

01/08/2013

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-33361

NAME AND ADDRESS: W & H LIMITED LIABILITY CO
DBA MALLARD FARMS
PO BOX 7943
BOISE ID 83707

SOURCE: UNNAMED DRAIN

TRIBUTARY: BOISE RIVER

QUANTITY: 0.050 CFS

The quantity of water under this right for stockwater use shall not exceed
13,000 gallons per day.

PRIORITY DATE: 03/13/1944

POINT OF DIVERSION:

T05N R05W S21 SWNE Within CANYON County
T05N R05W S21 SWNE Lot 7 Within CANYON County
T05N R05W S21 SENE Within CANYON County
T05N R05W S21 SENE Lot 8 Within CANYON County
T05N R05W S21 NENW Within CANYON County
T05N R05W S21 SENW Within CANYON County
T05N R05W S22 SWNW Within CANYON County
T05N R05W S22 SWNW Lot 4 Within CANYON County
T05N R05W S22 MWSW Within CANYON County
T05N R05W S22 MWSW Lot 3 Within CANYON County
T05N R05W S22 SMSW Within CANYON County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

STOCKWATER

01/01 12/31

0.050 CFS

PLACE OF USE:

STOCKWATER in CANYON County

T05N R05W S21 SWNE
T05N R05W S21 SENE
T05N R05W S21 NENW
T05N R05W S22 SWNW
T05N R05W S22 MWSW
T05N R05W S22 MWSW Lot 3
T05N R05W S22 SMSW

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

The quantity of water decreed for this water right for stockwater use is not a determination of historical beneficial use.

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

01/08/2013

IDAHO DEPARTMENT OF WATER RESOURCES

PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

Source is also known as the Lower Haas Ditch.

Stockwater use is for 200 beef cattle.

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER ST

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DBA MALLARD FARMS
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T05N R05W S21 NENW within CANYON County

T05N R05W S21 SENW within CANYON County

T05N R05W S22 SWNW within CANYON County

T05N R05W S22 SWNW Lot 4 within CANYON County

T05N R05W S22 NMSW within CANYON County

T05N R05W S22 NMSW Lot 3 within CANYON County

T05N R05W S22 SMSW within CANYON County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

0.050 CFS

PLACE OF USE: STOCKWATER in CANYON County

T05N R05W S21 SWNE

T05N R05W S21 SENE

T05N R05W S21 NENW

T05N R05W S22 SWNW

T05N R05W S22 NMSW

T05N R05W S22 SMSW

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

The quantity of water decreed for this water right for stockwater use is not a determination of historical beneficial use.
This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

*Explanatory
remark of
Cadd
Source with
Jesse Hano
Ditch*

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

05/20/2011

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

Stockwater use is for 200 beef cattle.

Source is also known as the Lower Haas Ditch.

Saxton, Craig

From: Saxton, Craig
Sent: Friday, June 11, 2010 1:59 PM
To: Spencer, Nick; Williams, Ray
Cc: Shurte, Jan
Subject: FW: Motion to file late claim 63-33361: W&H Limited Liability Co
Attachments: Amended Claim 63-33361.doc

Hello,

This e-mail is meant to provide information that might be useful when the motion is heard on 8-17-10.

Filing Fees:

Motion indicates the claimant submitted \$100 in filing fees. Actual fees are calculates as follows:

\$50 claim fee
\$50 late fee
\$5 (\$100 per cfs @ 0.05 cfs)
\$105 total

If the motion is accepted, the claimant needs to submit an additional \$5 in filing fees. Doesn't seem like much but they owe \$150 for their other claim 63-33354

Source and POD:

Below is and e-mail I sent to Lori Graves from SPF about this claim. 63-33361 essentially claims seepage water that collects in a manmade ditch called Lower Haas Ditch. The claim lists the source as ground water and then lists the POD's as beginning and ending points on the ditch like you would an instream stock. After speaking with Carter, he thought the better way to claim this is to list the ditch as the source, and call out a POD for each QQ that ditch is in.

I wrote up an amended claim (attached) and sent it to Lori Graves to do with as she felt appropriate.

C

From: Saxton, Craig
Sent: Friday, June 11, 2010 1:46 PM
To: 'Lori Graves'
Subject: Motion to file late claim 63-33354 & 63-33361: W&H Limited Liability Co

Hey Lori,

I have been looking over 63-33361 as well and spoke with Carter about it. This is the one for essentially seepage into Lower Haas Ditch. After speaking with Carter, he thought we might want to call the source "Lower Haas Ditch" and list each QQ that the ditch falls into as a POD.

I have data entered 63-33361 as submitted to the court in the motion.

However, I have also attached a draft amended claim for you to look at. Generally I don't put a lot of time into these until they are granted by the court. But I thought I would throw this out to see if your client is interested in amending the claim.

The only other thing that I guess I will bring up is that it appears that both 63-33361 and 63-33354 claim non-de minimus stockwater use. Both claims appear to have been submitted with \$100 filing fee when the filing fee for 63-33354 should be \$250 and the filing fee for 63-33361 should be \$105. Again, I don't always bring this up until the motion is granted because there is no point asking for more money if the motion is denied. But since I am e-mailing you anyway, I thought I would bring that up too.

Would it be better if I contacted Michael Cramer?

You don't need to do anything in response to this e-mail unless you want to. I will note in the file the filing fee issues and IDWR's question about how the POD and source was claimed for 63-33361 so it can be addressed at the hearing.

Have a good weekend.

Craig

Saxton, Craig

From: Saxton, Craig
Sent: Tuesday, August 03, 2010 3:52 PM
To: 'Lori Graves'
Cc: Spencer, Nick; Courtney, Andrea; Williams, Ray
Subject: RE: Motion to File late claim 63-33361: W&H Limited Liability Co
Attachments: Amended Claim 63-33361 (8-3-10).doc

Hey Lori,

I have attached a new amended claim with the updated information. Truth is I don't know if an amended claim needs to be sent to the court before the hearing on 8-17-10 or not. It is my opinion that you would want the court to have the most updated version of the claim so the judge will be more likely to grant the motion. However, since the changes we are talking about don't really change the nature of the water use claimed, and because the court generally seems to be granting all the motions (for the most part) anyway, I don't know if it is necessary. At some point, we will need an amended claim though.

By CC, I am letting our legal staff know that the current claim on record with the court, does not reflect the results of our discussion below regarding how to describe the elements of the claim.

Talk to you later,

Craig

From: Lori Graves [mailto:LGraves@sprwater.com]
Sent: Wednesday, July 21, 2010 1:48 PM
To: Saxton, Craig
Cc: Michael C Creamer; Terry Scanlan
Subject: FW: Motion to File late claim 63-33361: W&H Limited Liability Co

Craig,

I unnamed drain is locally known as the "Lower Haas Ditch", not the "Upper Haas Ditch". Ops. Thankfully, Terry caught my mistake.

From: Lori Graves
Sent: Wednesday, July 21, 2010 1:02 PM
To: 'Saxton, Craig'
Cc: 'Michael C Creamer'; Terry Scanlan
Subject: FW: Motion to File late claim 63-33361: W&H Limited Liability Co

Craig,

I forwarded the email below to Mike Cramer. In response, Mike said that IDWR's preference to list the source as "Unnamed Drain" tributary to the Boise River was acceptable with the addition of a remark that clarifies the source as seepage water that collects in an unnamed drain locally known as the "Upper Haas Ditch".

Please let me know if you have any questions or comments. Thanks Craig.

From: Saxton, Craig [mailto:Craig.Saxton@idwr.idaho.gov]
Sent: Monday, June 14, 2010 3:02 PM

To: Lori Graves
Subject: Motion to File late claim 63-33361: W&H Limited Liability Co

Hey Lori,

I don't have Mr. Cramer's e-mail address so would you mind forwarding this to him.

