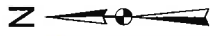
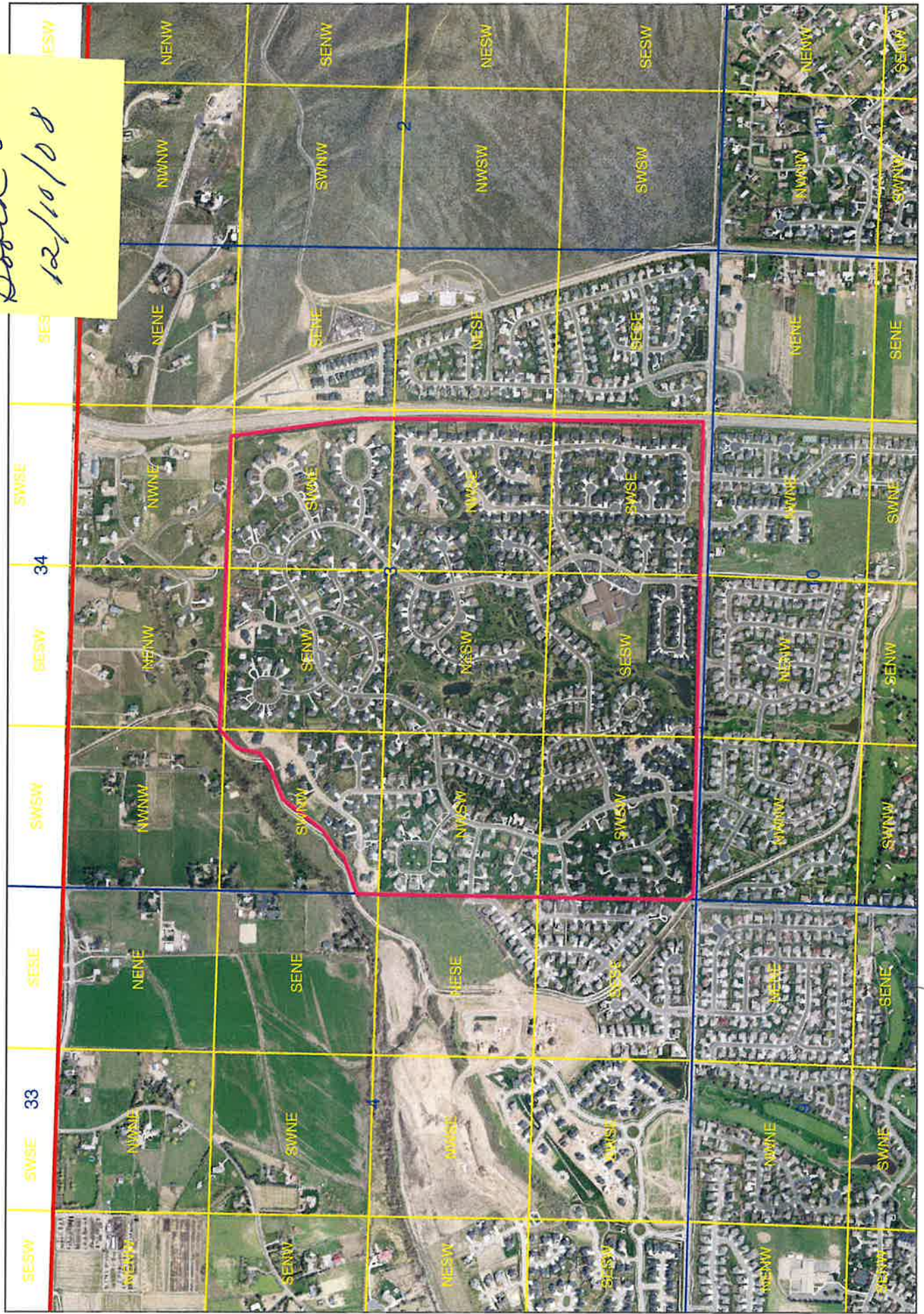


LEXINGTON HILLS INC
63-123F

Went to Ted
Booth on
12/10/08



IDAHO DEPARTMENT OF WATER RESOURCES
Water Permit Report 63-11413

WATER RIGHT NUMBER: 63-11413

<u>Owner Type</u>	<u>Name and Address</u>
Original Owner	FLOATING FEATHER HILLS INC 2417 BANKS DR STE 101 BOISE, ID 83705 (208)343-6500
Current Owner	CITY OF EAGLE PO BOX 1520 EAGLE, ID 83616 (208)939-6813
Attorney	CITY OF EAGLE PO BOX 1520 EAGLE, ID 83616 (208)939-6813
Original Owner	TREASURE VALLEY VILLAGE LIMITED PARTNERSHIP 4720 EMERALD BOISE, ID 83706 (208)336-3393

Priority Date: 04/02/1991

Basis:

Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
MUNICIPAL	1/01 to 12/31	3.150 CFS	540.00 AF
	<u>Total Diversion:</u>	3.150 CFS	540.00 AF

Location of Point(s) of Diversion

GROUND WATER ADA County	NW1/4SW1/4	Sec. 3,	Twp 04N,	Rge 01E, B.M.
GROUND WATER ADA County	SW1/4SW1/4	Sec. 3,	Twp 04N,	Rge 01E, B.M.
GROUND WATER ADA County	SW1/4SW1/4	Sec. 4,	Twp 04N,	Rge 01E, B.M.
GROUND WATER ADA County	NE1/4SE1/4	Sec. 4,	Twp 04N,	Rge 01E, B.M.

Place of UseConditions of Approval:

1. 004 The issuance of this right does not grant any right-of-way or easement across the land of another.

IDAHO DEPARTMENT OF WATER RESOURCES

Water Permit Report 63-11413

2. 01M After specific notification by the department, the right holder shall install a suitable measuring device or shall enter into an agreement with the department to determine the amount of water diverted from power records and shall annually report the information to the department.
3. 046 Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
4. The right holder is responsible on an on-going basis to provide a well suitable for monitoring as determined by the Department.
The right holder is responsible to insure that pumpage under this water right does not directly cause the water level to significantly decline in any domestic well drilled and in use prior to March 29, 1978, or to cause the water level in any other well having a prior right to exceed a reasonable pumping level, unless the right holder provides reasonable compensation or mitigation to the prior water right holder for the reduced water levels as determined by the Director.
Farmers Union Canal Company water shall be utilized for the irrigation of the lots in Lexington Hills and Trail Creek Ranch parcels equal to or greater than one-half acre in size during periods when water is being delivered in the canal. This water right may be used for irrigation purposes only if the entire amount of water from the Farmers Union Canal Co. remains with the lands in Lexington Hills and Trail Creek Ranch. Sale or transfer of surface water from any portion of these properties will be cause for the Department to further limit the use of this right.
The right holder shall permanently maintain totalizing flow measurement devices of a type approved by the Department at each well. The water right holder shall provide flow measurements to the Department on a frequency determined by the Department.
Each lot which receives water under this right shall be metered.
Rights 63-11413, 63-12017, and 63-12448 when combined shall not exceed a total diversion rate of 3.25 cfs.
Rights 63-12017 and 63-12448 also diverted through the point(s) of diversion described above.
Points of diversion were formerly known as Hormaechea Wells 1 and 2 and Lexington Wells 1 and 2. They are currently known as City of Eagle Wells 1-4.
Place of use is located within the city limits of Eagle and the surrounding service area.

