

10/22/2005

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

RIGHT NUMBER: 63-31586

NAME AND ADDRESS: DALE M FRAZELL
15205 N MC FARLAND CREEK RD
BOISE ID 83714

KATHLEEN KEYS
15205 N MC FARLAND CREEK RD
BOISE ID 83714

SOURCE: SPRING

TRIBUTARY: MC FARLAND CREEK

QUANTITY: 0.220 CFS
0.400 AFY

USE OF THIS RIGHT WITH RIGHT NO. 63-31247 & 63-32082 IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 0.22 CFS AND TO A TOTAL STORED
VOLUME OF 0.4 AF PER ANNUM.

PRIORITY DATE: 07/01/1983

THIS WATER RIGHT IS SUBORDINATE TO ALL WATER RIGHTS WITH A PRIORITY
DATE EARLIER THAN APRIL 12, 1994, THAT ARE NOT DECREED AS
ENLARGEMENTS PURSUANT TO SECTION 42-1426, IDAHO CODE. AS BETWEEN
WATER RIGHTS DECREED AS ENLARGEMENTS PURSUANT TO SECTION 42-1426,
IDAHO CODE, THE EARLIER PRIORITY RIGHT IS THE SUPERIOR RIGHT.

POINT OF DIVERSION:

T05N R02E S29 SESWNW Within ADA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
FIRE PROTECTION	01/01 12/31	0.220 CFS
FIRE PROTECTION STORAGE	01/01 12/31	0.40 AFY
FIRE PROTECTION FROM STORAGE	01/01 12/31	0.40 AFY

PLACE OF USE: FIRE PROTECTION Within ADA County

T05N R02E S29 SWNW

FIRE PROTECTION FROM STORAGE same as FIRE PROTECTION

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

THIS RIGHT IS BASED UPON AN ENLARGEMENT OF RIGHT NO. 63-31247
& 63-32082 PURSUANT TO SECTION 42-1426, IDAHO CODE.

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

NOT A PROTEST - NEEDS TO
KEEP TRACK ON SRBA DOCKET.

Philip H. Dater, MD

15005 N. McFarland Creek Rd. • Boise, ID 83714-9513
Phone: (208) 939-5505 • FAX (208) 441-7570

December 23, 2005

Mr. Dan Nelson
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705

RECEIVED

DEC 27 2005

WATER RESOURCES
WESTERN REGION

SUBJECT: Snake River Basin adjudication requested rights 63-31586 & 63-31588

Dear Mr. Nelson,

The Idaho Statesman on 11/28/05 had a legal notice regarding enlargements to existing water rights for Frazell (63-31586) and Brush (63-31588). There is a claim made that this is simply an expansion of an existing pond on Frazell's property that predated 1994.

In late 1993 and the first half of 1994, after back surgery when I was unable to ride in a car, I extensively hiked this area (with permission of the owners, Harold and Pat Brush). There were several spring-fed ponds located approximately 1/3 mile west-northwest of what is now the Frazell property, but I never saw a pond adjacent to McFarland creek on the Frazell property itself. There was what I would call a wetland (with typical wetland vegetation) adjacent to the west bank of the creek fed by at least one of the three springs, and there was some periodic damming of the springs to irrigate a pasture. Since Frazell built a pond (about which he was sent a notice of violation #63-S-1613, 2/22/02) and diverted 2 of the 3 springs in McFarland Creek to fill this pond, water flow in the creek has diminished significantly and has denied usable water for irrigation to rights holders downstream.

The McFarland Creek aquifer is shallow. We depend on it for our domestic well. When we bought our home in 1991 from Michael Brady, our well bailed (according to Brady) in excess of 40 gallons per minute. This summer, with the reduced flow feeding the aquifer, our well did not provide enough water to run our lawn sprinklers without sucking air. Carron Pump checked our well and found that our maximum flow was only 11 gallons per minute. This is inadequate to run our home and maintain our small lawn surrounding our house (necessary for wildfire protection). Adequate sprinkling for range fire protection of our home is in excess of 15 gallons per minute.

The concept of "fire suppression" reserves may be admirable, but it would benefit only the property where the pond is located. An already existing newly-constructed pond is on the Frazell property, the filling of which has significantly diminished the creek/aquifer flow. Additionally, increasing any pond size will increase loss of valuable water from evaporation. Only a mile away Hidden Springs has two large settling ponds of over 2.5 million gallon capacity that has already been used for helicopter-assisted fire suppression in the area.

While "rights" can be transferred from anywhere, the physical water cannot. Considering the already marginal flow of McFarland Creek and the limitations of the aquifer fed by this creek, granting of additional water rights will adversely affect not only the downstream rights, but also the domestic wells of residential users. I consider it irresponsible to increase water rights of one user at the expense of existing requirements and rights of others.

As a potentially affected party, I request that I be notified of any S.R.B.A. court hearings on this matter.

Respectfully,





State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

January 4, 2006

Beth Scherfee
15000 North McFarland Creek Road
Boise ID 83714

RE: McFarland Creek Concerns

Dear Beth:

Thank you for notifying the department 1/3/2006 regarding the visit you made to the Frazell/Keys property that day. I am encouraged that Dale Frazell returned your phone call and invited you to walk the stream with him and his partner Kathleen Keys.

Based on your observations, you stated that it did not appear recent development or expansion had occurred on the Frazell/Keys property that would directly affect the stream flow. You also stated that water was discharging from their spring-fed pond into McFarland Creek, which was flowing. At your request, we will not pursue an investigation of unauthorized use of water and/or water rights in response to your complaint letter dated 12/29/05.

I agree that an analysis from a hydrologist is probably necessary to determine what is causing irregular stream flow patterns on McFarland Creek. Sudhir Goyaland, IDWR Hydrologist, and David Blew, IDWR Aquifer Recharge Program Coordinator, were unable to locate department research specific to McFarland Creek, however, the enclosed information involving the Dry Creek area may be helpful.

Please let me know if I can be of further assistance Beth.

Sincerely,

Lori Graves
Sr. Water Resource Agent

Encl: 1991 Ground Water Study by Steve Baker, 2000 & 2004 Photos and
Explanation From David Blew

December 2, 2005

Idaho Department of Water Resources
2735 Airport Way
Boise ID 83705

RECEIVED

DEC 02 2005

WATER RESOURCES
WESTERN REGION

**RE: SNAKE RIVER BASIN ADJUDICATION RIGHTS 63-31586 AND
63-31588**

Ladies and Gentlemen:

I recently read in the Idaho Statesman that the water rights 63-31586 and 63-31588 were recently filed with your office. Approximately 3 to 4 years ago Shari Mulligan discovered that the owners of these rights were building a pond on their property without proper permitting. This was taken before the county and supposedly the pond construction had stopped.

Earlier this year, approximately in June or early July, McFarland Creek stop flowing approximately 3 hours. It resumed flowing with a reduced stream flow.

My husband and I purchased the Mulligan property on 8/5/2003. We have water right 63-12063 down stream of the above-mentioned water rights. I have not seen any pond construction or other evidence of recent pond construction other than the stoppage of flow of the stream. There have been large numbers of heavy earth moving equipment heading up that direction, but I am unsure about that purpose. They are planning to subdivide the property, so I am concerned about this issue.

I would not have any problem with this water right if I knew whom the person or persons were that are responsible for regulating the flow in this creek to ensure that our water right is not injured. However, from the earlier issues raised by Shari Mulligan, I am unsure who to go to and who would do the regulation if we are injured. I would like to file a formal petition with the department until there is something in place to ensure my water right will not be harmed.

Respectfully,



Beth Scherfee
15000 N McFarland Creek RD
Boise ID 83714

RECEIVED

JAN 12 2006

WATER RESOURCES
WESTERN REGIONThe Idaho
Statesman

P.O. Box 40, Boise, Idaho 83707-0040

LEGAL ADVERTISING PROOF OF PUBLICATION

Account #	DTI#	Identification	Amount:
120934	1393427	ENLARGEMENT OF WATER RIGHTS	\$225.50
Attention:	P.O. #	Run Dates	
DANNI SMITH		NOVEMBER 28, DECEMBER 5, 2005	
IDAHO WATER RESOURCES / LEGAL PO BOX 83720 BOISE, ID 83720-0098			Number of Lines 2 X 63
			Affidavit 1
			Legal # 24126

LEGAL NOTICE
NOTICE OF ENLARGEMENT OF WATER RIGHT

The following claims to water rights have been filed in the Snake River Basin Adjudication as enlargements to existing water rights under Idaho Code §42-1426. Note that the places of use in Ada County are shown to the nearest section - more specific locations are available upon request.

Water Right: 63-31586
NAME & ADDRESS: DALE M FRAZELL
KATHLEEN KEYS
15205 N MC FARLAND CREEK RD
BOISE ID 83714
SPRING TRIBUTARY TO: MC FARLAND CREEK
SOURCE: 07/01/1983
PRIORITY DATE: T05N R02E S29 SESWNW
POINT OF DIVERSION: FIRE PROTECTION
PURPOSE OF USE: FIRE PROTECTION STORAGE
FIRE PROTECTION FROM STORAGE
T05N R02E S29 SWNW

PLACE OF USE:
This right is for an enlargement of 63-31247 and 63-32082 by adding fire protection uses
Within the place of use described for this right.

