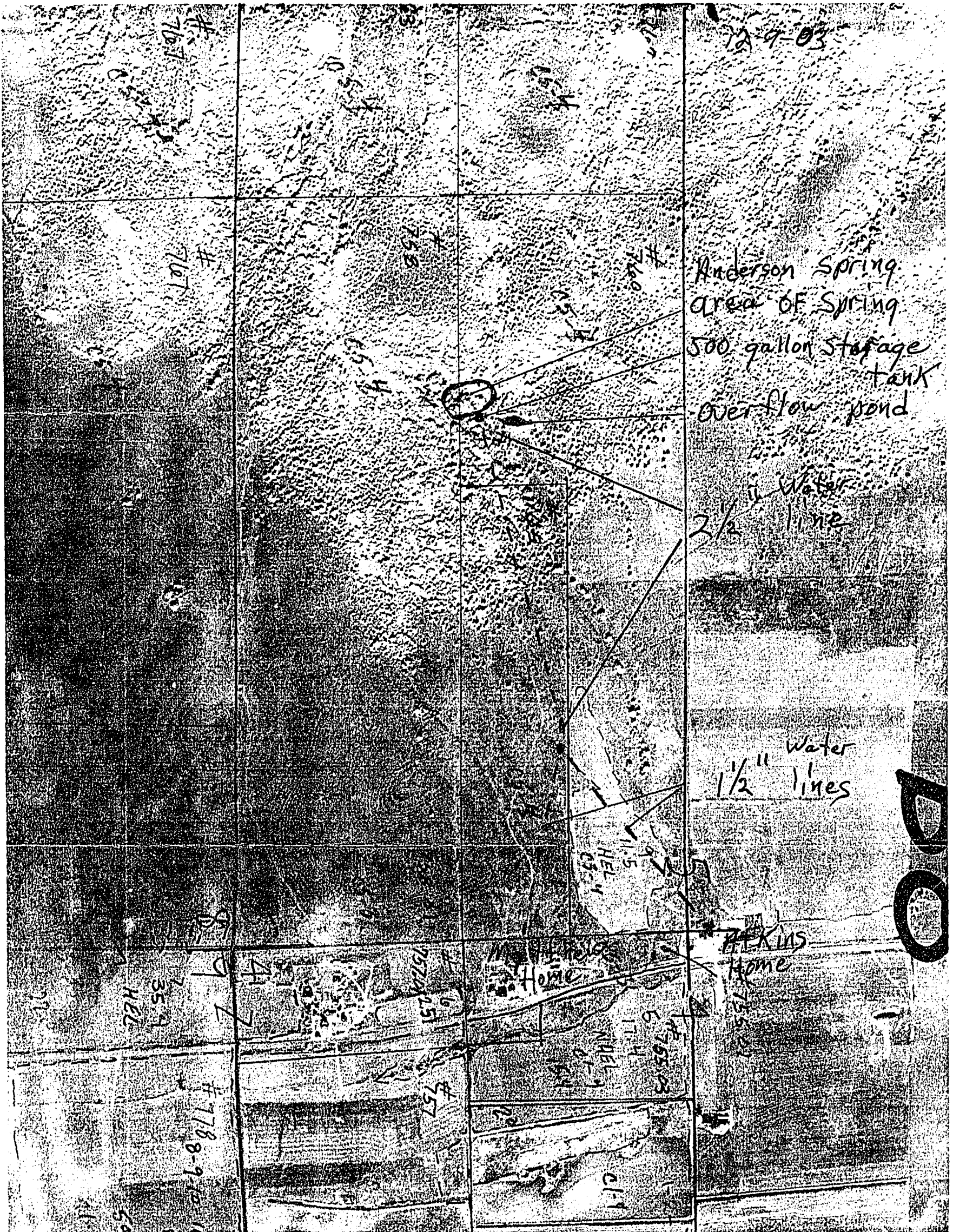


RANDALL C. BUDGE

RCB:rr

Enclosures

cc: Larry and Linda Matthews (w/encl.)



No 5678

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO,

County of Franklin

ss.

Rodney Boon

being duly sworn,

deposes and says:

That he is the Editor of THE PRESTON
WIZEN, a weekly newspaper published at Preston, in the County of
Franklin and State of Idaho; that said paper has been and is in general
circulation in the county aforesaid, and in the vicinity of Preston; that the
advertisement, a copy of which is attached hereto, was published in said

newspaper once a week for 2 consecutive weeks in the regular
and entire issue of said paper during the period of time of publication, and
was published in the newspaper proper and not a supplement; that said
paper has been established and regularly published for more than seventy-
eight consecutive weeks prior to the date of first publication of said
advertisement.

Such notice was published in the issue beginning with

Dec. 17, 2003, and ending
with the issue of Dec. 24, 2003

R Boon
Fec \$ 62.33

Subscribed and sworn to before me this 31st day

of Dec, 2003.
Ann Rawlings

Notary Public, Residing at Preston, Idaho

My Commission Expires 10/26, 2006.