Remarks:

Comments:

1. ZIMMERMA 1/24/1994 AMENDED PERMIT
Comment: This permit was amended to reduce irrigation use by 3 acres in Lot 2 (NWNE) and 2 acres in Lot 3 (NENW), S03, T04N, R01E to mitigate pond surface area in water right no. 63-12017. This reduction in acres reduced the total diversion rate from 3.25 cfs to 3.15 cfs.
2. VAULT 8/31/1995 Extension of Time Received
Comment: Extension of Time Received
3. JYARBROU 9/11/1995 Lapse Notice Sent
Comment: Lapse Notice Sent
4. VAULT 9/27/1995 Extension of Time Received
Comment: Extension of Time Received
5. VAULT 9/18/2000 Lapse Notice Sent
Comment: Lapse Notice Sent
6. DELLIS 9/19/2000 Proof of Beneficial Use Rcvd
Comment: Proof of Beneficial Use Rcvd

IDAHO DEPARTMENT OF WATER RESOURCES
Water Permit Report 63-11413

Water Supply Bank:

Twp. 4N, Rge. 1E

LEXINGTON HILLS INC
63-123F



06/15/2005

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

RIGHT NUMBER: 63-123F

NAME AND ADDRESS: LEXINGTON HILLS INC
1815 E STONYBROOK CT
EAGLE ID 83616

SOURCE: BOISE RIVER

TRIBUTARY: SNAKE RIVER

QUANTITY: 1.930 CFS

PRIORITY DATE: 06/01/1864

POINT OF DIVERSION:
T03N R02E S5 NESENE Within ADA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	03/01 11/15	1.930 CFS
Diversion for irrigation under this water right prior to April 1 and after October 31 shall occur only as authorized by the Water District 63 Water Master and only when water is being released for flood control by the United States from the Lucky Peak Dam outlet under procedures and requirements for the Memorandum of Agreement between the U.S. Department of the Army and the U.S. Department of the Interior for Flood Control Operations of the Boise River Reservoirs, dated November 20, 1953, the Water Control Manual for Boise River Reservoir dated April 1985 and any future amendments or revisions made thereto pursuant to state or federal procedures or law; provided that any such use of this water right prior to April 1 and after October 31 shall be subordinated to water rights for storage in Lucky Peak Reservoir, Lake Lowell, Arrowrock Reservoir, and/or Anderson Ranch Reservoir, as decreed in SRBA Case No. 39576.		

PLACE OF USE:

96.4 ACRES TOTAL

The boundary encompassing the place of use for this water right is described with a digital boundary as defined by I.C. Section 42-202B(2) and authorized pursuant to I.C. Section 42-1411(2)(h). The data comprising the digital boundary are incorporated herein by reference and are stored on a CD-ROM disk issued in duplicate originals on file with the SRBA District Court and the Idaho Department of Water Resources. A map depicting the place of use is attached hereto to illustrate the place of use described by the digital boundary.

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 96.4 ACRES WITHIN THE BOUNDARY OF THE LEXINGTON HILLS SUBDIVISION.

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: BASIS OF CLAIM - Decreed

SCANNED

JUN 28 2006

THIS RIGHT IS DESIGNATED AS NO 2 IN THE STEWART DECREE AND THE
BOISE RIVER WATER MASTERS RECORDS

Right includes accomplished change in place of use pursuant to Section
42-1425, Idaho Code.

THE FOLLOWING RIGHTS ARE ALSO DIVERTED THROUGH POINT OF
DIVERSION DESCRIBED ABOVE: 63-120G, 63-123C, 63-123D, 63-123E,
63-123G, 63-124Q, 63-125J, 63-126F, 63-165M, 63-198AG, 63-248, 63-297,
63-2360, 63-21729, 63-18700, 63-31832, 63-31937

Right includes accomplished change in point of diversion pursuant to Section
42-1425, Idaho Code.

WATER IS DELIVERED THROUGH THE FARMERS UNION CANAL

SCANNED

JUN 29 2006

MEMORANDUM

**TO: DAVE TUTHILL, JAN SCHURTE, MEL SCHULTE, SUSAN
HAMLIN-NYGARD**

FROM: NICK SPENCER

RE: UNCUTTABLE RIGHTS IN BOISE RIVER

DATE: JUNE 7, 2005

Our decision to place the step-down remark on the Jacobs and Perrault/Johnson rights in order to place the burden on the local legal community to search for the missing court ruling making these two rights “uncuttable” has paid off. Jerry Kiser has provided us an explanation that seems credible to me. Based on this explanation I recommend that the step-down remark be removed from these two rights. Jerry Kiser’s analysis is explained below.

The “missing” language is found in the 1909 supreme court decision on appeal of the Stewart Decree, Farmers’ Cooperative Ditch Co. v. Riverside Irr. Dist., 16 Idaho 525, 102 P. 481 (1909). This is the case where the supreme court remanded the case back to Judge Stewart for a determination of the duty of water.

On page 536 of that decision, the supreme court expressly addresses the two rights in question, which it notes are listed as “Allotment No. 2” (Jacobs) and “Allotment No. 30” (Perrault and Johnson). It describes the purpose of these rights and notes they are to be remanded for determination of a duty of water, using the following language:

These two water rights are used primarily for sale, rental, and distribution for municipal and domestic purposes, and the sprinkling of streets and lawns and irrigating trees and shrubbery and flushing sewers in Boise City. These allotments, numbered 2 and 30, have been properly established and decreed and are hereby affirmed. But the duty of water to be used under such allotments, and the necessity for its application and the extent of its use, will be subjects of examination on a new trial in establishing the duty of water to be used and applied under these respective priorities.

Id. Thus the two rights were to be remanded back to the trial court for a determination of the duty of water. However, immediately following this decision, the supreme court appended its decision on a petition for rehearing of its decision. In its decision on the petition for rehearing the court modified its original order on remand. It stated as follows:

SCANNED

JUN 29 2006

[T]he former opinion of this court must be so modified as to make the new trial apply to acreage tracts and not to the irrigation of certain town lots, street sprinkling, parking purposes, sewerage, domestic and power purposes. On a re-examination of the record, we conclude that the judgment of the trial court should be affirmed except as to the question of the duty of water for the irrigation and cultivation of agricultural lands and acreage tracts. The question of duty of water for acreage purposes is the only question to be determined in a new trial as far as the duty of water is concerned.

Id. at 539-540. In other words, it was only the *irrigation* rights that were remanded back to the trial court. The non-irrigation rights were affirmed as they were described in the original Stewart Decree; they were not remanded back to the trial court. Thus the Jacobs, and Perrault/Johnson rights, not being irrigation rights, were affirmed rather than remanded back to the trial court. Since they were not remanded back to the trial court they were not among the group of rights before Judge Bryan when he entered the order for the step-down provision. Thus they were not—and are not—subject to that step-down provision. They are “uncuttable.”

I find Jerry Kiser’s analysis persuasive. Please let me know what you think.

SCANNED

JUN 28 2006

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 63-123F V1

WATER RIGHT NUMBER: 63-123F V1

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	LEXINGTON HILLS INC 1815 E STONYBROOK CT EAGLE, ID 83616 (208)939-6000
Attorney	GIVENS PURSLEY LLP ATTN JOHN MARSHALL PO BOX 2720 BOISE, ID 83701-2720 (208)388-1200

Priority Date: 06/01/1864

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
BOISE RIVER	SNAKE RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	03/01 to 11/15	1.930 CFS	
	<u>Total Diversion:</u>	1.930 CFS	

Location of Point(s) of Diversion

BOISE RIVER	NE1/4SE1/4NE1/4	Sec. 5, Twp 03N, Rge 02E, B.M.
ADA County		

Place of UseConditions of Approval:

1. 135 The boundary encompassing the place of use for this water right is described with a digital boundary as defined by I.C. Section 42-202B(2) and authorized pursuant to I.C. Section 42-1411(2)(h). The data comprising the digital boundary are incorporated herein by reference and are stored on a CD-ROM disk issued in duplicate originals on file with the SRBA District Court and the Idaho Department of Water Resources. A map depicting the place of use is attached hereto to illustrate the place of use described by the digital boundary.
2. 155 This right shall receive 100 percent of its decreed quantity until the natural flow of the waters of the Boise River shall decrease so that all rights containing this condition cannot receive 100 percent of their decreed quantities, at which time this right and the other rights containing this condition shall first be cut to 75 percent of their decreed quantities, as the natural flow of the river decreases, beginning with the latest rights containing this condition and preceding to the earliest rights containing this condition in the order of their priority dates, and after all of the rights containing this condition shall have been reduced to 75 percent of their decreed quantities, should the natural flow of the waters of the river decrease below the amount necessary to supply 75 percent of those decreed quantities, then this right and the other rights containing this condition, beginning with the latest and preceding to the earliest, shall be reduced to 60 percent of their decreed quantities.
3. C03 Right includes accomplished change in point of diversion pursuant to Section 42-1425, Idaho Code.
4. C05 Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.