I just thought I would drop you both an e-mail to try to answer the question about the source suggestions for 63-33361. Carters thought on why the source doesn't sound like groundwater is that he feels there should have been an intent to excavate to reach the water table.

Another concern about calling the source Ground Water is then down the road, it could be misinterpreted as giving authorization to drill a well under this water right.

It sounds like a similar situation as digging a gravel pit and ending up with a pond. I did some checking on some of the water rights that have been permitted for essentially ponds that are dug and filled up with water. Many of these have been permitted with the source listed as **Ground Water tributary to the Boise River**. This would leave you subject to water master regulation but I don't know how you regulate seeps.

The instream flow just seemed wrong because it is a man made ditch, or at least artificially maintained, and instream flows are for natural channels. I guess there is a question of if it flows too. I originally thought it didn't flow, but the affidavits indicate it eventually makes its way to the Boise River.

From the affidavits it sounds like perhaps the ditch was used to drain water from the field. Carter suggested another option could be to call the source an unnamed drain which covers springs and seeps. You could always add a remark that the source is locally known as Lower Haas Ditch. If you did call it an unnamed drain, and if it flowed, I suppose you could argue that it is instream flow but you still wouldn't really have a set beginning and ending point as the source of the water since it seeps in.

I hope that helps answer your questions...at least about our initial concerns with calling it ground water.

Thanks,
Craig

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

CIVIL CASE NUMBER: 39576

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

Ident. Number 63-33361
Date Received: 4/9/2010
Receipt No:
Received By:

Amended - Draft

Amended - Draft

**NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW**

1. Name of Claimant(s)

W & H PARTNERSHIP, LLC Phone: (208) 323-7767

DBA MALLARD FARMS
PO BOX 7943
BOISE ID USA 83707

2. Date of Priority: 03/13/1944

3. Source: ~~GROUND WATER~~ Trib. to:

BOISE RIVER

4. Point of Diversion:

Township Range Section 1/4 of 1/4 of 1/4 Lot County Type

05N 05W 21 NE NW CANYON Ending Point

SW NE 7 CANYON

SW NE CANYON

SE NE 8 CANYON

SE NE CANYON

SE NW CANYON

05N 05W 22 SW SW CANYON Beginning Point

SW NW 4 CANYON

SW NW CANYON

NW SW 3 CANYON

NW SW CANYON

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
STOCKWATER	1/1	12/31	0.05	

7. Total Quantity Appropriated is: 0.05 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4 Lot	Use	Acres
05N	05W	21	SW NE	STOCKWATER	7
			SE NE	STOCKWATER	
			SE NE	STOCKWATER	8
			~~NE NW~~	~~STOCKWATER~~	
			NE NW	STOCKWATER	
			SE NE	STOCKWATER	
05N	05W	22	SW SW	STOCKWATER	
			SW NW	STOCKWATER	
			SW NW	STOCKWATER	4
			NW SW	STOCKWATER	3
			NW NW	STOCKWATER	

11. Place of use in counties: CANYON

12. Do you own the property listed above as place of use? Yes

13. Other Water Rights Used:

14. Remarks:

Stockwater for 200 beef cattle.

"Unnamed Drain" is locally known as "Upper Haas Ditch".

This claim is for naturally occurring seep water that accumulates in the Lower Haas Ditch that is not attributable to water being diverted from the Boise River through the Lower Haas Ditch. Conveyance loss is not applicable.

Incidental stockwater use during the irrigation season under decrees 63-172B, 63-202B, 63-261A, and 63-261B. Year-round stockwater use claimed under SRBA beneficial use claim 63-33354.

15. Basis of Claim: Beneficial Use

16. Signature(s)

(a.) By signing below, I/we acknowledge that I/we have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/we do not wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Organizations:

I do solemnly swear or affirm that I am _____ of _____ Title

Organization, that I have signed the foregoing

document in the space below as _____ of _____ Title

Organization and that the statements contained in the foregoing document are true and correct. _____ Signature of Authorized Agent

Title and Organization

Date

State of Idaho)
County of _____)
SS. _____)

Subscribed and sworn (or affirmed) before me this _____

of _____ 20

Notary Public

Residing at _____

My commission Expires _____

SEP - 2 2010

SCANNED

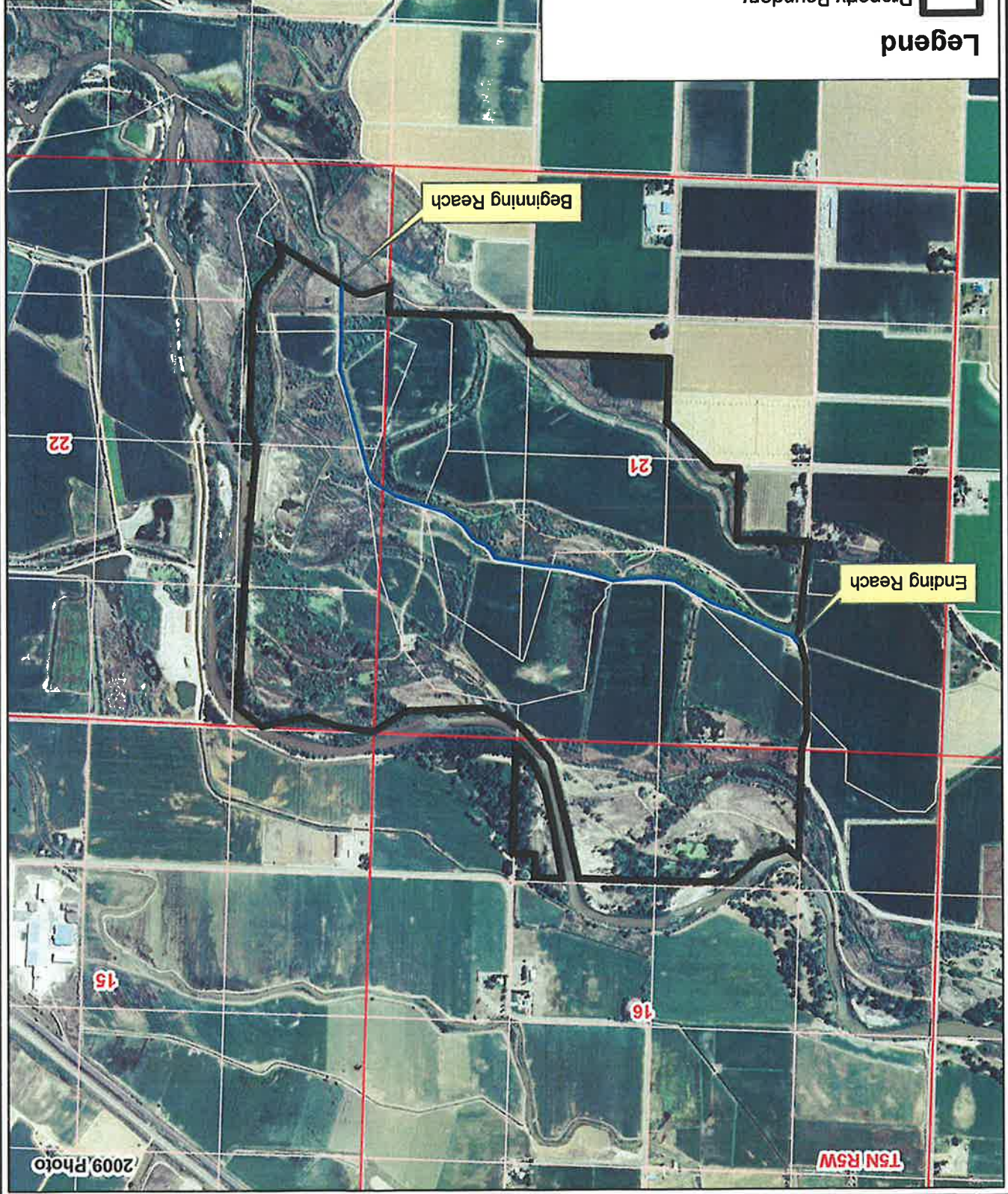


0 750 1,500 Feet



W & H Partnership, LLC
Claim 63-33361

- Legend**
- Section Qtr Air Lines
 - Sections
 - Stockwater Place of Use (Lower Haas)
 - Property Boundary



2009 Photo

T5N R5W

2011003981

RECORDED

2011 JAN 28 PM 12 18

CHRIS W. OTO
CANYON COUNTY RECORDER

Chris W. OTO
Givens-Burley
TYPE BSA FEE 91.00

AGREEMENT

This Agreement is entered into effective the 21st day of January, 2011 by and between W&H Limited Liability Company, an Idaho limited liability company ("W&H") and Gregory Obendorf and G.O. Investments, LLC a Colorado limited liability company (collectively "Obendorf") to resolve pending disputes between them concerning the use of water and water delivery facilities.