Water Right: 63-31588
NAME & ADDRESS: HAROLD R BRUSH
PATRICIA R BRUSH
PO BOX 1768
MC CALL ID 83638
SPRINGS TRIBUTARY TO: MC FARLAND CREEK
SOURCE: 07/01/1983
PRIORITY DATE: T05N R02E S29 NESWNW
POINT OF DIVERSION: FIRE PROTECTION
PURPOSE OF USE: FIRE PROTECTION STORAGE
FIRE PROTECTION FROM STORAGE
T05N R02E S29 SWNW SENW

PLACE OF USE:
This right is for an enlargement of 63-31587 by adding fire protection uses
Within the place of use described for this right.

Water Right: 63-31988
NAME & ADDRESS: HOOT NANNEY FARMS INC
C/O MICHAEL L DIXON
8542 FLOATING FEATHER RD
EAGLE ID 83616
GROUNDWATER

SOURCE: 03/01/1976
PRIORITY DATE: T04N R01W S03 LT4 (NWNW)
POINT OF DIVERSION: LT4 (NWNW)

PURPOSE OF USE: IRRIGATION
PLACE OF USE: T04N R01W S03 LT4 (NWNW) SWNW NWSW
S04 LT1 (NENE) SENE NESE

This right is for an enlargement of 124 acres irrigation Within the place of use described for this right.

The water rights will be subject to all prior water rights. Those asserting injury from the enlargements may file petitions with the Director, Idaho Department of Water Resources, Western Region, 2735 Airport Way, Boise, ID 83705-5082 on or before January 4, 2006.

Pub. Nov. 28, Dec. 5, 2005

24126

JANICE HILDRETH, being duly sworn, deposes and says: That she is the Principal Clerk of *The Idaho Statesman*, a daily newspaper printed and published at Boise, Ada County, State of Idaho, and having a general circulation therein, and which said newspaper has been continuously and uninterruptedly published in said County during a period of twelve consecutive months prior to the first publication of the notice, a copy of which is attached hereto: that said notice was published in *The Idaho Statesman*, in conformity with Section 60-108, Idaho Code, as amended, for:

TWO

☒ consecutive weekly ☐ single
☐ consecutive daily ☐ odd skip
insertion(s)

beginning issue of: NOVEMBER 28, 2005
ending issue of: DECEMBER 5, 2005

STATE OF IDAHO)
.SS

COUNTY OF ADA)

On this 5 day of DECEMBER in the year of 2005
before me, a Notary Public, personally appeared before me
Janice Hildreth known or identified to me to be the person
whose name subscribed to the within instrument, and being
by me first duly sworn, declared that the statements therein
are true, and acknowledged to me that she executed the same.

Notary Public for Idaho
Residing at: Boise, Idaho
My Commission expires: _____

RECEIVED

JAN 05 2006

ACCTS PAYABLE

The Idaho Statesman

RECEIVED

DEC 07 2005

DEPARTMENT OF
WATER RESOURCES

DEC 08 2005

P.O. Box 40, Boise, Idaho 83707-0040

LEGAL ADVERTISING PROOF OF PUBLICATION

Account #	DTI#	Identification	Amount
120934	1393427	ENLARGEMENT OF WATER RIGHTS	\$225.50
Attention:		P.O. #	Run Dates
DANNI SMITH			NOVEMBER 28, DECEMBER 5, 2005
IDAHO WATER RESOURCES / LEGAL PO BOX 83720 BOISE, ID 83720-0098			Number of Lines 2 X 63
			Affidavit 1
			Legal # 24126

LEGAL NOTICE NOTICE OF ENLARGEMENT OF WATER RIGHT

The following claims to water rights have been filed in the Snake River Basin Adjudication as enlargements to existing water rights under Idaho Code §42-1426. Note that the places of use in Ada County are shown to the nearest section - more specific locations are available upon request.

Water Right: 63-31586
NAME & ADDRESS: DALE M FRAZELL
KATHLEEN KEYS
15205 N MC FARLAND CREEK RD
BOISE ID 83714
SOURCE: SPRING TRIBUTARY TO: MC FARLAND CREEK
PRIORITY DATE: 07/01/1983
POINT OF DIVERSION: T05N R02E S29 SESWNW
PURPOSE OF USE: FIRE PROTECTION
FIRE PROTECTION STORAGE
FIRE PROTECTION FROM STORAGE

PLACE OF USE: T05N R02E S29 SWNW
This right is for an enlargement of 63-31247 and 63-32082 by adding fire protection uses Within the place of use described for this right.

Water Right: 63-31588
NAME & ADDRESS: HAROLD R BRUSH
PATRICIA R BRUSH
PO BOX 1768
MC CALL ID 83638
SOURCE: SPRINGS TRIBUTARY TO: MC FARLAND CREEK
PRIORITY DATE: 07/01/1983
POINT OF DIVERSION: T05N R02E S29 NESWNW
PURPOSE OF USE: FIRE PROTECTION
FIRE PROTECTION STORAGE
FIRE PROTECTION FROM STORAGE

PLACE OF USE: T05N R02E S29 SWNW SENW
This right is for an enlargement of 63-31587 by adding fire protection uses Within the place of use described for this right.

Water Right: 63-31988
NAME & ADDRESS: HOOT NANNEY FARMS INC
C/O MICHAEL L DIXON
8542 FLOATING FEATHER RD
EAGLE ID 83616
SOURCE: GROUNDWATER
PRIORITY DATE: 03/01/1976
POINT OF DIVERSION: T04N R01W S03 LT4 (NWNW)
LT4 (NWNW)
PURPOSE OF USE: IRRIGATION
PLACE OF USE: T04N R01W S03 LT4 (NWNW) SWNW NWSW
S04 LT1 (NENE) SENE NESE

This right is for an enlargement of 124 acres irrigation Within the place of use described for this right.

The water rights will be subject to all prior water rights. Those asserting injury from the enlargements may file petitions with the Director, Idaho Department of Water Resources, Western Region, 2735 Airport Way, Boise, ID 83705-5082 on or before January 4, 2006.

Pub. Nov. 28, Dec. 5, 2005



JANICE HILDRETH, being duly sworn, deposes and says: That she is the Principal Clerk of *The Idaho Statesman*, a daily newspaper printed and published at Boise, Ada County, State of Idaho, and having a general circulation therein, and which said newspaper has been continuously and uninterruptedly published in said County during a period of twelve consecutive months prior to the first publication of the notice, a copy of which is attached hereto: that said notice was published in *The Idaho Statesman*, in conformity with Section 60-108, Idaho Code, as amended, for:

TWO

☒ consecutive weekly ☐ single
☐ consecutive daily ☐ odd skip
insertion(s)

beginning issue of: NOVEMBER 28, 2005
ending issue of: DECEMBER 5, 2005

Janice Hildreth

STATE OF IDAHO)
.SS
COUNTY OF ADA)

On this 5 day of DECEMBER in the year of 2005
before me, a Notary Public, personally appeared before me
Janice Hildreth known or identified to me to be the person
whose name subscribed to the within instrument, and being
by me first duly sworn, declared that the statements therein
are true, and acknowledged to me that she executed the same.

Dondra L Boughtman
Notary Public for Idaho
Residing at: Boise, Idaho
My Commission expires: 6/10/06

02/24/2005

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

RIGHT NUMBER: 63-31586

NAME AND ADDRESS: DALE M FRAZELL
15205 N MC FARLAND CREEK RD
BOISE ID 83714

KATHLEEN KEYS
15205 N MC FARLAND CREEK RD
BOISE ID 83714

SOURCE: SPRING

QUANTITY: 0.120 CFS
0.400 AFY

TRIBUTARY: MC FARLAND CREEK

PRIORITY DATE: 07/01/1983

USE OF THIS RIGHT WITH RIGHT NO. 63-31247 IS LIMITED TO A TOTAL
COMBINED DIVERSION RATE OF 0.12 CFS AND TO A TOTAL STORED
VOLUME OF 0.4 AF PER ANNUM.

THIS WATER RIGHT IS SUBORDINATE TO ALL WATER RIGHTS WITH A PRIORITY
DATE EARLIER THAN APRIL 12, 1994, THAT ARE NOT DECREED AS
ENLARGEMENTS PURSUANT TO SECTION 42-1426, IDAHO CODE. AS BETWEEN
WATER RIGHTS DECREED AS ENLARGEMENTS PURSUANT TO SECTION 42-1426,
IDAHO CODE, THE EARLIER PRIORITY RIGHT IS THE SUPERIOR RIGHT.

POINT OF DIVERSION:

T05N R02E S29 SESWNW Within ADA County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
FIRE PROTECTION	01/01 12/31	0.120 CFS
FIRE PROTECTION STORAGE	01/01 12/31	0.40 AFY
FIRE PROTECTION FROM STORAGE	01/01 12/31	0.40 AFY

PLACE OF USE: FIRE PROTECTION Within ADA County

T05N R02E S29 SWNW

FIRE PROTECTION FROM STORAGE same as FIRE PROTECTION

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

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.