SCANNED

JUN 29 2006

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 63-123F V1

5. 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.
6. S45 Diversion for irrigation under this water right prior to April 1 and after October 31 shall occur only as authorized by the Water District 63 Water Master and only when water is being released for flood control by the United States from the Lucky Peak Dam outlet under procedures and requirements for the Memorandum of Agreement between the U.S. Department of the Army and the U.S. Department of the Interior for Flood Control Operations of the Boise River Reservoirs, dated November 20, 1953, the Water Control Manual for Boise River Reservoir dated April 1985 and any future amendments or revisions made thereto pursuant to state or federal procedures or law; provided that any such use of this water right prior to April 1 and after October 31 shall be subordinated to water rights for storage in Lucky Peak Reservoir, Lake Lowell, Arrowrock Reservoir, and/or Anderson Ranch Reservoir, as decreed in SRBA Case No. 39576.

Remarks:

1. Explanatory THIS RIGHT IS DESIGNATED AS NO 2 IN THE STEWART DECREE AND THE BOISE RIVER WATER MASTERS RECORDS
2. Quantity THIS RIGHT WHEN COMBINED WITH ALL OTHER RIGHTS SHALL PROVIDE NO MORE THAN .02 CFS PER ACRE AT THE FIELD HEADGATE.
3. Explanatory WATER IS DELIVERED THROUGH THE FARMERS UNION CANAL
4. Explanatory THE FOLLOWING RIGHTS ARE ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE: 63-120G, 63-123C, 63-123D, 63-123E, 63-123G, 63-124Q, 63-125J, 63-126F, 63-165M, 63-198AG, 63-248, 63-297, 63-2360, 63-21729, 63-18700, 63-31832, 63-31937
5. Place of Use - Irrigation THIS RIGHT IS LIMITED TO THE IRRIGATION OF 96.4 ACRES WITHIN THE BOUNDARY OF THE LEXINGTON HILLS SUBDIVISION.

Comments:

1. mschulte 2/1/2005 RECOMMENDATION

Comment: This claim was originally disallowed but additional information provided by the claimant was sufficient to indicate they have an ownership interest in a portion of the Jacobs right.

Water Supply Bank:

SCANNED

JUN 28 2006

**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) 63-123F

Owner:

Lexington Hills, Inc

Phone No.

388-1200 = atty John Marshall939-6000

Current Address:

1815 E. Stonybrook Ct. Eagle 83616

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

Accompanied by:

Claim filed by attorney, John Marshall**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: 6-1-1864 = same as decree.

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

Source:

Boise River

Tributary to

Snake River

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

POINT OF DIVERSION

- ☒ No change
- ☐ POD found is different than claimed:
- ☐ If different, when did POD change?

SCANNED

JUN 29 2006

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	

Overlap with other water rights: A small amount of Farmers Union water is also used.
Does overlap increase rate of flow, volume, additional acres, different source for same acres? Explain:

Delivery System Narrative: This water is delivered by Farmers Union Canal from the river to the Lexington Hills Headgate. At the Headgate, Lexington Hills and Lexington Hills East water is diverted into a common delivery system.

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

FLOW MEASUREMENTS: NA.

Attach appropriate documents

NARRATIVE/REMARKS/COMMENTS

This claim was previously disallowed because the legal ownership of part of the Jacobs right (63-123) was in question. Additional information was provided that indicates the portion of the right appurtenant to Lexington Hills is the result of an accomplished transfer. The records of Farmers Union Ditch Co indicate the Holgate, the land owner prior to Lexington Hills, used the water and were assessed by Farmers as early as 1972.
The attached documents and the files for 63-123C

See Page 4

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	

Overlap with other water rights: _____

Does overlap increase rate of flow, volume, additional acres, different source for same acres? Explain:

Delivery System Narrative: _____

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

FLOW MEASUREMENTS:

Attach appropriate documents

NARRATIVE/REMARKS/COMMENTS

and 63-123D provide additional information.

The acre limitation of 96.4 acres is based on one acre per inch of water. The Lexington Hills HOA owns 107.6" of water used within the same Lexington Hills Subdivision as this right, and Lexington Hills East (63-123D) water is delivered through the same system.

See the attached memo dated 3-8-2005 for more information

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:

1-31-05

FIELD EXAMINER:

Mel Schulte

MEMORANDUM

FROM: Mel Schulte

TO: FILE

RE: A summary of information concerning the Jacobs Canal Company water right 63-123.

DATE: July 1, 2005

HISTORICAL INFORMATION

Water right 63-123 was awarded in the Stewart Decree as Right No. 2 to the Jacobs Canal Company with a priority date of June 1, 1864. The decree specified an amount of 1000 inches to be diverted from the north side of the Boise River about one mile east of the original Boise City town site to be used in Secs. 4, 9, 10, 11, 13, 14; T03N, R02E. This is possibly one of the rights that cannot be cut in times of scarcity.

An approved water right transfer dated June 8, 1914 changed the point of diversion to the Farmer's Union Canal. The transfer describes a detailed place of use in T05N, R01W, T05N, R02W and T04N, R02W.

An agreement dated July 17, 1916 between Farmer's Union Ditch Company and W. A. Keyt, who is described in the agreement as the owner of the Jacobs Canal Company right, splits the ownership of right 63-123. This contract gives Farmer's Union Ditch Company one-third of the right as compensation for delivering the remaining two-thirds of the right to land of interest to Keyt in T05N, R01E. This parcel in T05N, R01E is apparently the same land that was organized as Capital View Irrigation District in 1922.

An approved transfer dated December 31, 1934 split .6875 cfs of the Jacobs Canal Company right into the ownership of the Federal Land Bank to be used on land in Sec. 4, T04N, R01E. This right is designated as 63-123A in the water right records but no specific claim was filed in the SRBA for this split and there is no proof the transfer was ever perfected.

OWNERSHIP ISSUE

It is an accepted fact Farmer's Union Ditch Co. was conveyed one-third or 333 inches of right 63-123 by virtue of the July 17, 1916 agreement and W. A. Keyt retained ownership of the remaining two-thirds or 667 inches.

Capital View Irrigation District, the apparent successor of interest to W. A. Keyt, has indicated they have historically been delivered and assessed for only 350 inches of the 667 inches retained by W. A. Keyt.

If Farmer's Union owns one-third of 63-123 and Capital View Irrigation claims to own approximately one-third of the right an issue to be resolved is who owns the remaining one-third. There are no water right records that address the ownership issue nor are there any water right records that accurately describe the places of use for the entire right.

The Boise River water master's records and the Farmer's Union Ditch Company records indicate the entire right has been historically diverted into the Farmer's Union Canal.

The Lexington Hills subdivisions were developed by Lexington Hills, Inc on land previously owned by the Holgate family. A series of deeds conveyed the land in parcels from the Holgates to Lexington Hills, Inc.