RECITALS

A. W&H owns real property in Canyon County, Idaho adjacent to the Boise River more particularly described in Exhibit A hereto. ("W&H Property")

B. W&H has filed certain claims in the Snake River Basin Adjudication ("SRBA"), including Amended Claim No. A63-32910 claiming 4.60 cubic feet per second ("cfs")/45 acre-feet per annum ("AFA") from a drain known locally as the Baldridge and Meadows Drain ("Drain") for year-round wildlife, wildlife storage and stock water purposes with a claimed priority date of January 1, 1970 (the "Wildlife Claim"). W&H also has filed late claims A63-33354 claiming 1.55 cfs from the Drain for stock watering with a claimed priority date of March 13, 1944, and Claim A63-33361 claiming .05 cfs from the Lower Haas Ditch for stock watering with a claimed priority date of March 13, 1944 (the "Stock Water Claims").

C. W&H also has filed an Application for Permit No. 63-32458 ("W&H Application") with the Idaho Department of Water Resources ("IDWR") seeking to appropriate an additional 4.6 cfs/78.8 AFA of water for year-round wildlife purposes from the Drain with a priority date of September 12, 2006 for delivery to the W&H Property via the Upper Haas Ditch via a headgate and control works located on the Obendorf property ("Upper Haas Headgate").

D. W&H also holds decreed water right Nos. 63-02611A and 63-02611B, each with a priority date of March 13, 1944 for 2.28 cfs for irrigation purposes diverted and delivered from the Drain via the Upper Haas Headgate and Upper Haas Ditch.

E. W&H also holds water right Permit 63-12601 with a priority date of August 24, 2000 for 0.2 cfs/20AFA for year-round wildlife purposes diverted and delivered from the Drain via the Upper Haas Headgate and Upper Haas Ditch.

F. The above-described water rights, including applications for permit, permits, licenses, claims and decrees, belonging to W&H are collectively referred to herein as the "W&H

Water Rights." W&H also owns shares in the Haas Ditch Company for irrigation from the Lower Haas Ditch that are not the subject of this Agreement.

G. Obendorf owns real property adjacent to the W&H property, more particularly described in Exhibit B hereto ("Obendorf Property"), and has filed an Application for Permit No. 63-32460 with IDWR seeking to appropriate 6 cfs/40 acre-feet of water from the Drain with a priority date of April 5, 2005 for wildlife uses from the Upper Haas Headgate and using the Upper Haas Ditch on the Obendorf Property, and an Application for Permit No. 63-32459 seeking to appropriate 24 cfs from the Boise River with a priority date of April 5, 2005 for delivery through the Lower Haas Ditch for wildlife uses (the "Obendorf Applications"). Obendorf also has other water rights, including without limitation, from the Riverside Irrigation District and the Haas Ditch Company, that are not the subject of this Agreement.

H. Obendorf also desires to obtain a water right for the same purposes and in the same quantity as sought in Application for Permit 63-32460 to be diverted and delivered to storage and wildlife purposes from March 1 through November 15 from the Upper Haas Headgate and using the Upper Haas Ditch on the Obendorf Property. A copy of Obendorf's proposed new permit application is attached hereto as Exhibit C. Obendorf may also desire to obtain a water right for the same purposes as sought in Application for Permit 63-32459 to be diverted from the Boise River for delivery through the Lower Haas Ditch for wildlife uses from March 1 through November 15.

I. Obendorf also intends filing: 1) a SRBA claim for a water right for wildlife and wildlife storage purposes using water diverted from the "Meadows Drain," a tributary to the Drain, to be delivered to existing ponds on the Obendorf Property lying south of the Lower Haas Ditch, which water right would not be diverted or delivered from the Upper Haas Headgate or Upper Haas Ditch; 2) a SRBA claim for a water right for irrigation of ten acres of the Obendorf Property lying south of the Lower Haas Ditch using wastewater diverted directly from lands owned by Obendorf lying south and west from the Drain; and 3) a SRBA claim for a water right for irrigation of twelve acres of the Obendorf Property lying on both sides of the Lower Haas Ditch using water from the Drain diverted at the Upper Haas Headgate and delivered through and from the Upper Haas Ditch on the Obendorf Property. Copies of the above-described proposed SRBA Claims are attached hereto as Exhibits D, E and F respectively (the "Obendorf SRBA Claims").

J. W&H has filed an Objection in the SRBA to IDWR's recommendation of disallowal of its Wildlife Claim. Obendorf has filed a Response in the SRBA supportive of IDWR's recommendation of disallowal of the Wildlife Claim and the matter currently is set for trial.

K. W&H has protested the Obendorf Applications and notified IDWR that Obendorf currently has no consent from W&H to use the Upper Haas Headgate or Upper Haas Ditch to deliver water to the Obendorf property. Obendorf has protested W&H's Application for Permit No. 63-32458 raising as an issue, among other things, that W&H does not have an easement to

3. W&H shall file appropriate documents with IDWR to withdraw its protests to the now pending Obendorf Applications subject to IDWR approval consistent with the terms and conditions herein specified, and agrees not to protest the proposed applications described in Recital H above, including, without limitation, Exhibit C hereto. W&H's protest withdrawals will specifically state that a permit may be issued pursuant to such application for water right No. 63-32460 to Obendorf for 6 cfs/40 acre-feet, with a source of the Drain diverted at Upper Haas Headgate and delivered through the Upper Haas Ditch on the Obendorf Property as provided herein, and such Permit No. 63-32460 and any subsequently issued license of same, may

2. Obendorf shall not object to IDWR's recommendations and the SRBA's approval and partial decree of the Stock Water Claims, provided that W&H will reduce the quantity claimed for stock water under its late claim A63-33354 to 0.05 cfs, which, when combined with the Wildlife Claim, shall be limited to a total diversion rate and volume from the Drain of 4.6 cfs/45 AFA.

This water right shall be subordinate to Water Right No. 63-32460. When the quantity of water necessary for the authorized beneficial use under Water Right No. 63-32460 is not available to be delivered from the source of this water right, diversions under this water right shall be limited to the extent required to supply the authorized beneficial use under Water Right No. 63-32460.

1. W&H and Obendorf will enter into a stipulated settlement by way of an SF-5 approved by IDWR allowing entry of a partial decree in the SRBA of the Wildlife Claim providing that the combined diversion rate for wildlife and stock water purposes under the Wildlife Claim and stock water claim A63-33354 is 4.6 cfs/45 AFA, and including language in substantially the following form subordinating the priority of the Wildlife Claim to the priority of Application for Permit No. 63-32460 when there is not a sufficient flow of water in the Drain to fully satisfy both:

NOW THEREFOR, in consideration of the recitals, terms, covenants and conditions set forth herein, the parties agree as follows:

M. The general locations of the various drains and ditches are described in Exhibit G hereto.

L. W&H and Obendorf wish to resolve these various disputes between them concerning water use and use of the Upper Haas Headgate and Upper Haas Ditch on terms set forth herein.

use the Upper Haas Headgate and Upper Haas Ditch to deliver the water sought by the Application.