THIS RIGHT IS BASED UPON AN ENLARGEMENT OF RIGHT NO. 63-31247
PURSUANT TO SECTION 42-1426, IDAHO CODE.

EXPLANATORY MATERIAL: Beneficial Use

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 63-31586 V1

WATER RIGHT NUMBER: 63-31586 V1

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	DALE M FRAZELL 15205 N MC FARLAND CREEK RD BOISE, ID 83714 (208) 433-9282
Current Owner	KATHLEEN KEYS 15205 N MC FARLAND CREEK RD BOISE, ID 83714 (208) 433-9282

Priority Date: 07/01/1983

Basis: Beneficial Use

Status: Active

<u>Source</u>	<u>Tributary</u>
SPRING	MC FARLAND CREEK

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
FIRE PROTECTION	01/01 to 12/31	0.120 CFS	
FIRE PROTECTION STORAGE	01/01 to 12/31		0.40 AF
FIRE PROTECTION FROM STORAGE	01/01 to 12/31		0.40 AF
	<u>Total Diversion:</u>	0.120 CFS	0.40 AF

Location of Point(s) of Diversion

SPRING	SE1/4SW1/4NW1/4	Sec. 29, Twp 05N, Rge 02E, B.M.
ADA County		

Place of Use

FIRE PROTECTION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
05N	02E	29							X										

FIRE PROTECTION FROM STORAGE same as FIRE PROTECTIONConditions of Approval:

1. C11 THIS WATER RIGHT IS SUBORDINATE TO ALL WATER RIGHTS WITH A PRIORITY DATE EARLIER THAN APRIL 12, 1994, THAT ARE NOT DECREED AS ENLARGEMENTS PURSUANT TO SECTION 42-1426, IDAHO CODE. AS BETWEEN WATER RIGHTS DECREED AS ENLARGEMENTS PURSUANT TO SECTION 42-1426, IDAHO CODE, THE EARLIER PRIORITY RIGHT IS THE SUPERIOR RIGHT.

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 63-31586 V1

2. C18 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.

Remarks:

1. Quantity USE OF THIS RIGHT WITH RIGHT NO. 63-31247 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 0.12 CFS AND TO A TOTAL STORED VOLUME OF 0.4 AF PER ANNUM.
2. General THIS RIGHT IS BASED UPON AN ENLARGEMENT OF RIGHT NO. 63-31247 PURSUANT TO SECTION 42-1426, IDAHO CODE.

Comments:

1. rhowerto 7/24/2003 Place of use

Comment: The place of use is different than base right 63-31247 and affidavit indicated an accomplished transfer in 1983.

2. dbuffington 4/15/2004 Address change

Comment: The data in the name field was changed to show this right has an address change.

3. csaxton 2/24/2005 Recommendation

Comment: Added enlargement remarks.

Dates and Other Information:

Decreed Date:
 Enlargement Use Priority Date:
 Enlargement Statute Priority Date:
 Defendant:
 Plaintiff:
 Civil Case Number:
 Judicial District:
 Notice of Error Flag:
 State or Federal:
 Owner Name Connector: OR
 Water District Number:
 Generic Max Rate Per Acre:
 Generic Max Volume Per Acre:
 Swan Falls Trust or Nontrust:
 Swan Falls Dismissed:
 DLE Act Number:
 Carey Act Number:
 Mitigation Plan: False

Combined Use Limits:Element Reviewed/Verified Dates:

<u>Element</u>	<u>Last Reviewed Date</u>	<u>Reviewer</u>	<u>Last Verified Date</u>	<u>Verifier</u>	<u>Status</u>
Contacts	12/23/2002 3:19:14 PM	rhowerto			Active
Priority Date	12/23/2002 3:21:53 PM	rhowerto			Active
POD	12/23/2002 3:22:10 PM	rhowerto			Active
Source	12/23/2002 3:22:34 PM	rhowerto			Active
POU	12/23/2002 3:23:02 PM	rhowerto			Active
Use	12/23/2002 3:23:20 PM	rhowerto			Active
Season	12/23/2002 3:23:51 PM	rhowerto			Active
Quantity	12/23/2002 3:24:19 PM	rhowerto			Active

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 63-31586 V1

Summary		12/23/2002	rhowerto	Active
POU	7/24/2003 9:07:49 AM		rhowerto	Active

Verification Log:

<u>Element</u>	<u>Date Time Stamp</u>	<u>Reviewer</u>	<u>Log text</u>
POD	12/23/2002 3:22:10 PM	rhowerto	(No) 1. Is the basis of this claim a Decree or License? (No) 2. Is the basis of this claim a Application or Permit? (No) 6. Is there evidence that there has been a change in the POD? (No) 9. Does the file contain all the necessary information to verify the POD? (No) 10. Is a POD remark and/or condition required?
Contacts	12/23/2002 3:19:13 PM	rhowerto	(No) 1. Do you want to schedule an appointment? Comment for 1: FX DONE
Priority Date	12/23/2002 3:21:53 PM	rhowerto	(No) 1. Should this water use have been included in a later court decree of the water rights from this source? (No) 4. Is the basis of claim decree or license? (No) 7. Is the basis of claim a Application or Permit? (No) 8. Is the basis of claim a posted notice? (Yes) 9. Is the Priority Date claimed after the date a permit is required for the source and the water use? (Yes) 11. Is the claim for an expansion or enlargement under 42-1416B or 42-1426? (No) 12. Does the claim file contain sufficient evidence of Priority Date? (No) 13. Has additional evidence of priority date been submitted?
Source	12/23/2002 3:22:33 PM	rhowerto	(No) 1. Is the basis of claim Decree or License? (No) 2. Is the basis of claim an Application or Permit? (No) 6. Is the basis of claim a Posted Notice? (No) 7. Is there evidence that there has been a change in the source? (No) 10. Does the file contain all the necessary information to verify the source? (No) 11. Is a Source remark and/or condition required? Description for Question 10 - FX
POU	12/23/2002 3:23:01 PM	rhowerto	(No) 1. Is the basis of this claim a Decree or License? (Yes) 2b. Is the POU required? (No) 3. Is the basis of claim a Application or Permit? (No) 7. Is there evidence that there has been a change in the POU? (No) 13. Does the file contain all the necessary information to verify the POU? (No) 14. Is a POU remark and/or condition required? Description for Question 13 - FX & NAPP

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 63-31586 V1

Use	12/23/2002 3:23:20 PM	rhowerto	(No) 1. Is the basis of this claim a Decree or License? (No) 2. Is the basis of this claim a Application or Permit? (No) 6. Is there evidence that there has been a change in the Purpose of Use? (No) 11. Does the file contain all the necessary information to verify the Water Use? (No) 13. Is a Purpose of Use remark and/or condition required? Description for Question 10,11,12 - FX
Season	12/23/2002 3:23:50 PM	rhowerto	(No) 1. Is the basis of claim Decree or License? (No) 2. Is the basis of claim a Application or Permit? (No) 6. Is there evidence that there has been a change in the Period of Use? (Yes) 12. Does the file contain all the necessary information to verify the Period of Use? (No) 13. Is the basis of claim a decree, license, or a transferred beneficial use right that has had the Period of Use administratively determined? (No) 15. Is irrigation claimed as a Purpose of Use? (No) 18. Is a Period of Use remark and/or condition required? Description for Question 15 - STANDARD
Quantity	12/23/2002 3:24:18 PM	rhowerto	(No) 1. Is the basis of this claim a Decree or License? (No) 2. Is the basis of this claim a Application or Permit? (No) 6. Is the basis of claim a posted notice? (Yes) 7. Is a flow measurement required? (No) 9. Is the source Groundwater and does the purpose of use require a diversion volume limit? (No) 11. Has a diversion volume limit been established by a decree, license or transfer for this water use? (Yes) 12. Is a Quantity remark or condition required? Description for Question 7 - MANNING
Summary	12/23/2002 3:38:19 PM	rhowerto	(Yes) 1. Is the basis of this claim a Decree, License, Permit, Application or Posted Notice? (No) 2. Does any evidence indicate a five year period of continuous nonuse occurred that could result in recommending forfeiture or partial forfeiture? (Yes) 5. Is an additional remark and/or condition required? (Yes) 6. Would you like to view the recommended right? (No) 7. Is this a split or combined right? (No) 8. Do you have documents you would like to attach or link to the file? (Yes) 9. Would you like to set the verification date?
POU	12/23/2002 4:18:20 PM	rhowerto	Edited shape boundary
POD	12/23/2002 3:49:43 PM	rhowerto	Edited point location

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 63-31586 V1

POU

7/24/2003 9:07:49 AM

rhowerto

(No) 1. Is the basis of this claim a Decree or License?

(Yes) 2b. Is the POU required?

(No) 3. Is the basis of claim a Application or Permit?

(Yes) 7. Is there evidence that there has been a change in the POU?

(Yes) 8. Can the claim be verified as an accomplished transfer?