Lexington Hills, Inc executed The Declaration Of Covenants, Conditions, Restrictions and Easements for Lexington Hills which authorized the formation of a homeowners association to be responsible for various maintenance and operations including the irrigation system. Lexington Hills Homeowners' Association, Inc was formed in 1992.

The common areas within Lexington Hills development were conveyed in a series of 16 deeds from Lexington Hills, Inc to Lexington Hills HOA dating from 1992 to 2001. Six of the deeds include the conveyance of water totaling 119.40 inches of Jacobs water. The remaining 10 deeds are silent as to water. Twelve of the deeds reserve a perpetual 10' right-of-way for the irrigation system to the grantor, Lexington Hills, Inc.

FARMER'S UNION DITCH COMPANY RECORDS

Farmer's Union Ditch Co. records provide some information that can assist in determining who might own the portion of 63-123 not allocated to Farmer's Union and Capital View Irrigation. As of June 15, 2004 (See attached letter) Farmer's has been delivering and assessing 308 inches of the Jacobs right as described below:

Green Acres/Richard Hormaechea	34.0 inches	*
Echo Creek HOA	33.77 inches	*
Lexington Hills, Inc	96.4 inches	
Lexington Hills, HOA	107.6 inches	
Ilene Stinar	10.0 inches	*
East Hills Development	26.23 inches	

* Not claimed in the SRBA

A very important bit of information in Farmer's records is the fact that 264 inches of the above listed 308 inches can be traced back as early as 1972 to land previously owned by Myron Holgate & Sons. The Holgate land is the same parcel that was subdivided into the current Echo Creek, Lexington Hills and Lexington Hills East subdivisions.

CURRENT SRBA CLAIMS

63-123C	Farmer's Union Ditch Co.	20 cfs	1000 inches	*
-123D	East Hills Development	.525 cfs	26.23 inches	
-123E	Capital View Irrigation	20 cfs	1000 inches	*
-123F	Lexington Hills, Inc	1.93 cfs	96.4 inches	
-123G	Lexington Hills, HOA	4.605	230.23 inches	**

* Farmer's Union and Capital View both claimed the entire right with the understanding that the real ownership and allocation of the right would be determined in the SRBA review and recommendations.

**Lexington Hills HOA claimed all of the water delivered to the Lexington Hills subdivision. They believe that East Hills Development has been absorbed into the Lexington Hills HOA. They contend that because they are the entity designated in the CC& R's and their own Bylaws as being responsible for the operation and maintenance of the irrigation system they are also entitled to the water rights appurtenant to the subdivision property.

PRELIMINARY RECOMMENDATIONS

Listed below are the diversion amounts and entities proposed for the preliminary recommendations:

63-123C	Farmer's Union Ditch Company	8.4 cfs	419.77 inches	***
-123D	East Hills Development	.52 cfs	26.23 inches	
-123E	Capital View Irrigation	7.0 cfs	350.0 inches	
-123F	Lexington Hills, Inc	1.93 cfs	96.4 inches	
-123G	Lexington Hills HOA	<u>2.15 cfs</u>	<u>107.6 inches</u>	
	TOTALS	20.00 cfs	1000 inches	

***The Farmer's Union allocation includes the following:

1916 contract portion conveyed as compensation	333.0 inches
Green Acres/Hormaechea part delivered but unclaimed	34.0 inches
Echo Creek HOA part delivered but unclaimed	33.77 inches

Ilene Stinar part delivered but unclaimed
A remaining portion delivered but not claimed

10.0 inches
9.0 inches
419.77 inches

ADDITIONAL INFORMATION TO SUPPORT THE RECOMMENDATIONS

The records of the Boise River water master and the Farmer's Union Ditch Co. verify that the Jacobs right, 63-123, has been historically diverted into the Farmer's Union Canal.

There is insufficient information in our water right records to support the division of the Jacobs right to the above list of claimants and the places of use they claimed. The above recommendations can, however, be justified as accomplished transfers based on the records of Farmer's Union Ditch Co. Farmer's Union can trace the assessment and delivery of 264 inches of the Jacobs right back to 1972 to the parcel of land that is now known as Lexington Hills, Lexington Hills East and Echo Creek subdivisions. We have deeds on file that convey the land from Holgate Enterprises to Lexington Hills, Inc.

The unclaimed portions of 63-123 listed above were recommended to the Farmer's Union Ditch Co. for two reasons. First, they claimed the entire right and second they have historically delivered and used these unclaimed portions within their boundary. If any of the unclaimed parts can be recommended to other entities in the future, Farmer's Unions share will have to be reduced to avoid expanding the right.

The sixteen deeds conveying the common areas from Lexington Hills, Inc. to Lexington Hills HOA appear to transfer the water appurtenant to the common areas to the association. However, the water appurtenant to the individual lots owned by private parties is not addressed in any instruments of conveyance. Therefore, it appears Lexington Hills, Inc. as the developer of the subdivisions still holds title to that water in a fiduciary capacity for the individual private lot owners.

Another item of interest relating to Lexington Hills HOA's claim to be the owner of the entire 230 inches of water associated with the subdivision is the fact they have only been assessed by Farmer's Union for 107.6 inches since 1994. Why don't the assessments by Farmers Union Ditch Co. reflect an assessment to the HOA for the entire 230 inches? It would seem they would want to solidify their claim as the total owner by changing the ditch company records. Why would they allow Lexington Hills, Inc and East Hills Development to be assessed and pay for water that is owned by the homeowners? According to Ron Schreiner with Farmers, the Lexington Hills entities and East Hills assessments are paid separately by a property management firm.

Notices of error were filed by Lexington Hills HOA and Capital View challenging our recommendations for the amount of diversion rate, but did not include sufficient evidence to change the recommendations. Therefore no changes were made to our original recommendations. The issues involving the ownership of the Jacobs right need to be resolved at the objection phase when all of the parties can present their cases in a formal review process.

MTS

63-123.F

(6)

I.

That the defendant THOMAS DAVIS be and is hereby awarded the use of the waters of Boise River, diverted from a point on the north bank of said river about one mile east of the east line of the original townsite of Boise City, Idaho, through what is commonly known as the Jacobs Canal, for use upon lands lying in Secs. 10 and 11, T. 3 N. R. 2 E. B.M., in the following amount from the following date;

63 0120 110 inches, from June 1, 1864; and hereby designated as Right No. 1
 512, 513, 580, 595

That the defendant Thomas Davis be and is hereby awarded the use of said waters diverted from a point on the south side of said river in NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sec. 9, T. 3 N. R. 2 E. B.M., through what is known as the Davis Canal, for use upon lands in Secs. 5, 6, 31 and 32, T. 3 N. R. 2 E. B.M., in the following amount from the following date;

63 0121 670 inches, from June 1, 1886, and hereby designated as Right No. 94.

That the defendant Thomas Davis be and is hereby awarded the use of said waters diverted from said river at a point in NW $\frac{1}{4}$ of Sec. 9, T. 3 N. R. 2 E. B.M., through what is known as the Davis private ditch, for use upon SE $\frac{1}{4}$ of Sec. 5 and SE $\frac{1}{4}$ of Secs 8 and 9, all in T. 3 N. R. 2 E. B.M., in the following amount from the following date;

63 0122 27 inches, from June 1, 1891; And hereby designated as Right No. 119
 P.D. 32
 And adjudged to pay \$56.49 costs, in addition to the costs incurred by him.

II.

JACOBS CANAL COMPANY, Limited, a corporation.