*Put on
63-32910
"Wildlife"*

*Not into
63-32910
x 33354*

expressly recognize the subordination of W&H's Wildlife Claim described in Section 1 above to Permit No. 63-32460.

4. Obendorf may file the new application for permit shown in Exhibit C hereto, and provided that any permit issued has a priority date junior to September 12, 2006, W&H will not protest the new application. Obendorf may also file an Application for Permit for a water right for the same purposes as sought in Application for Permit 63-32459 to be diverted from the Boise River for delivery through the Lower Haas Ditch for wildlife uses from March 1 through November 15.

5. Obendorf may file the Obendorf SRBA Claims and, provided such SRBA Claims are recommended in substantial conformance with the elements contained in the attached Exhibits D, E and F, W&H will not object to the Obendorf SRBA Claims.

6. Obendorf will withdraw its protest to the W&H Application, subject to IDWR approval consistent with the terms and conditions herein specified.

7. Obendorf and W&H agree to share equally the cost of design and construction of any new measuring and/or control structure(s) that may be required by IDWR to allow the Watermaster to measure and deliver their respective water rights from the Drain at the Upper Haas Headgate. Upon the request of either party, one or more structures shall be designed and constructed after IDWR consultation, and as applicable, after approval from IDWR and/or U.S. Army Corps of Engineers, to allow W&H and Obendorf to accurately measure and confirm that they each are getting their authorized quantities from the Upper Haas Ditch. If IDWR recommends that accurate measurement can be obtained using only one structure, the parties will share equally in the costs and design of that measurement structure. If separate structures are recommended by IDWR for the parties' respective diversions from the Upper Haas Ditch, then W&H and Obendorf will be solely and individually responsible for designing and constructing all such measurement structures at any points measuring delivery of their individual respective water rights.

8. Obendorf agrees to take appropriate steps as necessary to ensure that the existing roadway by which W&H accesses the Upper Haas Headgate is not made impassable due to flooding or seepage resulting from Obendorf's use of water diverted at the Upper Haas Headgate.

9. Obendorf confirms W&H's existing right-of-way for the Upper Haas Headgate and the Upper Haas Ditch located on the Obendorf Property and W&H's continued right of access thereto for operation, maintenance, repair and replacement of same for delivery of water to the W&H Property under the W&H Water Rights described in this Agreement, and W&H confirms Obendorf's continued right of access to the Upper Haas Headgate and Upper Haas Ditch for the construction, operation, maintenance, repair and replacement of Obendorf's portion of the Upper Haas Headgate and Upper Haas Ditch for delivery of water to the Obendorf Property under the various Obendorf water rights, applications, permits and claims described in this Agreement.

10. W&H and Obendorf shall endeavor in good faith to implement this Agreement and shall not encourage or assist any third party in undertaking any action that either of them would be precluded from taking themselves by way of this Agreement.

11. This Agreement may be recorded by either party or produced by either party in any proceeding before the SRBA or the IDWR to confirm the parties' intent with respect to the processing of the water right claims and applications that are the subject hereof.

12. All of the obligations and covenants contained herein shall be binding on the parties hereto and their respective principals, members, managers, agents, employees, representatives, successors and assigns.

13. Each party will bear their own attorney fees and costs with respect to proceedings regarding the water right applications and/or SRBA claims that are the subject of this Agreement.

14. In the event of a breach of this Agreement by any party, the non-breaching party shall have all remedies available at law or in equity, including injunctive or other equitable relief. In any suit, action or appeal therefrom to enforce or interpret this Agreement, the prevailing party shall be entitled to recover its costs incurred therein, including reasonable attorneys' fees and consultants' fees and disbursements, and also including reasonable attorneys' fees and costs and fees associated with any appeal of a judgment.

15. This Agreement may be executed in any number of counterparts for the convenience of the Parties, all of which, when taken together and after execution by all Parties hereto, shall constitute one and the same Agreement.

[End of text — separate signature pages follow]



Notary Public for Idaho
Residing at: Ada County
My commission expires: 3/22/16

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

Katharine Creswell
On this 6th day of January, 2011, before me, a Notary Public in and for the State of Idaho, personally appeared Gerald A. Waller, known or identified to me to be one of the members in the limited liability company of W&H Limited Liability Company, LLC and the member or one of the Managers of said limited liability company who subscribed said name to the foregoing instrument, and acknowledged to me that he executed the same in said limited liability company name.

STATE OF IDAHO
)
) ss.
)
County of Ada

By: *Gerald A. Waller*
Gerald A. Waller, Manager

W&H LIMITED LIABILITY COMPANY,
an Idaho limited liability company



[Signature]
Notary Public for Idaho
Residing at _____
Commission expires 12/03/2011

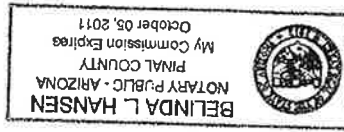
IN WITNESS WHEREOF, I have hereto set my hand and affixed my official seal the day and year in this certificate first above written.

On this 18 day of January, 2011, before me, the undersigned, a notary public in and for said county and state, personally appeared Gregory Obendorf, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

STATE OF IDAHO
()
() ss. *[Signature]*
County of *[Signature]*

[Signature]
GREGORY OBENDORF

Notary Public for Arizona
Residing at: Queen Creek, AZ
My commission expires: 10-5-2011



On this 17 day of January, 2011, before me, a Notary Public in and for the State of Arizona, personally appeared George Ray Obendorf, known or identified to me to be one of the members in the limited liability company of G.O. Investments, LLC and the member or one of the Managers of said limited liability company who subscribed said name to the foregoing instrument, and acknowledged to me that he executed the same in said limited liability company name.

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

STATE OF Arizona)
(ss.)
County of Maricopa)

By: George Ray Obendorf
George Ray Obendorf, Manager

G.O. INVESTMENTS, LLC
a Colorado limited liability company

EXHIBIT A
(W&H Property Description)

Parcel 1

A tract of land situated in the County of Canyon, State of Idaho to wit:

Beginning at the Northwest corner of Lot 3, Section 21, Township 5 North, Range 5 West of the Boise Meridian, Canyon County, Idaho and running thence West on the North line of said Section 21, a distance of 1305 feet; thence South 17°10' West 250.0 feet; thence South 3°45' East 565.0 feet; thence South 16°45' East 245.5 feet; thence North 90°0' East 102.2 feet; thence South 68°30' East 295.5 feet; thence South 49°44' East 428.7 feet; thence South 56°10' East 343.0 feet; thence South 67°28' East 335.9 feet to a point 1735.25 feet South of the North ¼ corner of Section 21, Township 5 North, Range 5 West of the Boise Meridian; thence South 76°38' East 416.6 feet; thence South 63°07' East 255.3 feet; thence South 82°50' East 132.5 feet; thence North 84°55' East 271.0 feet; thence South 26°45' East 231.3 feet; thence North 89°53' East 176.3 feet; thence North 78°50' East 380.7 feet; thence South 68°25' East 546.0 feet; thence South 73°22' East 486.0 feet; to a point which is North 6°38' East 254.0 feet from the ¼ corner between Section 21 and 22, Township 5 North, Range 5 West of the Boise Meridian; thence South 82°58' East 515.5 feet; thence South 81°30' East 413.0 feet to the Southwesterly bank of the Boise River; thence continuing South 81°30' East 375.8 feet to a point on the East side of Lot 4 of Section 22, Township 5 North, Range 5 West of the Boise Meridian 81.3 feet North of the Southeast corner of said Lot 4; thence North along the East side of Lot 4 and the Northwest ¼ of the Northwest ¼ of said Section 22 to the North line of said Section 22, thence West along the North line of Section 22 and Section 21, Township 5 North, Range 5 West of the Boise Meridian to the North ¼ corner of said Section 21, which is the Northwest corner of Lot 3, Section 21, Township 5 North, Range 5 West of the Boise Meridian, Canyon County, Idaho, the point of Beginning. (Consisting of 242 acres more or less.)