(No) 13. Does the file contain all the necessary information to verify the POU?

(Yes) 14. Is a POU remark and/or condition required?

Description for Question 8 - See comments

Description for Question 13 - Field exam

MEMORANDUM

Date: February 22, 2005

To: File

From: Craig L. Saxton

Re: Response to August 4, 2004 letter requesting re-evaluation of Preliminary Recommendations for SRBA claims 63-31247, 63-31585, and 63-31586.

On June 8, 2004, Jan Shurte and I met with Norm Young from ERO concerning his clients request to re-evaluation of Preliminary Recommendations for SRBA claims 63-31247, 63-31585, and 63-31586.

After our discussion, it was decided that more information was needed to review the requested changes.

63-31247:

Claimant Concern:

- Additional Acreage: The claimant requests that the POU for right 63-31247 be increased to represent the same POU as 63-31585.
- Addition Diversion Rate: The other point of concern, is if we do not increase the POU as requested, the diversion should be increased to 0.03 cfs per acre as the recommended POU is 5 acres or less.
- POD: Should be two POD's listed: pond embankment and the pumped and gravity diversions from the pond and spillway.

Conclusion:

- Additional Acreage: Cannot recommend the same POU as 63-31585 (upper area that cannot be flood irrigated by the spring). Concerning the argument that it wouldn't be an administrative issue if no-one else had a claim with an earlier priority date from this source, someone could still file a late claim with an earlier priority date. Plus, we can not just recommend an early priority date because no one else has. A new claim needs to be filed to represent the new appropriation of water, or when the water was pumped up gradient from the spring.

However, Additional acreage was added under both 63-31247 and 63-31585 to represent acreage irrigated under the tree canopy that was not originally included in the initial recommendation

- Additional Diversion Rate: Yes. Since we are not increasing acreage under this claim and we are recommending less than 5 acres (3.9), and the mannings equation conducted by Ron Howerton shows that the diversion works has the capacity, we can recommend 0.03 cfs per acre.

- Additional POD: Yes. I can recommend second POD as the dam/pond embankment on the upstream side of the pond. Since the spring is in the pond then we can consider the embankment of the pond as the man-made diversion works.

- Storage Volume: The wording in the remark limiting the storage volume has been changed to limit volume stored only, but not the amount of life flow that may be diverted from the spring source.

- Note: If we change the storage from the spring, we need to know how many times the pond fills during an irrigation season.

- K06 added to recognize that 63-31586 is an enlargement of this right.

(There is a question whether right 63-31586 can be recommended as an enlargement of this right. It is currently being reviewed by the legal staff.)

63-31585:

Claimant concern:

- Additional POU: Recognize previously missed irrigated acreage that is under the canopy of the trees along the creek that could not be seen from aerial photography.

- Storage Volume: Add Explanatory stating that no storage needed because the pond can be filled in less than 24 hours.

Conclusion:

- Additional POU: Yes. One acre added.

- Storage Volume: Yes, we can add and Explanatory remark stating that no storage needed because the pond can be filled in less than 24 hours.

63-31586:

Claimant concern:

- Combined Use Limitation: Make sure that the limiting remark refers only to the volume that can be stored and not live flow.

Conclusion:

- Combined Use Limitation: Agreed, remark altered to reflect that change.

- Note: If we change the storage from the spring, we need to know how many times the pond fills during an irrigation season.

- Add enlargement priority condition C11 and General Remark K02.

(There is a question weather this right can be recommended as an enlargement of 63-31247. It is currently being reviewed by the legal staff.)



ERO Resources Corp.
1106 N. Cole Rd. Suite C
Boise, ID 83704-8661
(208) 373-7983
Fax: 373-7985
Denver • Boise
www.eroresources.com
eroboise@eroresources.com

RECEIVED

AUG 06 2004

WATER RESOURCES
WESTERN REGION

August 4, 2004

Craig Saxton
Idaho Department of Water Resources
Western Regional Office
2735 Airport Way
Boise, ID 83705

RE: Claim Nos. 63-31247, 63-31585 and 63-31586 (Frazell and Keys)

Dear Mr. Saxton:

Much thanks to you and Jan Shurte for meeting with me on June 8, 2004 to discuss the above referenced claims. I am sure you will remember that I have been assisting Matt Howard in a review of the preliminary recommendations posted in IDWR's electronic database for issuance of partial decrees on the claims. Because Mr. Howard has accepted a position with the U.S. Bureau of Reclamation and has indicated that the right holders' remaining concerns are more technical than legal in nature, I was asked to review with you, on behalf of the right holders, the concerns listed and discussed below:

Description of Diversion and Use of Water under Claim Nos. 63-31247, 63-31585 and 63-31586.

Water is diverted and used from two sources – McFarland Creek and a spring tributary to McFarland Creek - for irrigation, stock watering and fire protection purposes. The integrated water use system includes: 1) open ditches to divert water from McFarland Creek and the spring for irrigation, 2) a pond fed both by the spring and from McFarland Creek for storage for irrigation, stock watering and for fire protection, and 3) a portable pump has been used to re-divert water from the pond for irrigation and to fight fires.

Three diversions directly from McFarland Creek and at least two from the spring have been used to establish and exercise the water uses claimed under these rights. The uppermost diversion from McFarland Creek is located near the right holders' eastern property line. At this location, a check structure of earth and rock has been used to divert water into an open ditch for direct application of water to the field north and east of the pond. A second diversion from McFarland Creek is located just upstream from

the pond where an open ditch has been used to divert water to the pond for storage or through the pond for direct irrigation. The third diversion from McFarland Creek is located downstream from the confluence of the spring and the creek. Water diverted at this point by a check structure in the creek and an open ditch has been used for direct irrigation of the fields below the pond.

The first diversion from the spring source is the embankment across the spring channel that creates the pond. Because the pond does not have a low-level outlet, the stream channel has been effectively relocated to the spillway channel located on the west end of the embankment. A diversion from this channel, located just upstream from the confluence of the spillway channel with McFarland Creek, takes water in an open ditch to directly irrigate the fields below the pond. In addition to these diversions, a portable pump has been used to re-divert water from the pond. The water diverted using the pump is a combination of stored water and natural flow moving through the pond. The water rising in and diverted to the pond can be used for irrigation of fields above and below the pond, for stock watering and for fire fighting purposes.

During most years, McFarland Creek flows are largest during spring runoff and after major storm events. Based upon the cross-section of the stream channel and the slope of the stream as it enters and flows across the right holders' property, it is visually apparent that peak flows exceed by many times the total recommended diversion rate for Right No. 63-31585. When the flow available in the stream tapers off and stops as the irrigation season progresses, the more stable flow rate available from the spring that feeds the pond is spread to as much of the place of use as possible to sustain the pasture and other crops.

Concerns Raised by the Preliminary Recommendations and Requested Revisions:

1. Place of use and Point of Diversion for Claim No. 63-31247 (Spring Source).

The recommendation limits the place of use for this right to land that can be irrigated using open ditches and surface application of water. However, the original claimant, Harold Brush (see the attached affidavit signed by Mr. Brush), has indicated that a portable pump has been used to irrigate land from the pond. Note that according to Mr. Brush the pond and its uses were in existence when he bought the property in 1958. The priority date assigned to the irrigation use from the pond for the lands relying upon pumping should not be an issue in administration of this reach of McFarland Creek unless there are rights with priority dates later than 1908 but earlier than the pre-1958 date that can be attached to the use of pumped water under this claim. Please let me know if you disagree and feel that a separate claim is needed to cover the pumped water with a later priority than 1908. Because the spring and pond provide a more reliable supply of water after the flow in the creek has diminished, the available water has been judiciously put to beneficial use as needed on the property. Accordingly the place of use of Claim No. 63-31247 (Spring Source) should duplicate the place of use of Claim No. 63-31585 (McFarland Creek). At least two points of diversion should be listed in the SESWNW, Section 29 to reflect the pond embankment and the pumped and gravity diversions from the pond and spillway.

2. Rate of Flow for Claim No. 63-31247 (Spring Source).

Agreed

The rate of flow recommended is apparently based upon 0.02 cfs per acre or upon a measurement made in late summer during a drought period. Early in the irrigation season during wetter periods and when the pond has been drawn down by pumping, the spring discharge exceeds the rate now recommended. As you noted during the meeting, Ron Howerton's notes indicate that the capacity of the ditch from the pond, based upon a calculation using Manning's Equation and the size and slope of the ditch, is larger than the presently recommended diversion rate. For irrigation of parcels of 5 acres or less, IDWR's standard rate of flow is 0.03 cfs per acre (References: Rule 35.03b of the "Beneficial Use Examination Rules" IDAPA 37.03.02, Application Processing Memorandum No. 17 and Paragraph 5f of Transfer Processing Memorandum No. 24). If the place of use is not changed from that now recommended, the diversion rate should be increased to 3.3 acres times 0.03 cfs/acre = 0.10 cfs. If the place of use is changed to that recognized in the previous paragraph, the rate of flow should be 0.02 cfs per acre recommended to allow diversion and use of the full supply available from the spring source to continue as it has historically been used.