WATER CLAIM

The following claim(s)
have been filed based on diver-
sion and beneficial use of wa-
ter:

13-7648

LARRY MATTHEWS

LINDA B MATTHEWS

7405 N WESTSIDE HIGHWAY

CLIFTON ID 83228

Point(s) of Diversion: NESW 85

T14S R38E, FRANKLIN County

Source: ANDERSON SPRING,

Tributary To SINKS

Use: DOMESTIC 01/01 To
12/31 0.04 CFS

Total Diversion: 0.04 CFS

Priority Date: 5112/1885

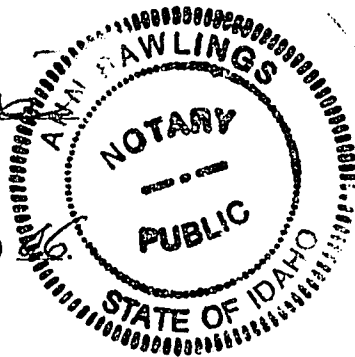
Place Of Use: DOMESTIC

T14S R38E 54 NWSW

Exceptions to a claim may
be filed with the Department of
Water Resource, Eastern Re-
gion, 900 N Skyline Dr Ste A,
Idaho Falls ID 83402 together
with an exception fee of \$25.00.

KARL J DREHER
DIRECTOR

Legal No. 5678 - Publish
Dec. 17 and 24, 2003.



RECEIVED

JAN 05 2004

Department of Water Resource
Eastern Region



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, ID 83402-1718 • Phone: (208) 525-7161 FAX: (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

January 8, 2004

RANDY K PETERSON -
7239 N WEST SIDE HWY
CLIFTON, ID 83228

RE: Claim No. 13-007648 LARRY MATTHEWS

Dear RANDY K PETERSON:

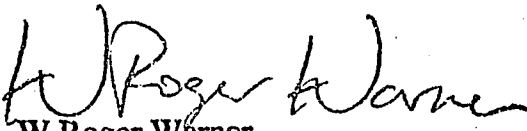
We have received the exception dated December 31, 2003, filed against the above referenced claim to a water right. The following is a quote from the provisions of the Idaho Code under which this claim has been filed.

42-244. Recording of claims by Department -Corrections. - At any time after the filing of a claim under the previous section, any person who disagrees that a right has been established as set forth in said claim may file an exception thereto in duplicate, in affidavit form, accompanied by such proof as said person deems appropriate. An exception filed shall be made a part of the file of the claim in the department of water resources and shall be considered the same as other evidence in said file. A copy of an exception filed shall be forwarded to the claimant by the department of water resources. Such claims may be corrected by the claimant only by filing of an amended claim in the same form as the original, which shall be recorded and numbered by the department the same as the original, and for which no additional filing fee shall be required.

Only the above action has been contemplated by the Idaho Legislature and we are not authorized to hold hearings or evaluate for conformation of final censorship of the described rights.

If you have any questions regarding this matter, please contact us.

Sincerely,


W Roger Warner
Water Rights Supervisor

Enclosure(s)

WRW:sc



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, ID 83402-1718 • Phone: (208) 525-7161 FAX: (208) 525-7177

EASTERN REGION

January 8, 2004

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

LARRY MATTHEWS -
7405 N. WESTSIDE HIGHWAY
CLIFTON, ID 83228

RE: Claim No. 13-007648

Dear LARRY MATTHEWS:

Enclosed please find a copy of the exception filed in connection with the above referenced claim. The following is a quote from the provisions of the Idaho Code under which this claim has been filed.

42-244. Recording of claims by Department -Corrections. - At any time after the filing of a claim under the previous section, any person who disagrees that a right has been established as set forth in said claim may file an exception thereto in duplicate, in affidavit form, accompanied by such proof as said person deems appropriate. An exception filed shall be made a part of the file of the claim in the department of water resources and shall be considered the same as other evidence in said file. A copy of an exception filed shall be forwarded to the claimant by the department of water resources. Such claims may be corrected by the claimant only by filing of an amended claim in the same form as the original, which shall be recorded and numbered by the department the same as the original, and for which no additional filing fee shall be required.

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If you have any questions regarding this matter, please contact us.

Sincerely,

W Roger Warner
Water Rights Supervisor

Enclosure(s)

WRW:sc



State of Idaho

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EASTERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

January 8, 2004

ATKIN & HAWKINS, P.C.
136 S MAIN, 6TH FLOOR
SALT LAKE CITY, UT 84101

RE: Claim No. 13-007648 LARRY MATTHEWS

Dear Lonn Litchfield, ATKIN & HAWKINS, P.C.:

We have received the exception dated January 2, 2004, filed against the above referenced claim to a water right. The following is a quote from the provisions of the Idaho Code under which this claim has been filed.

42-244. Recording of claims by Department -Corrections. - At any time after the filing of a claim under the previous section, any person who disagrees that a right has been established as set forth in said claim may file an exception thereto in duplicate, in affidavit form, accompanied by such proof as said person deems appropriate. An exception filed shall be made a part of the file of the claim in the department of water resources and shall be considered the same as other evidence in said file. A copy of an exception filed shall be forwarded to the claimant by the department of water resources. Such claims may be corrected by the claimant only by filing of an amended claim in the same form as the original, which shall be recorded and numbered by the department the same as the original, and for which no additional filing fee shall be required.

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If you have any questions regarding this matter, please contact us.

Sincerely,

W Roger Warner
Water Rights Supervisor

Enclosure(s)

WRW:sc