Beginning at a point 20.0 feet East of the Northwest corner of the Southwest Quarter of Lot Six of Section Twenty-one, Township Five North, Range Five West of the Boise Meridian, thence North 2° 55' East 645.0 feet; thence North 2° 10' West 252.0 feet; thence North 16° 45' West 12.5 feet; thence North 90° 0' East, 102.2 feet; thence South 68° 30' East 295.5 feet; thence South 49° 44' East 428.7 feet; thence South 56° 10' East 343.0 feet; thence South 67° 28' East 335.9 feet to a point 1735.25 feet South of the quarter corner on the North side of said Section Twenty-one; thence South 76° 38' East 416.6 feet; thence South 63° 07' East 255.3 feet; thence South 82° 50' East 132.5 feet; thence North 84° 55' East 271.0 feet; thence South 26° 45' East 231.3 feet; thence North 89° 52' East 176.3 feet; thence North 78° 50' East 380.7 feet; thence South 68° 25' East 546.0 feet; thence South 73° 22' East 486.0 feet to a point North 6° 38' East 254.0 feet from the Quarter corner between Section Twenty-one and Twenty-two, Township Five North, Range Five West of the Boise Meridian; thence South 82° 58' East 515.5 feet; thence South 81° 30' East 413.0 feet to the Southwest corner of the Boise River; thence continuing South 81° 30' East 375.8 feet to a point on the East side of Lot Four of Section Twenty-two, Township Five North, Range Five West of the Boise Meridian, 81.3 feet North of the Southeast corner of said Lot Four; thence South along the east side of Lot Four and Lot Three, Section Twenty-two, Township Five North, Range Five West of the Boise Meridian, to the Southeast corner of Lot Three (Northwest Quarter of the Southwest Quarter) of Section Twenty-two, Township Five North, Range Five West of the Boise Meridian; thence West along the South line of Lot Three of Section Twenty-two, and Lot Nine of Section Twenty-one, Township Five North, Range Five West

(continued on next page)

of the Boise Meridian, to a point 180.0 feet East of the Southwest corner of Lot Nine (Northeast Quarter of the Southeast Quarter) of Section Twenty-one, Township Five North, Range Five West of the Boise Meridian; thence Northwesterly 269.1 feet to a point 200.0 feet North of the said Southwest corner of Lot Nine; thence North 130.0 feet; thence West 1324.6 feet parallel to the center line of Section Twenty-one; thence North 991.5 feet to the center of Section Twenty-one; Township Five North, Range Five West of the Boise Meridian; thence 663.4 feet West along the center line of said Section Twenty-one; thence North 660 feet; thence West 640 feet to the point of beginning;

Parcel III

The Southeast Quarter of the Southwest Quarter and the Southwest Quarter of the Southeast Quarter of Section 16, Township 5 North, Range 5 West, Boise Meridian, Canyon County, Idaho.
EXCEPTING from said Southwest Quarter of the Southeast Quarter: BEGINNING at the Northeast corner of the Southwest Quarter of the Southeast Quarter of said Section 16; running thence due South 210 feet; thence due East 210 feet; thence due North 210 feet; thence due East 210 feet to the POINT OF BEGINNING.

(The end of Exhibit A)

EXHIBIT B
(Obendorf Property Description)

Lot 10 of Sec. 21, and Lot 5 of Sec. 22, and Lot 4 of Sec. 27 and the NE¼ of the NE¼ of Sec. 28;

ALSO a strip of land of uniform width off the entire South side of the NW¼ of the SE¼ of Sec. 21, said strip of land containing 10 acres;

ALSO, a tract of land in the SW corner of Lot 9 of Sec. 21, described as follows, to-wit:
Commencing at the SW corner of said Lot 9, running thence East along the South side of said Lot 9, 180 feet, thence in a NWly direction to a point on the West line of said Lot 9, 200 feet North of the SW corner of said lot, thence South along the West line of said Lot 9 to the SW corner of said lot, the point of beginning,

ALL of the above described land being in Twp. 5 N, R. 5 W B.M.;

EXCEPTING therefrom the lands conveyed to the United States of America by deed recorded in Book 76 of Deeds, at page 535, records of Canyon County, Idaho, to which reference is hereby made, AND SUBJECT to the rights acquired by agreement recorded in Book 4 of Bonds and Agreements, at page 29, records of Canyon County, Idaho, to which reference is hereby made.

EXHIBIT C
(Obendorf Permit Application)

FORM 202 03/10 Print form as a 2 page, single-sided document

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT
To appropriate the public waters of the State of Idaho

1. Name of applicant(s) G. O. Investments, LLC Phone 208-482-7397

Mailing address: 24034 Ball Corner Road City Parma State ID Zip 83660 Email: _____

2. Source of water supply Unnamed Drain which is a tributary of Boise River

3. Location of point(s) of diversion: _____

Twp	Rge	Sec	Govt Lot	%	%	County	Source	Local name or tag #
5N	5W	27	4	NE	NW	Canyon	Unnamed Drain	

4. Water will be used for the following purposes:

Amount 6.0 cfs for Wildlife purposes from 2/29 to 11/15 (both dates inclusive)
Amount 6.0 cfs for Diversion to Storage purposes from 2/29 to 11/15 (both dates inclusive)
Amount 40.0 at for Wildlife Storage purposes from 1/1 to 12/31 (both dates inclusive)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
5. Total quantity to be appropriated is (a) 6.0 cubic feet per second (cfs) and/or (b) 40.0 acre-feet per year (af).
3. Proposed diverting works:

a. Describe type and size of devices used to divert water from the source. Check box, pipe _____

b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet. If the reservoir will be filled more than once each year, describe the refill plan in item 1.

c. Application for Construction or Enlargement of a New or Existing Dam. Application required? ☐ Yes ☐ No

d. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.

e. Is ground water with a temperature of greater than 85°F being sought? ☐ Yes ☐ No

f. If well is already drilled, when? _____, drilling firm _____

g. Well was drilled for (well owner) _____, Drilling Permit No. _____

a. Hydro power, show total feet of head and proposed capacity in kW, _____

b. Stockwatering, list number and kind of livestock, _____

c. Municipal, show name of municipality or the applicant's qualifications as a municipal provider, _____

d. Domestic, show number of households _____

e. Other, describe fully, Five ponds covering a total of 10 acres with an average depth of 4 feet are planned for wildlife _____

8. Description of place of use:
- a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- b. If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.



5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc), including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed and as enlarged and the depth of each well. Ponds cover about 12 acres at an average depth of 2 feet.

Govt. Lot _____, BM., County of _____

ending point is: Township _____, Range _____, Section _____, 1/4 of _____, 1/4

Govt. Lot _____, BM., County of _____

Township _____, Range _____, Section _____, 1/4 of _____, 1/4

b. If instream flow, beginning point of claimed instream flow is:

_____ If available, GPS Coordinates

_____ Additional points of diversion if any:

Parcel (PIN) no. _____

4. a. Location of Point of Diversion is: Township 5N, Range 5W, Section 27 NW, 1/4 of NW, 1/4 Govt. Lot 4, BM., County of Canyon

which is tributary to (b) Boise River

3. Source of water supply (Check one) Ground Water () or Other (V) (a) Meadows Drain

2. Date of Priority (Only one (1) per claim) March 14, 1944 Month Day Year (YYYY)

Mailing Address 24034 Batt Corner Road, Parma, Idaho Street or Box City State ZIP 83660

1. Name of Claimant(s) G. O. Investments, LLC Phone (208) 482-7397

Please type or print clearly

**NOTICE OF CLAIM
TO A WATER RIGHT
ACQUIRED UNDER STATE LAW**

CIVIL CASE NUMBER: 39576

Ident. Number _____

Date Received: _____

Receipt No: _____

Received By: _____

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

SRBA Form No. 42-1409-1 (Internal 2/09)

EXHIBIT D
(Obendorf SRBA Claim - wildlife ponds)

Parcel (PIN) no(s). _____
Total number of acres irrigated _____

10. In which county (ies) are lands listed above as place of use located? Canyon _____

11. Do you own the property listed above as place of use? Yes (✓) No ()
If your answer is No, describe in Remarks below the authority you have to claim this water right.