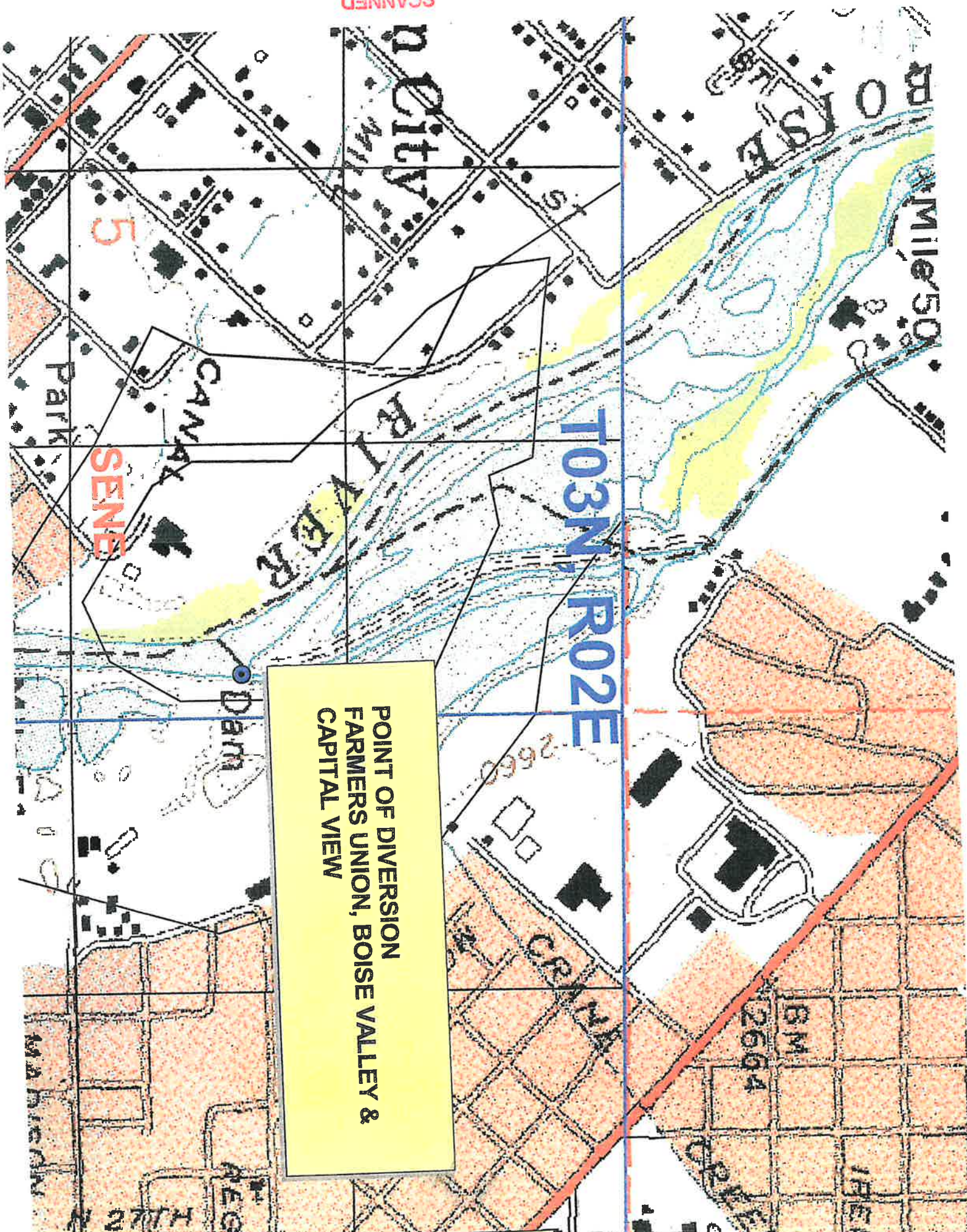
That the defendant the Jacobs Canal Company, Limited, be and it is hereby awarded the use of the waters of Boise River, diverted from a point on the north side of said river about one mile east of the east boundary line of the original townsite of Boise City, Idaho, through what is commonly known as the Jacobs Canal, for use upon the town lots and lands lying under said canal in Secs. 4, 9, 10, 11, 13, 14, T. 3 N. R. 2 E. B.M., in the following amount from the following date;

63 0123 1000 inches, from June 1, 1864; and hereby designated as Right No. 2
 542, 136
 And adjudged to pay \$70.00 costs, in addition to the costs incurred by it.

SCANNED

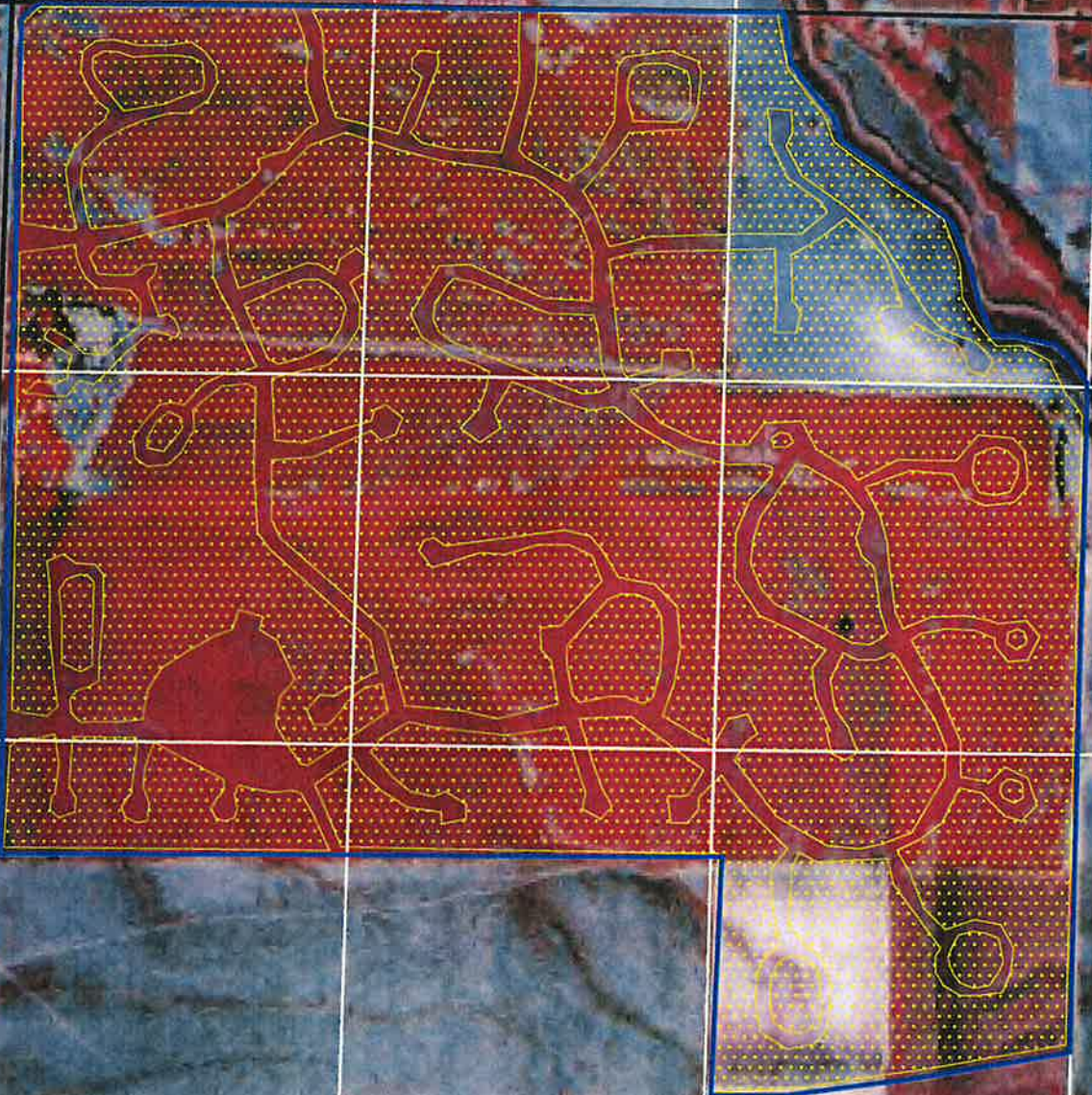
JUN 29 2006

JUN 21 1996



**LEXINGTON HILLS DEVELOPMENT
BOUNDARY AND PLACE OF USE MAP**

T04N, R01E, SEC 3



An aerial photograph of a suburban development. A large, irregularly shaped area in the upper-middle portion of the image is outlined with a thick yellow border. This area is densely packed with small, dark-colored houses and is crisscrossed by a network of light-colored roads. To the left of this yellow-outlined area, there is another residential area with a more regular grid of streets. Below the yellow-outlined area, there is a large, dark, and mostly featureless area that appears to be a body of water or a large undeveloped lot. The rest of the image shows various other residential lots and roads, some with trees and some with bare ground.