3. Acreage for Claim No. 63-31585 (McFarland Creek).

As we discussed at the meeting, the claimants are concerned that the number of acres recommended by IDWR to be irrigated from McFarland Creek is substantially less than the number of acres they understood had irrigation rights when they purchased the property. My visual inspection of the property led me to believe that additional area should be added to reflect a more northerly location for the ditch from McFarland Creek from the furthest upstream diversion and to recognize irrigation along the canopy of trees along McFarland Creek and on the west side of the irrigated area. Based upon your higher resolution photographs, the location of the upper ditch from McFarland Creek appears to have been accurately described in the recommendation. My understanding from the meeting was that IDWR would review the place of use to assure that the recommendation adequately includes some areas, including under the canopy of the large trees at the west end of the field and along the creek, an area on the extreme east end of the upper parcel and an area on the west side of the upper parcel. An aerial photo with these areas circled is attached.

4. Storage as a purpose of use on No. 63-31585 (McFarland Creek).

IDWR's files include information recognizing that water can be diverted from the creek into the pond, but the notations made by the initial claims reviewer, Ron Howerton, indicate that storage does not need to be included as a purpose of use on the water right because the rate of flow from the creek under this right is large enough to refill the pond within 24 hours. Under the 24-hour guideline used by IDWR, short-term storage is considered to be necessary for efficient operation of irrigation systems and is allowed without specific authorization on the right. During our meeting, we agreed that a remark could be added to the recommendation for this right noting that the storage from McFarland Creek occurs in the pond under this guideline.

— what type of Remark does your client want added. no recollection of this discussion.

5. Combined Use Limitation.

The combined use limitation attached to the preliminary recommendations for Claim No. 63-31247 (Spring Source) and Claim No. 63-31586 (Fire Protection) should be adjusted to incorporate the rate of flow ultimately recognized for Claim No. 63-31247 and to clarify that the volume limitation relates only to the use of water from storage and is not a limitation on the volume that is allowed to be diverted directly for the purposes authorized under these rights. It is also my understanding that IDWR will also apply recently received administrative guidance concerning the annual volume allowed for storage from ponds that are drafted and filled more than once during a year.

Sincerely,

A handwritten signature in black ink, appearing to read "Norman C. Young", with a stylized, cursive script.

encl. Brush affidavit
Aerial photo

cc: Dale Frazell and Kathy Keys

AFFIDAVIT

RECEIVED

AUG 06 2004

WATER RESOURCES
WESTERN REGION

STATE OF IDAHO)
)ss.
County of Valley)

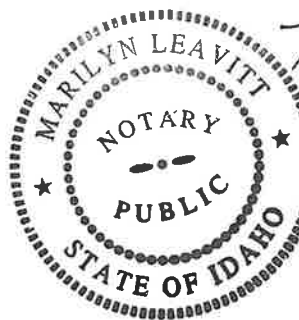
HAROLD R. BRUSH, being first duly sworn upon oath, deposes and says:

1. I make the following statements based upon my personal knowledge.
2. I am familiar with a 20-acre parcel of land located within the S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 29 and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 30, all in Township 5 North, Range 2 East, Boise Meridian, which lands are currently owned by Dale Frazell and Kathy Keys (the Frazell-Keys parcel).
3. From 1958 until 2001, my wife and I owned the Frazell-Keys parcel.
4. There is a small pond located on the Frazell-Keys parcel that I maintained and used for irrigation and fire protection purposes (hereinafter "the pond"). The pond was in existence when I bought the property, and had been used by the previous owner for these purposes. The pond is fed by a spring or springs located in the bottom of the pond.
5. From 1961 to 1987, I used the water from the pond to irrigate portions of the Frazell-Keys parcel located both above and below the pond elevation. In order to irrigate the ground up gradient from the pond, I used a 5-hp (or it could have been a 6-hp) gasoline powered pump to divert water from the pond. I ran approximately four to five Rainbird-brand sprinklers from the pump and spaced the sprinklers approximately 30 to 40 feet apart. I operated the sprinklers in one area for about four hours, and then shut off the sprinklers to allow the pond to refill. I would then move the sprinklers to another area and repeat the process. On average, the sprinklers were moved approximately once per week, sometimes more or less depending upon the availability of water, weather conditions, and the need to use the water from the pond on land below the pond by gravity flow using either or both of the two ditches that diverted downstream of the pond. I have five children, who are all adults now, who used to help me move the sprinklers around.
6. I used the water from the pond to grow alfalfa.

Further your affiant sayeth naught.

Harold R. Brush
HAROLD R. BRUSH

SUBSCRIBED AND SWORN to before me on this 2nd day of August, 2004



Marilyn Leavitt
NOTARY PUBLIC FOR THE
STATE OF IDAHO

Residing at: McCall

My Commission Expires: 7-28-09

DRAFT

ESE

NWSW

T05N, R02E

NNNWSW

SWSWNW

SWNW

S29

Pond

Pond

NENWSW

SENW

TAX LOT LINES

NESW

NENESW

OVERVIEW MAP
ORTHO QUADS
X8 & X9
FRAZELL/KEYS & BRUSH

Memorandum

Date: June 8, 2004

From: Craig L. Saxton

To: File

RE: Requested change in recommendations for 63-31247 and 63-31585

Norm Young from ERO made an appointment to meet with myself and Jan Shurte concerning SRBA claims 63-31247 and 63-31585 at 8:30 am on June 8, 2004.

Mr. Young's client had several concerns:

- There are actually two points of diversion from the pond. We agreed to add the second POD. One point of diversion for the dam and one for the ditch from the pond.
- The limiting remark on both 63-31586 and 63-31247 (spring source) listed the volume as less than it should be. After a discussion with Jan Shurte, it was thought that this remark might not even be needed. It appears the limit was for the storage AF amount and not the diversion volume. Either the remark needs to be changed to be more specific to storage AF or deleted completely. We need to revisit this subject at a later time. The AF storage amount could be increased if it is shown that the pond fills more than one time during the irrigation season.
- No storage component was recommended under claim 63-31585 from McFarlands ck. This was assumed to have been done because under the recommended diversion rate, the pond could be filled or drained in a 24 hour period and a storage volume was not necessary.
- POU was too small. I said I could support 11 acres instead of 10 based on the aerial photography. ⁶³⁻³¹⁵⁸⁵
- Feels that the spring right 63-31247 should include the entire place of use as defined by 63-31585. A conclusion on this was not reached. I called Ron Howerton, who originally made the recommendation, and confirmed with him that there was not evidence that a pump was in place in 1908 and that the acreage recommended under this right should be limited to what could have been flood irrigated. We are waiting to see if Mr. Young can find evidence to support otherwise.

04/15/2004

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

RIGHT NUMBER: 63-31586

NAME AND ADDRESS: DALE M FRAZELL
15205 N MC FARLAND CREEK RD
BOISE ID 83714

KATHLEEN KEYS
15205 N MC FARLAND CREEK RD
BOISE ID 83714

SOURCE: SPRING

TRIBUTARY: MC FARLAND CREEK

QUANTITY: 0.070 CFS
0.400 AFY

USE OF THIS RIGHT WITH RIGHT NO. 63-31247 IS LIMITED TO A TOTAL
COMBINED DIVERSION RATE OF 0.07 CFS AND TO A TOTAL COMBINED
ANNUAL DIVERSION VOLUME OF 0.4 AF.

PRIORITY DATE: 07/01/1983

POINT OF DIVERSION:

T05N R02E S29 SESWNW Within ADA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
FIRE PROTECTION	01/01 12/31	0.070 CFS
FIRE PROTECTION STORAGE	01/01 12/31	0.40 AFY
FIRE PROTECTION FROM STORAGE	01/01 12/31	0.40 AFY

PLACE OF USE: FIRE PROTECTION Within ADA County

T05N R02E S29 SWNW

FIRE PROTECTION FROM STORAGE same as FIRE PROTECTION

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

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: Beneficial Use

RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT
TO SECTION 42-1425, IDAHO CODE.



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

April 15, 2004

DALE M FRAZELL
KATHLEEN KEYS
15205 N MC FARLAND CREEK RD
BOISE ID 83714

Re: Notice of Claim to a Water Right No. 63-31247, 63-31585 & 63-31586

Dear Claimant(s):

Enclosed is a copy of the above referenced claim(s), which reflects your change in address.

Please note that the enclosed Notice of Claim to a Water Right is not a determination of your water right. This claim was filed during claims taking in the Snake River Basin Adjudication (SRBA) and has not yet been verified by this Department. Water rights are established and maintained by beneficial use of water for the uses designated on this claim form dating back to the priority date listed. This claim will be investigated, verified and recommended to the SRBA Court for court decree sometime in the near future. You will be notified prior to the beginning of any verification of this water right.

Thank you for your patience and cooperation, as we have had several water right changes to process. If you have any questions concerning the enclosed claim(s), please feel free to contact this office.

Sincerely,

A handwritten signature in cursive script that reads "Denise Buffington".