12. Describe any other water rights used at the same place and for the same purposes as described above.

[illegible]

6. Water is claimed for the following purposes:

	1/1		to 12/31		amount	2.5	or
For Wildlife	purposes from						
For Diversion to Storage	purposes from		12/31		amount	2.5	or
For Wildlife Storage	purposes from		12/31		amount	24.0	or
For	purposes from		to		amount		or

(both dates are inclusive MM-DD) (cfs) (acre feet)

7. Total quantity claimed (a) 2.5 (cfs) and/or (b) 24.0 (acre feet)

8. Non-irrigation uses: describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock, Etc.)

9. Description of place of use:
a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
b. If water is used for other purposes, place a symbol of use (example: D for Domestic)
In the corresponding place of use below. See instructions for standard symbols.



Map of Project: Attach aerial photograph or topographic map showing clearly the point of diversion, place of use, section number, township, and range number, unless unavailable. Otherwise sketch the elements above on the grid below.

14. Basis of Claim (Check One) Beneficial Use (☒) Posted Notice (☐) License (☐) Permit (☐) Decree (☐)

Court _____ Decree Date _____ Plaintiff v. Defendant _____
 If applicable provide IDWR Water Right Number _____

15. Signature(s) _____
 (a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notices in the Snake River Basin Adjudication," (b.) I/We do (☐) do not (☐) wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: 1 Aerial Photo _____

For Individuals: I/We do solemnly swear or affirm under penalty of perjury that the statements contained in the foregoing document are true and correct.
 Signature of Claimant(s) _____
 Date: _____

For Organizations: I do solemnly swear or affirm under penalty of perjury that I am

Manager _____ Title _____ of G. O. Investments, LLC
 that I have signed the foregoing document in the space below as
 Organization _____

Manager _____ Title _____ of G. O. Investments, LLC
 and that the statements contained in the foregoing document are true and correct.
 Organization _____

Signature of Authorized Agent _____ Date _____
 Title and Organization _____

16. Notice of Appearance:

Notice is hereby given that I, Dana L. Hostetter, Hostetter Law Office, LLC, will be acting as attorney at law of behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature _____ Date _____
 Address Hostetter Law Office, LLC
 608 West Franklin Street, Boise, ID 83702

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc), including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed and as enlarged and the depth of each well. Waste water collection pond, concrete ditch

Govt. Lot _____, BM., County of _____

ending point is: Township _____, Range _____, Section _____, 1/4 of _____, 1/4

Govt. Lot _____, BM., County of _____

Township _____, Range _____, Section _____, 1/4 of _____, 1/4

b. If instream flow, beginning point of claimed instream flow is:

if available, GPS Coordinates _____

Additional points of diversion if any: _____

Parcel (PIN) no. _____

4. a. Location of Point of Diversion is: Township _____, Range _____, Section _____, 1/4 of _____, 1/4 of SE _____, 1/4 of SE _____, 1/4 Govt. Lot _____, BM., County of _____ Canyon

which is tributary to (b) Boise River

3. Source of water supply (Check one) Ground Water () or Other () (a) Waste water

2. Date of Priority (Only one (1) per claim) March 1, 1940 Month Day Year (YYYY)

Mailing Address 24034 Batt Corner Road, Parma, Idaho _____

1. Name of Claimant (s) G. O. Investments, LLC _____

Phone (208) 482-7397

ZIP 83660

State _____ City _____ Street or Box _____

Please type or print clearly

NOTICE OF CLAIM
TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

CIVIL CASE NUMBER: 39576

Ident. Number _____

Date Received: _____

Receipt No: _____

Received By: _____

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

13. Remarks: Source of water is waste water from Riverside Irrigation District irrigated lands owned by the _____ or None (✓)

11. Do you own the property listed above as place of use? Yes (✓) No ()
If your answer is No, describe in Remarks below the authority you have to claim this water right.

Parcel (PIN) no(s). _____

Total number of acres irrigated 5

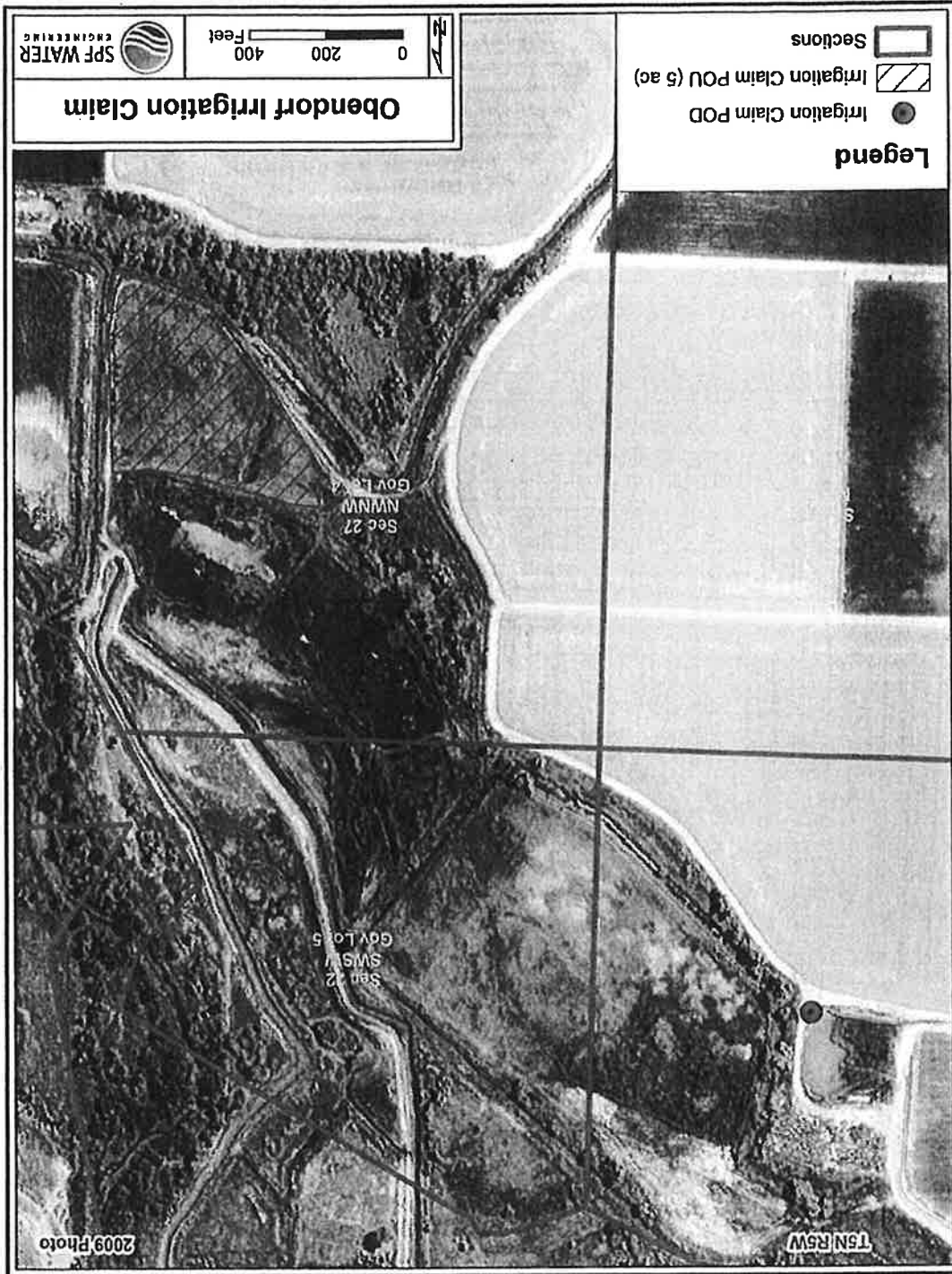
Town	Ring	Sec	NE				NW				SW				SE				Totals			
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE				
5N	5W	27																				