**LEXINGTON HILLS DEVELOPMENT
BOUNDARY AND PLACE OF USE MAP**

DATE: July 26, 2004

TO: Nick Spencer

FROM: Mel Schulte 

RE: Ownership of 63-123 (Jacobs Right)

Attached is documentation concerning the ownership of 63-123 (Jacobs right). You will note in John Marshall's letter dated June 9, 2004 he requested I forward to you the information he provided. Also, included is additional information independent of that provided by John.

Based on a tele-conference between Susan, myself and Jan on June 4th, I plan at this time to recommend 7.0 cfs to Capitol View Irrigation; 13.0 cfs to Farmers Union Ditch Co. and disallow the private claims by East Hills Development and Lexington Hills Inc. You might want to discuss this matter with Susan. Let me know if you would like a meeting between all of us.

The legal ownership of the Jacobs right is a mystery at this time and will have to be worked out in the SRBA review process. It's very likely that no matter which way we decide to structure our recommendations they will be challenged by someone.

MTS

SCANNED

JUN 29 2006

FARMERS UNION DITCH CO. LTD.
2153 N. POLLARD LN.
STAR, ID. 83669

RECEIVED

JUN 17 2004

WATER RESOURCES
WESTERN REGION

June 15, 2004

Mr. Mel Shulte
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

Dear Mr. Shulte:

Here is what we have found in our records in regards to the Jacobs Water and when these HOAs' or individuals appear initially.

1980	Green Acres/Richard Hormaechea	34.0 inches
1992	Echo Creek HOA	33.77 inches
1992	Lexington Hills Inc.	96.4 inches
1994	Lexington Hills HOA	107.6 inches
1999	Ilene Stinar	10.0 inches
2000	East Hills Development	26.23 inches

For your information the Lexington Hills HOA came from a portion of Lexington Hills Inc.. Also the East Hills Development came from a portion of Echo Creek HOA.

A total of 264 inches of water was traced back as far as 1972 to Myron Holgate & Son, addressed to 1832 East Floating Feather Road, Eagle, Idaho. This is the total without Hormaechea and Stinar. The Stinar water was transferred from the previous owner David Willmot which dated back to 1981.

If you have any questions you can reach me at 286-7028.

Yours truly,


Ron Schreiner
Asst. Sec.

SCANNED

JUN 29 2006

GIVENS PURSLEY ^{LLP}

LAW OFFICES

601 W. Bannock Street
PO Box 2720, Boise, Idaho 83701
TELEPHONE: 208 388-1200
FACSIMILE: 208 388-1300
WEBSITE: www.givenspursley.com

Gary G. Allen
Christopher J. Beeson
William C. Cole
Michael C. Creamer
Thomas E. Dvorak
Roy Lewis Eiguren
Timothy P. Feamside
Jeffrey C. Fereday
Steven J. Hippler
Karl T. Klein
Debora K. Kristensen
Anne C. Kunkel
Franklin G. Lee
David R. Lombardi

D. David Lorello, Jr.
Emily A. MacMaster
Kimberly D. Maloney
John M. Marshall
Kenneth R. McClure
Kelly Greene McConnell
Cynthia A. Mellillo
Christopher H. Meyer
L. Edward Miller
Patrick J. Miller
Judson B. Montgomery
Angela K. Nelson
Deborah E. Nelson
W. Hugh O'Riordan, LLM

Michael C. Orr
Kenneth L. Pursley
Bradley V. Sneed
H. Barton Thomas, LLM
Conley E. Ward
Robert B. White
Michael V. Woodhouse

James A. McClure
OF COUNSEL

Raymond D. Givens
RETIRED

May 26, 2004

Jan Shurte
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

RECEIVED
MAY 27 2004
WATER RESOURCES
WESTERN REGION

Re: Lexington Hills Inc. Water Rights
GP File No. 6018-1

Dear Jan:

On behalf of Lexington Hills, Inc., I am enclosing a new claim to a water right in the Snake River Basin Adjudication. Also enclosed is a check in the amount of \$146.50 (\$50 for the filing fee, plus \$96.50 per acre).

Please file the original notice and return the conformed copy to our office. A self-addressed, stamped envelope is included for your convenience.

Thank you for your assistance. Please contact me if you have any questions.

Sincerely,



John M. Marshall

JMM/hcm
Enclosures

S:\CLIENTS\6018\JMM to IDWR enc SRBA claim.DOC

SCANNED

JUN 2 9 2004

GIVENS PURSLEY ^{LLP}

LAW OFFICES
601 W. Bannock Street
PO Box 2720, Boise, Idaho 83701
TELEPHONE: 208 388-1200
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James A. McClure
OF COUNSEL

Raymond D. Givens
RETIRED

RECEIVED

JUN 14 2004

WATER RESOURCES
WESTERN REGION

June 9, 2004

Mel Shulte
Western Regional Office
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

Re: Jacobs Water Right
GP File No. 6018-1

Dear Mel:

In our recent phone conversation, you asked that I forward any information I collect concerning ownership of the "Jacobs Water Right," right no. 63-123. In that regard, I have come across a few deeds that reference the right. I have attached them to the enclosed memorandum I prepared regarding the ownership of the right. The memo addresses the basis for Lexington Hills' claim to ownership. I would appreciate your forwarding the memorandum (including the deeds) to Nick Spencer for his review.

Please contact me if you have any questions.

Sincerely,



John M. Marshall

JMM/hcm

Enclosure

cc: Client

S:\CLIENTS\6018\JMM to Shulte enc Jacobs Water Right memo.DOC

SCANNED

JUN 29 2004

JUN 14 2004

WATER RESOURCES
WESTERN REGION

MEMORANDUM

TO: Mel Shulte
Idaho Department of Water Resources

FROM: John M. Marshall *Jmm*

RE: Jacobs Water Right
Our File No. 6018-1

DATE: June 9, 2004

This memorandum addresses ownership of water right 63-123, commonly called the "Jacobs" water right, and the basis for Lexington Hills Inc.'s and East Hills Development Inc.'s claims to a portion of this right.

Ownership of the Jacobs Water Right.

Water right 63-123 is an 1864-priority decreed water right authorizing diversion of 20.0 cfs (1000 inches). The right's point of diversion is the Farmer's Union Canal.

There are competing claims to ownership of the Jacobs right. Four entities have filed claims to the right in the Snake River Basin Adjudication ("SRBA"). Two of the four claimants, Farmers Union and Capital View, have claimed the entire 20.00 cfs. The other two claimants, Lexington Hills and East Hills Development have filed only partial claims corresponding to that amount of the Jacobs right historically delivered to them. Lexington Hills has filed a claim for 1.93 cfs of the Jacobs right, and East Hills Development has filed a claim for 0.52 cfs.