Denise Buffington
Office Specialist 1
Adjudication Section
Western Region Office

DB: db

Enclosure

cc: Matt J Howard, attorney

11/17/2003

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

RIGHT NUMBER: 63-31586

NAME AND ADDRESS: DALE M FRAZELL
2205 W PLEASANTON AVE
BOISE ID 83702

KATHLEEN KEYS
2205 W PLEASANTON AVE
BOISE ID 83702

SOURCE: SPRING

TRIBUTARY: MC FARLAND CREEK

QUANTITY: 0.070 CFS
0.400 AFY

USE OF THIS RIGHT WITH RIGHT NO. 63-31247 IS LIMITED TO A TOTAL
COMBINED DIVERSION RATE OF 0.07 CFS AND TO A TOTAL COMBINED
ANNUAL DIVERSION VOLUME OF 0.4 AF.

PRIORITY DATE: 07/01/1983

POINT OF DIVERSION:

T05N R02E S29 SESWNW Within ADA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
FIRE PROTECTION	01/01 12/31	0.070 CFS
FIRE PROTECTION STORAGE	01/01 12/31	0.40 AFY
FIRE PROTECTION FROM STORAGE	01/01 12/31	0.40 AFY

PLACE OF USE: FIRE PROTECTION Within ADA County

T05N R02E S29 SNNW

FIRE PROTECTION FROM STORAGE same as FIRE PROTECTION

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

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: Beneficial Use

RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT
TO SECTION 42-1425, IDAHO CODE.

MATT J. HOWARD

ATTORNEY AT LAW

P. O. BOX 190012

BOISE, IDAHO 83719

TELEPHONE (208) 333-0622

FACSIMILE (208) 333-8409

EMAIL: MHOWARD@FIBERPIPE.NET

July 16, 2003

RECEIVED

JUL 17 2003

WATER RESOURCES
WESTERN REGION

Ron Howerton
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

RE: Notices of Claim for Water Right Nos. 63-31247, - 31585, and -31586

Dear Ron:

Enclosed are copies of the patents and affidavit that you requested to support the claimed priority dates for the above-referenced water rights. After you have had a chance to look at the enclosed documents, I will need to talk with you concerning the possibility of filing amended claims. I will be out of the office next week but will contact you shortly after my return.

Very truly yours,

Matt J. Howard

Enclosures
Cc: Clients

SEE ATTACHED
AFFIDAVIT
FOR DOP
FIRE INFO

MATT J. HOWARD
Attorney at Law
P. O. Box 190012
Boise, Idaho 83719
Telephone: (208) 333-0622
Facsimile: (208) 333-8409

AFFIDAVIT

STATE OF IDAHO)
County of Valley)ss.

PATRICIA R. BRUSH, being first duly sworn upon oath, deposes and says:

1. I make the following statements based upon my personal knowledge.
2. I am familiar with the lands located in Township 5 North, Range 2 East, Section 29, Boise Meridian, Ada County, which are currently owned by me and my husband, Harold R. Brush (hereinafter "the Brush Place") and Dale Frazell and Kathy Keys (hereinafter "the Frazell-Keys Place"), respectively.
3. From 1958 until 2002, my husband and I owned all of the lands which are now encompassed by the Brush Place and the Frazell-Keys Place.
4. In or around the summer of 1983, there was a large fire in the foothills. The fire came from Highway 55, along Cartright Road and then down to Rye Hill, nearly destroying our home. The Cole Collister Fire Department (now called North Ada) responded by sending fire trucks to our land. The firemen were able to pump water from our irrigation ponds to fight the fire and save our home and property.
5. After the fire was extinguished, the Cole Collister fire chief (I cannot recall his name, but I believe it was "Neil") met with my husband and I and requested that we maintain the

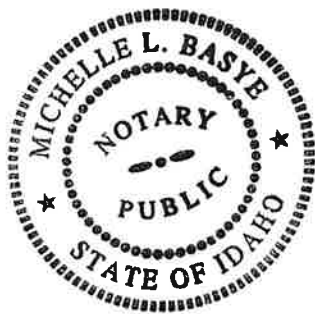
ponds for fire protection purposes. My husband and I agreed to do so, and have done so ever since.

Further your affiant sayeth naught.

DATED this 16 day of Oct, 2002.

Patricia R Brush
PATRICIA R. BRUSH

SUBSCRIBED AND SWORN to before me this 16th day of October, 2002.



Michelle Basye
Notary Public for Idaho
Residing at: McCall, ID.
My commission expires 8/16/06

Idaho Department of Water Resources

CLAIM VERIFICATION NARRATIVE SHEET

Updated: November 27, 2002

Date of Exam: 11-15-02

Field examiner:

Ron Howerton
Senior Water Right Agent

Water Right Nos.: 63-31586

Contacts: Attorney, Matt Howard

Narrative:

Field Exam 11-15-02: Spring in pond. Earth, rock, straw dam. The POD is located in the SESWNW, S29, T05N, R02E. Pond is approximately 5' deep and has a surface area of 0.2 acres per GIS. Fire protection storage is 0.40 AF. Place of use change C05. ENLARGEMENT OF RIGHT 63-31247.

Pond outflow to gravity ditch for irrigation, ENLARGEMENT OF RIGHT 63-31247. Spring water is co-mingled with McFarland Creek water (63-31585) in the pond and has overlapping irrigation in the NWSW, S29, T05N, R02E.

See attached maps:

Comments:

1. rhowerto 7/24/2003 Enlargement

Comment: The evidence submitted by affidavit indicated an enlargement date of 1983 when a fire burned the lands in T5N R2E S29. Enlargement of 63-31247.

2. rhowerto 7/24/2003 Place of use

Comment: The place of use is different than base right 63-31247 and affidavit indicated an accomplished transfer in 1983.

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION FIELD REPORT**

Prior to Field Exam

- ☒ Copy of Claim, claim has been signed, sealed, and dated by notary?
- ☒ Check fees paid
- ☐ Well logs (if needed)
- ☒ Copy of topo or NAPP
- ☒ Check of Govt. Lots, if needed, Govt. Plat/Tax lot information
- ☒ Check POD & POU overlap, see below – include overlapping right for exam
- ☐ Evidence of Priority – if none, talk with claimant

CLAIMANT INFORMATION – verify contact information is completeClaim No(s) 63-31586

Owner: _____ Phone No. _____

Current Address: _____

- ☒ No change NAME IS THE SAME
- ☐ NEW OWNER _____
- ☐ No change Address
- ☐ NEW ADDRESS _____
- ☐ How long owned property? _____

Accompanied by: MATT HOWARD - ATTORNEY FOR CLAIMANT**PRIORITY DATE**

- ☐ No change – Complete evidence submitted or not necessary
- ☐ Incomplete – Claimant should be asked when water was first used and submit proof of date.
- ☐ Priority date is acceptable/within mandatory filing dates?

Priority date, per claimant, is: _____

(If priority date, based on your exam, seems questionable, explain below.)

WAITING FOR EVIDENCE – RECEIVED 7-17-02

Source: _____ Tributary to _____

- ☒ No Change – SAME SOURCE
- ☐ Source found is different than claimed: _____

POINT OF DIVERSION

- ☐ No change CLARIFIED TO 10 ACRE TRACT
- ☐ POD found is different than claimed: _____
- ☐ If different, when did POD change? _____

DIVERSION AND DELIVERY SYSTEM

Points of Diversion:

ID #	Govt Lot #	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Method of Determination/Remarks GPS ID
		SE	SW	NW	29	5N	2E	ADA	GPS

Description of diverting works

EARTH ROCK STRAW DAM

OVERLAP REVIEW

Other water rights with the same point of diversion: 63-31247

Does overlap add acres or uses to existing system, increase rate of flow or volume, or other? Explain:

ENLARGEMENT OF 63-31247, COMBINED RMTS
& CONDITIONS APPLY

WATER USES

☐ No change

☒ Different Uses

Use FP From 01-01 To 12-31 Amount .07 CFS 12 AFA
 Use STORE FP From 01-01 To 12-31 Amount 0.4 CFS 0.4 AFA
 Use FROM STOR From 01-01 To 12-31 Amount 0.4 CFS 0.4 AFA

TOTAL VOLUME - Groundwater only

☐ Incomplete on claim, the total is, Amount 0.12 CFS 0.12 AFA
☒ Changes found, the new total is, Amount 0.07 CFS 0.4 AFA
☐ More than 1" per Acre? Yes _____ (claimant must complete excess flow sheet)

$(1.9835)(.07) = .14$ AFA $\rightarrow .4$ TOTAL AF
NEEDS STOR.

Don't need storage but it is ok to have it. CS
2-24-05

NON-IRRIGATION USES:

☒ No change

☐ Changes Exam found: Domestic # of homes _____ Stock # _____

Types _____ Additional comments: _____

PLACE OF USE:

☐ No Change

☒ Changes shown below:

PLACE OF USE IS DIFFERENT FROM
BASE CLAIM 63-31247 thus needs...