8. Non-irrigation uses: describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock, Etc.)

7. Total quantity claimed (a) 1.00 (cfs) and/or (b) 15 (acre feet)

For Irrigation	purposes from	3/1	to	11/15	amount	1.0	or
For Diversion to Storage	purposes from	3/1	to	11/15	amount	1.0	or
For Irrigation Storage	purposes from	3/1	to	11/15	amount	15	or
For Diversion from Storage	purposes from	3/1	to	11/15	amount	1.0	or

6. Water is claimed for the following purposes:



Last Name Identification No.

Address Horstetter Law Office, LLC

Signature

Date
608 West Franklin Street, Boise, ID 83702

Notice is hereby given that I, Dana L. Horstetter, Horstetter Law Office, LLC, will be acting as attorney at law of behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

16. Notice of Appearance:

Title and Organization

Signature of Authorized Agent

Date
and that the statements contained in the foregoing document are true and correct.

Title
Manager of G. O. Investments, LLC

Organization
that I have signed the foregoing document in the space below as

Title
Manager of G. O. Investments, LLC

Organization
For Organizations: I do solemnly swear or affirm under penalty of perjury that I am

Date:

Date:

For Individuals: I/We do solemnly swear or affirm under penalty of perjury that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s)

Date:

Date:
Number of attachments: 1 Aerial Photo

15. Signature(s)
(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notices in the Snake River Basin Adjudication," (b.) I/We do () do not () wish to receive and pay a small annual fee for monthly copies of the docket sheet.

If applicable provide IDWR Water Right Number

Court

Decree Date

Plaintiff v. Defendant

14. Basis of Claim (Check One) Beneficial Use (✓) Posted Notice () License () Permit () Decree ()

EXHIBIT F
(SRBA Irrigation Claim from Upper Haas)

SRBA Form No.42-1409-1 (Internet 2/09)

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576
Ident. Number
Date Received:
Receipt No:
Received By:

NOTICE OF CLAIM
TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

Please type or print clearly

1. Name of Claimant (s) G. O. Investments, LLC
Mailing Address 24034 Batt Corner Road, Parma, Idaho
Street or Box
City March 14, 1944
State
ZIP 83660
2. Date of Priority (Only one (1) per claim)
Month Day Year (YYYY)

3. Source of water supply (Check one) Ground Water () or Other () (a) Baldridge and Meadows Drain
which is tributary to (b) Boise River

4. a. Location of Point of Diversion is: Township 5N Range 5W Section 27
NW 1/4 of NW 1/4 Govt. Lot 4 BM, County of Canyon
Parcel (PIN) no. _____
Additional points of diversion if any: _____
if available, GPS Coordinates _____

b. If instream flow, beginning point of claimed instream flow is:
Township _____ Range _____ Section _____ 1/4 of _____ 1/4
Govt. Lot _____ BM, County of _____
ending point is: Township _____ Range _____ Section _____ 1/4 of _____ 1/4
Govt. Lot _____ BM, County of _____

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed
and as enlarged and the depth of each well: _____

13. Remarks: This claim includes 0.4 cfs for conveyance loss between the point of diversion and the field or None (✓)

11. Do you own the property listed above as place of use? Yes (✓) No ()
If your answer is No, describe in Remarks below the authority you have to claim this water right.

Parcel (PIN) no(s). _____

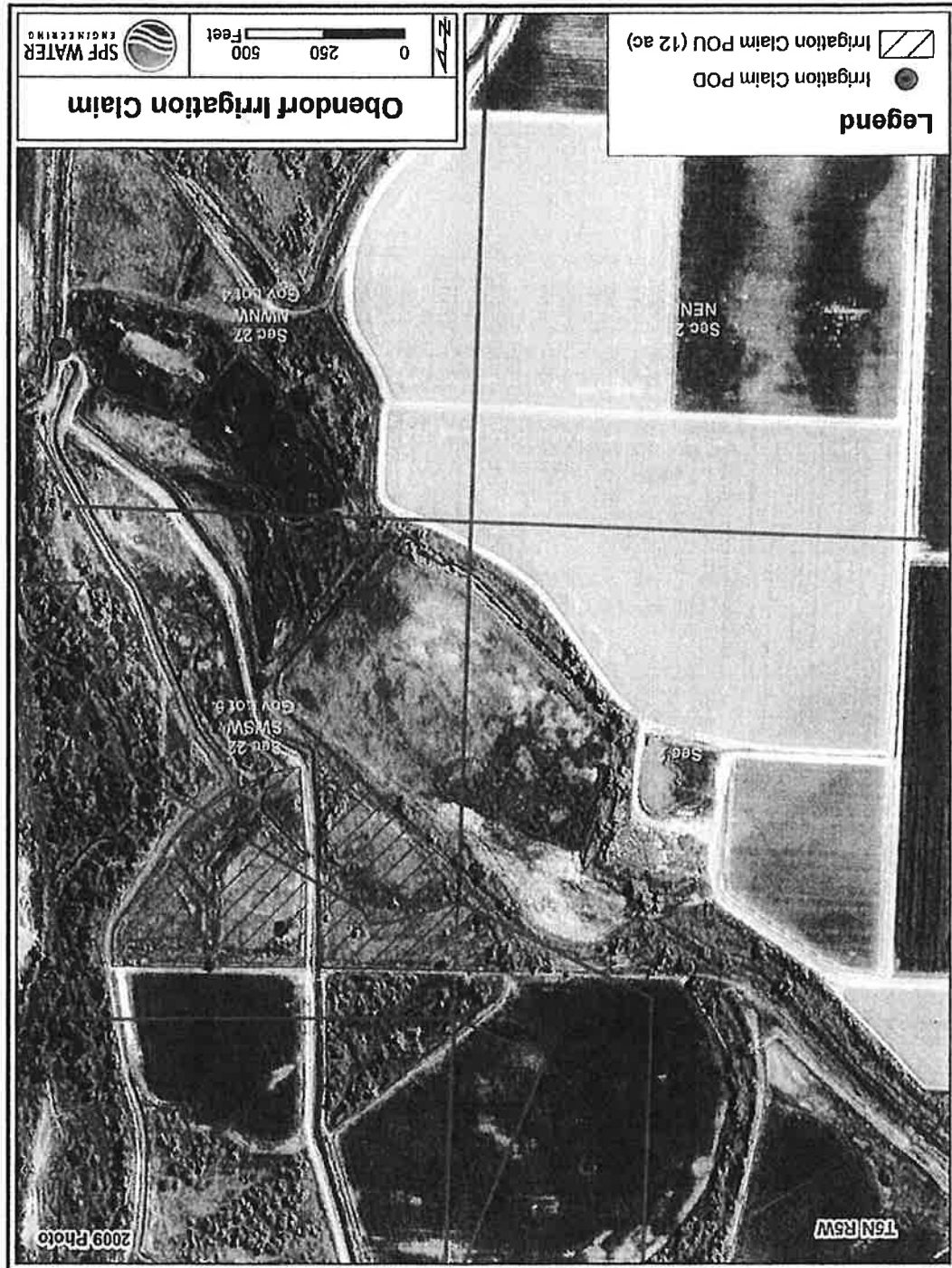
Total number of acres irrigated 12

[illegible]

8. Non-irrigation uses; describe fully (eg. Domestic; Give number of households served; Stockwater; Type and number of livestock, Etc.)