We have been able to establish a general ownership pattern for the Jacobs right. The right essentially has been split into three parts. Farmers Union holds one third of the right, Capital View Irrigation Inc. apparently holds one third, and several different landowners, including Lexington Hills and East Hills Development, own the other one-third portion.

This three-part split originates through a 1916 contract between Farmers Union and W.A. Keyt, a predecessor to Capital View Irrigation Inc. (the contract is attached as Exhibit A). According to the contract, Keyt had acquired all 20.00 cfs (1000 inches) of the Jacobs right and planned to initiate a new irrigation project above and to the north of Farmers Union's service

area. Farmers Union agreed to convey the water through its ditches to a point where Keyt would pump the water to his delivery system in exchange for 333.33 inches of the Jacobs right (1/3 of the right) to cover conveyance losses. Accordingly, as of 1916, the date of the contract, we know that Farmers Union held approximately 333 inches of the Jacobs right for conveyance losses and Keyt held approximately 666 inches for irrigation. Keyt's irrigation project apparently was organized as Capital View Irrigation, Inc.

Capital View states that they currently divert and delivery approximately 333 inches of water, leaving a 333-inch portion of the Jacobs right unaccounted for. Although we have not been able to trace exactly how this 333-inch portion was divided up, it is clear that the right became appurtenant through accomplished transfers to new lands outside of Capital View's service area, including lands owned by Lexington Hills and East Hills Development.¹ There are at least two sets of documents that confirm this.

First, the Farmers Union Canal Co. assesses Lexington Hills and East Hills Development for delivery of the Jacobs right. Importantly, the assessment for Jacobs water is expressly distinct from assessments for shares in the Farmers Union Canal Co. A Notice of Assessment from Farmers Union showing this distinction is attached as Exhibit B. Farmers Union shareholders as a whole are not assessed for delivery of Jacobs water. Only those individuals who own a piece of the Jacobs water are assessed. Presumably the assessment amount is calculated using the formula from the 1916 contract.

Second, we have located a deed in the chain of title dated March 6, 1942 from Idaho Farms to Western Land and Development that recites the conveyance of the land includes water rights "consisting principally of 128 inches of what is known as the Jacob's Water right, being water right #1 from the Boise River." Two subsequent deeds contain the same language. The deeds are attached as Exhibit C.

Based on all these documents, we are confident that Lexington Hills and East Hills Development own their claimed portions of the Jacobs right.

¹ Lands owned by these entities became the Lexington Hills Subdivision. These entities have since subdivided and sold the lands they owned. However Lexington Hills, Inc. expressly reserved all water rights from subsequent conveyances.

EXHIBIT A

SCANNED

JUN 29 2006

Farmer's Union Ditch
Company, Limited, a
corporation.

to

48.

W. A. Keyt

AGREEMENT

Dated July 17th, 1916
Ack'd July 29th, 1916 before
Blanche Myer N.P. Ada Co. Idaho.
Seal. Residence, Boise, Ada Co.
Idaho, By President and Secretary
Ack'd W.J. Bishop N.P. Polk Co. July 22, 1916
Oregon. Seal. Residence, McMinnville,
Polk County, Oregon. My commission
expires Jan 29- 1917. By W.A. Keyt
Recorded April 11th, 1917
Book 7 of Contracts page 232

WITNESSETH, That, whereas, the party of the first part is the owner and in the possession of a certain canal or irrigation ditch, together with a right-of-way therefor, situate in Ada and Canyon Counties, State of Idaho, and described as follows, to-wit: Commencing at the headgate of said canal at a point on the northerly side of the Boise River in the Southeast Quarter of the Southeast Quarter of Section 32 in Township 4 North of Range 2 East of the Boise Meridian, and running thence in a northwesterly direction through Townships 4 North of Range 2 East; 4 North of Range 1 East; 5 North of Range 1 West; 4 North of Range 2 West, and 5 North of Range 2 West of the Boise Meridian, being the said ditch known as the Farmers Union Ditch, together with the right to divert certain waters from the Boise River into said ditch at the headgate thereof, for the use of the stockholders of said Farmers Union Ditch Company, Limited, and that said Farmers Union Ditch Company Limited, is, and since the year 1895 has been, engaged in conveying and distributing through its said ditch waters to its said stockholders for irrigation and domestic purposes; and

Whereas, the party of the second part is interested in certain lands situate in Township 5 North, Range 1 East, B. M. which lie adjacent to and north of the canal of the party of the first part where it crosses said Township and Range, which land is arid in character and requires artificial irrigation for the production of profitable crops thereon and,

Whereas, the party of the second part is the owner of that certain water right generally known as the Jacobs Canal water right for 1000 miner's inches, or twenty cubic feet per second of time, of the waters of Boise river, Idaho, adjudicated to said canal company in that certain suit wherein the Farmers Co-operative Ditch Company, a corporation, was plaintiff, and the Riverside Irrigation District, Limited, et al., were defendants, then pending in the District Court of the Third Judicial District of the State of Idaho, in and for the County of Ada, now pending in the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Canyon, said decree being dated January 18, 1906, and said water right being designated therein as "right No. 2;" said water right having been specifically enumerated in certificate of transfer No 136 issued by the State Engineer of the State of Idaho, dated June 8, 1914, and of record in the office of the State Engineer of Idaho; said described water right now being diverted at the intake of the canal of the party of the first part herein and,

Whereas, in order for the party of the second part to apply the water which he owns as hereinabove described to said lands in Township 5 North, Range 1 East, adjacent to and north of the canal of the party of the first part herein, it is necessary that he convey the same through the canal of the party of the first part to a point in the Southwest Quarter (SW $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) of Section Thirty-four (34) Township Five (5) North, Range One (1) East, B. M., hereinafter more particularly described.

(Continued)

39
SCANNED
JUN 28 1916

Now, therefore, it is mutually understood and agreed between the parties hereto as follows, to-wit:

That for and in consideration of the party of the second part conveying, transferring and delivering to the party of the first part a one-third interest in the water right of said Jacobs Canal water right hereinabove described, the said Farmers Union Ditch Company, Limited, hereby agrees to perpetually carry and deliver to the party of the second part, his heirs or assigns, during the entire irrigation season of each and every year after the date hereof, except as hereinafter provided, at the point of diversion hereafter described, the waters represented by two-thirds of said Jacobs Canal water right herein above described, and at the elevation hereinafter described.

It is specially understood and agreed that the party of the first part shall be under no obligation to deliver to the party of the second part more water under this agreement than two-thirds of the amount which it is ultimately determined is represented by the water right of said Jacobs Canal Company, designated as "right No.2" in the priority suit on the Boise river hereinabove referred to, and which the party of the second part is entitled to have diverted from the Boise river by virtue of the ownership of said right, less proper deductions for seepage and evaporation.

It is further agreed that the party of the first part shall not be required to undergo any expense whatever in representing or defending said Jacobs Canal right in the litigation not pending in the Seventh Judicial District of the State of Idaho, in and for Canyon County, or any suit or action involving the transfer or use of said water but that said party of the second part shall cause the amount of water represented by said "right No.2" to be finally determined without expense to the party of the first part, and shall defend any suit or action involving the right to transfer, or use the same without expense to the party of the first part.

DELIVERY.

It is Expressly understood and agreed that the party of the second part and his assigns shall acquire no right or interest in or be entitled to the use of any part or portion of the waters now owned or hereafter acquired by the party of the first part by virtue of this agreement, and the party of the first part shall be under no obligation to carry or deliver the waters herein agreed to be carried and delivered until the party of the second part shall first have caused said waters represented by said "right No.2" to be delivered and maintained at the headgate of the party of the first part for diversion into its canal.

POINT OF DIVERSION.