C05

No.
Craig Sexton
2-24-05

Place of Use			NE				NW				SW				SE				Totals
TWP	RGE	SEC	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
5N	2E	29							FP										

Overlap with other water rights: 63-31247 & 63-31585 (NOT SAME USE - Irr)

Does overlap increase rate of flow, volume, additional acres, different source for same acres? Explain:
ENLARGEMENT OF 63-31247 COMBINED QNT RATES APPLY

Delivery System Narrative: EARTH-ROCK-STRAW DAM. POND HAS A SURFACE AREA OF 0.2 ACRES, 5' DEEP HAS OUTFLOW DITCH FOR IRRIGATION RIGHT 63-31247

Well or Diversion Identification No GPS ID	Motor Make	Hp	Motor Serial No.	Pump Make	Pump Serial No. or Discharge size

FLOW MEASUREMENTS: W/L PER POND & MAX CFS PER BASE CLAIM - MANNING MEAS IN FILE 63-31247

Attach appropriate documents

NARRATIVE/REMARKS/COMMENTS

SEE ATTACHED NARRATIVE SHEET

Priority date condition C11
OUT Rmk 63-31247 COMBINED AMOUNTS
E25 0.07 CFS & 0.4 AF
K02
K09
C05

AFTER EXAM THE FILE SHOULD CONTAIN:

- ☒ Completed claim checklist
- ☒ Photographs of POD's and POU
- ☒ GPS readings
- ☒ Completed map and or GIS layout showing POD's and POU

DATE EXAM CONDUCTED: 11-15-02

FIELD EXAMINER: Ron Howerton
Sr Water Agent

MATT J. HOWARD

ATTORNEY AT LAW

P. O. BOX 190012

BOISE, IDAHO 83719

TELEPHONE (208) 333-0622

FACSIMILE (208) 333-8409

EMAIL: MHOWARD@FIBERPIPE.NET

October 18, 2002

RECEIVED

OCT 21 2002

WATER RESOURCES
WESTERN REGION

Idaho Department of Water Resources
Western Region Office
2735 Airport Way
Boise, Idaho 83705

RE: Dale Frazell and Kathy Keys – SRBA Notices of Claim (Basin 63)

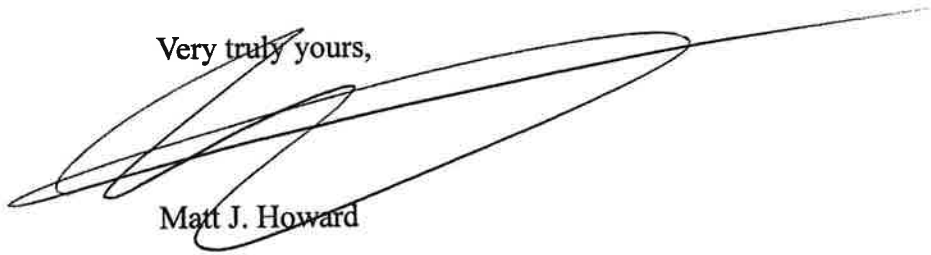
Dear Clerk:

Enclosed for filing are the following:

1. Amended Notice of Claim for 63-31247 (Spring – Irrigation and Stockwater);
2. Notice of Claim (McFarland Creek – Irrigation and Stockwater); and
3. Notice of Claim (Spring – Fire Protection).

Also, enclosed is a check in the amount of \$200 as payment of the filing fees for the above-mentioned claims. I have also enclosed an additional copy of the above-referenced claims that I would ask that you conform and return to me in the enclosed envelope. Please copy this office with all communications concerning the enclosed claims. Thank you.

Very truly yours,



Matt J. Howard

Enclosures

Cc: Client (w/o encls.)



Photo 1: 63-31586, Field Exam 11-15-02: Spring in pond. Earth, rock, straw dam. The POD is located in the SESWNW, S29, T05N, R02E. Pond is approximately 5' deep and has a surface area of 0.2 acres per GIS. Fire protection storage is 0.40 AF. See attached maps. Enlargement of right 63-31247.



Photo 2: Outflow to gravity ditch for irrigation, enlargement of right 63-31247. Spring water is co-mingled with McFarland Creek water (63-31585) in the pond and has overlapping irrigation in the NWSW, S29, T05N, R02E.