For Irrigation	purposes from	3/1	to	11/15	amount	1.00	or
For	purposes from		to		amount		or
For	purposes from		to		amount		or
For	purposes from		to		amount		or

6. Water is claimed for the following purposes:



Last Name Identification No.

Address Hofstetter Law Office, LLC
608 West Franklin Street, Boise, ID 83702

Signature Date
Notice is hereby given that I, Dana L. Hofstetter, Hofstetter Law Office, LLC, will be acting as attorney at law of behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

16. Notice of Appearance:

Title and Organization

Signature of Authorized Agent Date
and that the statements contained in the foregoing document are true and correct.

Title
Manager of G. O. Investments, LLC
that I have signed the foregoing document in the space below as

Title
Manager of G. O. Investments, LLC
For Organizations: I do solemnly swear or affirm under penalty of perjury that I am

Date:

Date:
Signature of Claimant(s)
For Individuals: I/We do solemnly swear or affirm under penalty of perjury that the statements contained in the foregoing document are true and correct.

15. Signature(s)
(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notices in the Snake River Basin Adjudication;" (b.) I/We do () do not () wish to receive and pay a small annual fee for monthly copies of the docket sheet.
Number of attachments: 1 Aerial Photo

If applicable provide IDWR Water Right Number

Court Decree Date Plaintiff v. Defendant

14. Basis of Claim (Check One) Beneficial Use (✓) Posted Notice () License () Permit () Decree ()

Shurte, Jan

From: Courtney, Andrea
Sent: Tuesday, August 03, 2010 3:52 PM
To: Shurte, Jan
Subject: FW: Motion to File late claim 63-33361: W&H Limited Liability Co
Attachments: Amended Claim 63-33361 (8-3-10).doc

From: Saxton, Craig
Sent: Tuesday, August 03, 2010 3:52 PM
To: Lori Graves
Cc: Spencer, Nick; Courtney, Andrea; Williams, Ray
Subject: RE: Motion to File late claim 63-33361: W&H Limited Liability Co

Hey Lori,

I have attached a new amended claim with the updated information. Truth is I don't know if an amended claim needs to be sent to the court before the hearing on 8-17-10 or not. It is my opinion that you would want the court to have the most updated version of the claim so the judge will be more likely to grant the motion. However, since the changes we are talking about don't really change the nature of the water use claimed, and because the court generally seems to be granting all the motions (for the most part) anyway, I don't know if it is necessary. At some point, we will need an amended claim though.

By CC, I am letting our legal staff know that the current claim on record with the court, does not reflect the results of our discussion below regarding how to describe the elements of the claim.

Talk to you later,

Craig

From: Lori Graves [mailto:LGraves@spfwater.com]
Sent: Wednesday, July 21, 2010 1:48 PM
To: Saxton, Craig
Cc: Michael C Creamer; Terry Scanlan
Subject: FW: Motion to File late claim 63-33361: W&H Limited Liability Co

Craig,

I unnamed drain is locally known as the "Lower Haas Ditch", not the "Upper Haas Ditch". Oops. Thankfully, Terry caught my mistake.

From: Lori Graves

Sent: Wednesday, July 21, 2010 1:02 PM
To: 'Saxton, Craig'
Cc: 'Michael C Creamer'; Terry Scanlan
Subject: FW: Motion to File late claim 63-33361: W&H Limited Liability Co

Craig,

I forwarded the email below to Mike Cramer. In response, Mike said that IDWR's preference to list the source as "Unnamed Drain" tributary to the Boise River was acceptable with the addition of a remark that clarifies the source as seepage water that collects in an unnamed drain locally known as the "Upper Haas Ditch".

Please let me know if you have any questions or comments. Thanks Craig.

From: Saxton, Craig [mailto:Craig.Saxton@idwr.idaho.gov]
Sent: Monday, June 14, 2010 3:02 PM
To: Lori Graves
Subject: Motion to File late claim 63-33361: W&H Limited Liability Co

Hey Lori,

I don't have Mr. Cramer's e-mail address so would you mind forwarding this to him.

I just thought I would drop you both an e-mail to try to answer the question about the source suggestions for 63-33361. Carters thought on why the source doesn't sound like groundwater is that he feels there should have been an intent to excavate to reach the water table.

Another concern about calling the source Ground Water is then down the road, it could be misinterpreted as giving authorization to drill a well under this water right.

It sounds like a similar situation as digging a gravel pit and ending up with a pond. I did some checking on some of the water rights that have been permitted for essentially ponds that are dug and filled up with water. Many of these have been permitted with the source listed as **Ground Water tributary to the Boise River**. This would leave you subject to water master regulation but I don't know how you regulate seeps.

The instream flow just seemed wrong because it is a man made ditch, or at least artificially maintained, and instream flows are for natural channels. I guess there is a question of if it flows too. I originally thought it didn't flow, but the affidavits indicate it eventually makes its way to the Boise River.

From the affidavits it sounds like perhaps the ditch was used to drain water from the field. Carter suggested another option could be to call the source an unnamed drain which covers springs and seeps. You could always add a remark that the source is locally known as Lower Haas Ditch. If you did call it an unnamed drain, and if it flowed, I suppose you could argue that it is instream flow but you still wouldn't really have a set beginning and ending point as the source of the water since it seeps in.

I hope that helps answer your questions....at least about our initial concerns with calling it ground water.

Thanks,
Craig

Shurte, Jan

From: Fritschle, Carter
Sent: Monday, June 14, 2010 1:38 PM
To: Saxton, Craig
Cc: Shurte, Jan
Subject: RE: Motion to file Late Claim 63-33361

Craig,

I am wondering why they would not want the source to be listed as the ditch?

In order to list the source as ground water, I feel there should have been an intent to excavate to reach the water table. The affidavits make this sound like the ditch was used more for draining the wet areas, rather than conveying irrigation water to the land. And, since I am not seeing a USGS name for the feature, I am now leaning towards "Unnamed Drain" as the source, which covers springs and seeps and anything else that may enter the ditch. We can always add that the source is locally known as the Lower Haas Ditch.

And, I am still uncomfortable calling it an instream flow. The ditch is obviously manmade or at least artificially maintained.

Carter

From: Saxton, Craig
Sent: Monday, June 14, 2010 11:18 AM
To: Fritschle, Carter; Shurte, Jan
Subject: Motion to file Late Claim 63-33361

Hey Fellow Adjudicators,

I spoke with you both about this motion in one manner or another last week and now I have Mike Cramer calling me so I wanted to get your opinion on what you want me to tell him.

63-33361 is a claim for sub water in a ditch...essentially. They claimed the source as Ground Water and put a beginning point and ending point on the claim (attached).

Carter and I spoke about it and decided that they should call the source, "Lower Haas Ditch" and put a POD in each QQ that the ditch flows through.

Mike Cramer and Lori Graves just called me on conference call and wanted to know why we suggested the change. I know that one issue with calling it Groundwater is that they might go out there and decide they want to drill a well since they have a ground water right (I neglected to mention that on the phone with them because I was flustered). The fact that there isn't a flow is why we don't want a beginning and ending point.

I guess I am wondering how you would answer Mike's question of why we wouldn't call the source ground water? Mike suggested calling it **seeps and springs** but said that it really might be part of an old slough.

I thought about calling it **ground water** trib to the **Boise River** with a comment that the use of this right is under water master regulation, but how do you regulate a seep.

I am not really sure how this is even a water right. In our conversation Jan, you spoke about the probability of disallowing it. Any thoughts?