OVERVIEW MAP
ORTHO QUADS
X8 & X9
FRAZELL/KEYS & BRUSH

S30

S29

SWNW

SENW

NESE

NWSW

T05N, R02E

NWNWSW

NENWSW

NESW

NENESW

TAX LOT LINES

Pond

Manning

Manning

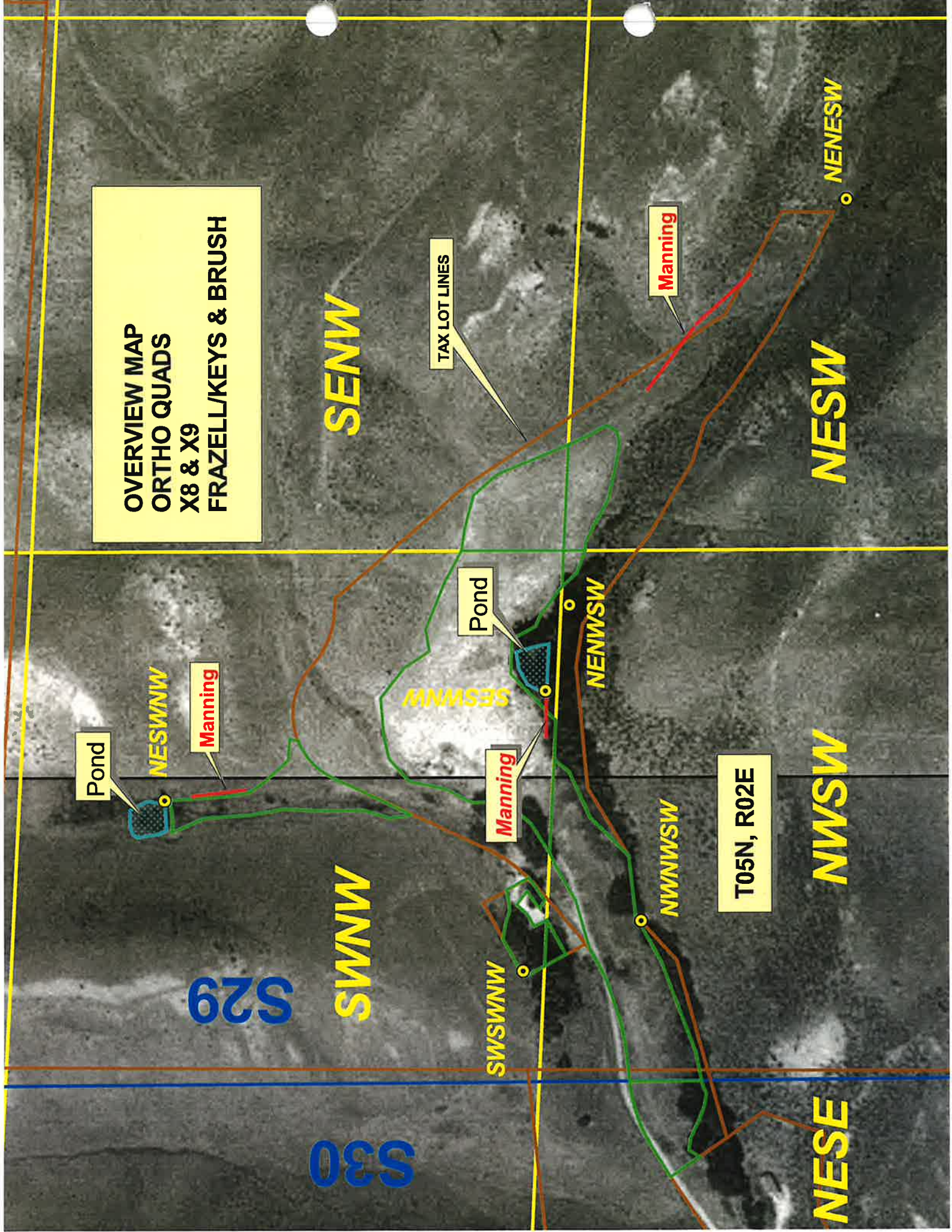
Manning

Pond

NESWNW

SESWNW

SWSWNW



ORTHO QUADS
X8 & X9

63-31586 place of use
Fire Protection

Pond

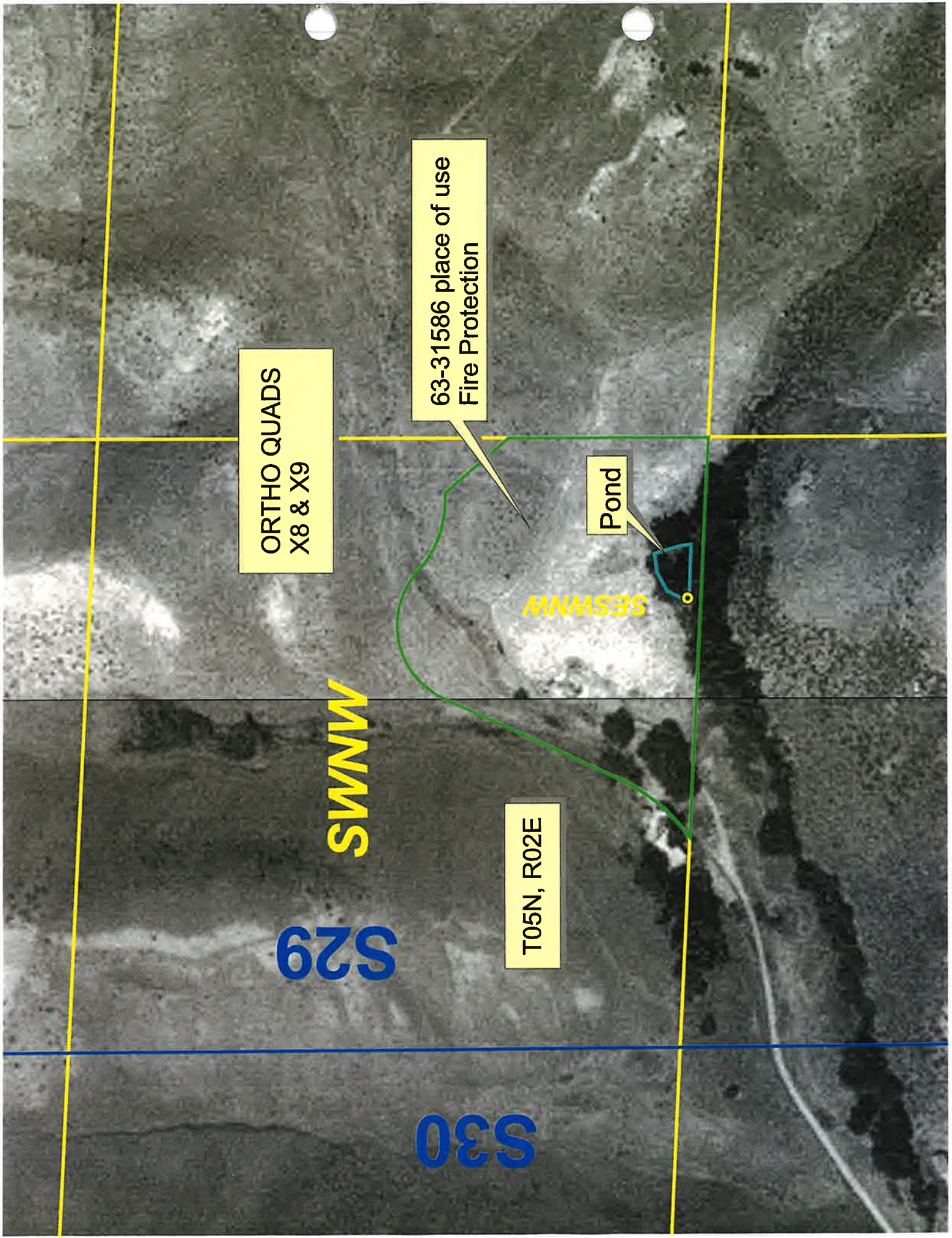
SESWNW

SWNW

S29

T05N, R02E

S30



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 63-31586
Date Received: 10/21/2002
Receipt No:
Received By:

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

1. Name of Claimant(s)

DALE M FRAZELL
15205 N MC FARLAND CREEK RD
BOISE ID USA 83714

Phone: (208) 433-9282

KATHLEEN KEYS
15205 N MC FARLAND CREEK RD
BOISE ID USA 83714

Phone: (208) 433-9282

2. Date of Priority: 07/01/1983

3. Source: SPRING Trib. to: MC FARLAND CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 Lot	County	Type
05N	02E	29	NW	SW		ADA	
05N	02E	29	SW	NW		ADA	

5. Description of diverting works:

Dams & Ditches

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
FIRE PROTECTION	01/01	12/31	0.39	
FIRE PROTECTION STORAGE	01/01	12/31		0.67

7. Total Quantity Appropriated is:

0.39 C.F.S. and/or 0.67 A.F.A.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
05N	02E	29	SW	NW		FIRE PROTECTION	
			NW	SW		FIRE PROTECTION	

11. Place of use in counties: ADA

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

13. Other Water Rights Used:

14. Remarks:

This claim is an expansion of water right no. 63-31247.

Address change by DB 4/15/2004

15. Basis of Claim: Beneficial Use

**SNAKE RIVER BASIN ADJUDICATION
CHANGE IN ADDRESS OF NOTICE OF CLAIM**Claim Number(s): 63-31247, 63-31585, 63-31586Previous Mailing Address: Dale Frazell and Kathy Keys
2205 W. Pleasanton Ave.
Boise ID 83702New Mailing Address: Dale Frazell and Kathy Keys
15205 N McFarland Creek Rd
Boise, ID 83714Dale Frazell + Kathy Keys →
15205 N. McFarland Creek Rd
Boise, Id 83714
433-9282Telephone Number: (208) 433 9282Signature of Claimant(s): Kathy Keys
Dale Frazell

Please return this completed form to:

Adjudication Bureau
Idaho Dept. of Water Resources
1301 N. Orchard St.
Boise, ID 83706-2237
Ph. 1/800/451-4129 or
FAX 208/327-5400Adjudication Bureau
Idaho Dept. of Water Resources
2735 Airport Way
Boise, ID 83705-5082
Ph. 208/334-2190 or
FAX 208/334-2348Adjudication Bureau
Idaho Dept. of Water Resources
1341 Fillmore St., Ste. 200
Twin Falls, ID 83301-3380 or
FAX 208/736-3037Adjudication Bureau
Idaho Dept. of Water Resources
900 N. Skyline, Ste. A
Idaho Falls, ID 83402-3653 or
FAX 208/525-7177

MATT J. HOWARD**ATTORNEY AT LAW**

P. O. BOX 190012

BOISE, IDAHO 83719

TELEPHONE (208) 333-0622

FACSIMILE (208) 333-8409

EMAIL MHOWARD@FIBERPIPE.NET

FACSIMILE TRANSMITTAL SHEET

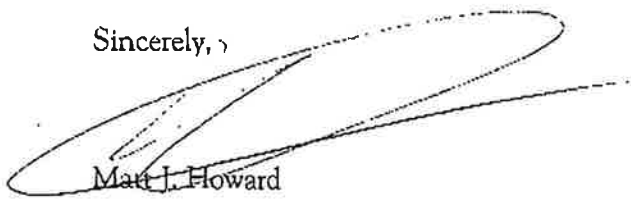
TO:	FROM:
IDWR Western Region	Matt J. Howard
COMPANY	DATE:
	April 15, 2004
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER:
334-2190 334-2548	2
RE:	
Change of Address - Water Right Nos. 63-31247, 63-31585, and 63-31586	

NOTES/COMMENTS:

Dear IDWR Western Region:

Enclosed is a SRBA Change in Address of Notice of Claim for water right nos. 63-31247, 63-31585, and 63-31586 executed by my clients, Dale Frazell and Kathy Keys. Please make the appropriate changes to your records. Please call me if you have any questions. Thank you very much.

Sincerely, >


Matt J. Howard**CONFIDENTIAL & PRIVILEGED INFORMATION**

This facsimile is confidential & privileged. It is for use of the individual(s) named on this cover sheet. If you are not the intended recipient, do not read this facsimile. Any further inspection, dissemination, or copying of this facsimile is prohibited. If you have received this facsimile by error, please notify us by phone immediately, and we will arrange to have it returned to us. Thank you for your cooperation.

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 *A63-31586*
Date Received: *10-21-02*
Receipt No: *W029815*
Received By:

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

DALE M FRAZELL Phone: (208) 283-7253
2205 PLEASANTON AVE.
BOISE, ID 83702

KATHLEEN KEYS Phone: (208) 283-7253
2205 PLEASANTON AVE.
BOISE, ID 83702

2. Date of Priority: 07/01/1983

3. Source: SPRING Trib. to: MC FARLAND CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
05N	02E	29	NW SW	ADA	
05N	02E	29	SW NW	ADA	

5. Description of diverting works: Dams and ditches.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
FIRE PROTECTION	01/01	12/31	0.39	
FIRE PROTECTION STORAGE	01/01	12/31		0.67

7. Total Quantity Appropriated is:
0.39 C.F.S. and/or 0.67 A.F.A.

8. Total consumptive use: N/A

9. Non-irrigation uses: Fire protection.

10. Place of use:

Township	Range	Section	1/4 of	1/4 Lot	Use	Acres
05N	02E	29	SW	NW	FIRE PROTECTION	
			NW	SW	FIRE PROTECTION	
Total Acres						

11. Place of use in counties: ADA

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

13. Other Water Rights Used:

14. Remarks:

This claim is an expansion of water right no. 63-31247.

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 _____ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: -0-

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s):

Kathleen Kaye
Paul A. Nelson

Date: 10-07-02

Date: 10/7/02

State of Idaho)

County of

Ada

) SS.

Subscribed and sworn (or affirmed) before me this

of 7 September 2002

Paul A. Nelson

Notary Public

Residing at

Boise, ID

My commission Expires

9/3/04