It is agreed that the place of diversion from the canal of the party of the first part by the party of the second part, his heirs or assigns, of said water herein agreed to be carried and delivered, shall be on the following described tract of land to-wit:

On the North line of the canal of said Farmers Union Ditch Company, Limited, on the following described tract,

Beginning at the section corner on the township line common to Sections Thirty-three (33) and Thirty-four (34) in Township Five (5) North, Range One (1) East, B. M.; thence north 25° 10 Min. east, 520 ft. being the place of beginning; thence south 66° 56 Min. west, 54.5 ft; thence north 21° 10 Min. west, 390 ft. to a point 30 ft. east of

(Continued)

40 CANNED

JUN 28 2006

(CONTINUATION OF DEED # 27)
the section line common to sections 33 and 34, Township 5 North, Range 1 East, B. M.; thence north 50° 7' ft. parallel to said section line; thence east 10 ft.; thence south 382 ft.; thence east 58 ft.; thence south 21° 10' Min. east, 480 ft; thence south 66° 56' Min. west, 54.5 ft. to the place of beginning containing 1.11 acres more or less.

ELEVATION OF DELIVERY.

1000,

It is understood and agreed that the party of the second part intends to elevate the water herein agreed to be carried, on to the lands to be irrigated by the same, by means of pumps. For the purpose of pumping the same he shall construct a sump on the north or right bank of the canal of the party of the first part at such distance from said canal as may be determined by the party of the second part; said sump shall be connected with the canal of the party of the first part by means of an open ditch so constructed that the waters to which the party of the second part is entitled may be measured into said ditch where it diverts from the canal of the party of the first part. A headgate or tap shall be constructed at the head of said ditch in such a manner and at such elevation as shall be approved by the party of the first part.

It is agreed that the party of the first part shall be under no obligation to deliver the water herein agreed to be carried and delivered to the party of the second part at an elevation greater than the present grade of the canal of the party of the first part where it passes the point of diversion described in the preceding paragraph, and the party of the first part shall have the same right to regulate the elevation and construction of the tap or headgate of the party of the second part as it has to regulate the taps or headgates of its stockholders or water users along the line of said canal.

MAINTANANCE.

For the purpose only of determining the annual maintenance to be paid by the party of the second part to the party of the first part for the carriage and delivery of said water hereinabove provided for, it is hereby agreed that the stock of the party of the first part represents eleven inches to the share and that the party of the second part shall pay to the party of the first part on each eleven inches diverted into and carried through the canal of the party of the first part for the party of the second part, the same annual maintenance as is paid by the stockholders of the party of the first part upon one share of the stock of said party of the first part; said estimate of the amount of water represented by one share of stock of said party of the first part being based upon the present capital stock of said party of the first part, to-wit: 500 shares.

It is agreed, however, that the party of the second part shall pay no maintenance to the party of the first part until he diverts water from said canal of the party of the first part and then only upon the amount so diverted, provided, however, that when he shall have diverted or caused to be diverted the maximum amount which he is entitled to divert under this agreement he shall henceforth pay maintenance upon the maximum amount he is entitled to divert.

It is further agreed that in lieu of the payment of maintenance before the party of the second part diverts water from the canal of the party of the first part under this agreement, he shall give the party of the first part free use of all the water represented by said "right No.2" of the Boise river herein agreed to be carried and delivered.

(Continued)

41

SCANNED

JUN 28 2005

(Continuation of Entry #48.)

In the event said party of the second part, his heirs or assigns should fail or refuse to pay the maintenance as herein agreed, then the party of the first part shall be relieved during such delinquency only, from its obligation to carry and deliver said water herein agreed to be carried and delivered, and when said delinquent payments are made, together with 12% penalty on the amount of such delinquency the party of the first part shall resume its carriage and delivery of said water.

The maintenance charges herein provided for shall be paid by the party of the second part, his heirs or assigns, at the same time and in the same manner as assessments for maintenance are paid by the stockholders of the party of the first part.

The party of the second part shall not be liable for any portion of bonded or mortgaged indebtedness, or interest on bonds, mortgages or notes given by the party of the first part, whether outstanding at the date hereof or hereafter to be made or issued, for the purpose of developing, acquiring or purchasing water for said party of the first part. Should the party of the first part supplement its water supply by means of wells, sumps, reservoirs or other artificial means, the party of the second part shall pay no part of the expenses in developing, acquiring or maintaining the same or securing water therefrom, but the party of the second part shall be liable for its portion of the maintenance of the main canal as hereinabove provided. Party of the second part shall not be liable for any portion of moneys expended for the purpose of increasing the water supply of the stockholders of the party of the first part, which expenditures do not increase the amount of water to be delivered under this agreement by the party of the first part to the party of the second part. Charges for betterments shall be considered as maintenance.

The party of the second part, his heirs or assigns, shall have no right, under this agreement, to exercise any management or control in the affairs, or of the property of the first part.

This contract is executed in duplicate, one copy of which is delivered to each of the parties hereto, and the same shall extend and bind the successors and assigns of the party of the first part and heirs, executors, administrators and assigns of the party of the party of the second part.

This contract is executed on behalf of the party of the first part by its President and Secretary by virtue of authority conferred upon said officers by resolution of its Board of Directors.

Farmers Union Ditch Co Ltd

(NO SEAL)

By Emil Jullion
President
Party of the first part.

Attest:

James M. Potter
Secretary.

W.A. Keyt
Party of the second part.

42
SCANNED

JUN 29 2006

EXHIBIT B

SCANNED

2006 9 2

Farmers Union Ditch Co., Ltd.

NOTICE OF 2001 WATER ASSESSMENT

Notice is hereby given that on January 18, 2001 an assessment has been levied by the Board of Directors of the Farmers Union Ditch Co., Ltd. on all of the capital stock of said corporation, and on all other water carried and delivered through the canal of said corporation.

Farmers Union Ditch Co., Ltd. shares are to be assessed at \$200.00 per share. All other water delivered through the Farmers Union Canal will be assessed at \$18.18 per miners inch. Storage water from Arrowrock and Anderson Ranch Reservoirs will be assessed at \$.30 per acre foot.

Bureau of Reclamation charge for the replacement of the ensign valves on Arrowrock Dam causes us to charge a SPECIAL ASSESSMENT of \$ 41.00 per share of FUD and \$ 3.75 per miners inch of other water delivered through Farmers Union Canal.

This assessment is due and payable to the Secretary of said corporation on or before March 15, 2001.

Any assessment which remains unpaid after March 15, 2001 will be declared delinquent and subject to a penalty of fifteen percent (15%) of the assessment. The penalty will be added to the total assessment, and no water will be delivered until the assessment and penalty are paid in full.

Int #2502.

2001 WATER ASSESSMENT

ACCOUNT	AMOUNT
338 FARMERS' UNION	6.160
ARROWROCK	2.55
ANDERSON	
BOISE VALLEY	
96.4 JACOBS WATER	1752.55
MIDDLETON WATER	
285 DEVELOPED WATER	46.36
OTHER WATER	
CREDIT	
DELINQUENT	
ACCOUNT SERVICE	10.00
SPECIAL ASSESSMENT (ARROWROCK)	384.92
PLEASE PAY THIS AMOUNT	2263.98

Detach and return lower portion with your remittance.

RECEIVED FEB 13 2001

Please make checks payable to:
Farmers Union Ditch Co. Ltd.
2153 N. Pollard Lane
Star, ID 83669

LEXINGTON HILLS, INC.
1815 E. STONYBROOK CT.
EAGLE, ID 83616

Amount Paid \$

2000 7 9 21445

EXHIBIT C

SCANNED
APR 29 2005

Idaho Farms Incorporated

To

Instrument Number 211005

The Western Loan &
Investment Company

Dated March 6, 1942

255/312

THIS INDENTURE, Made this 6th day of March, in the year of our Lord one thousand nine hundred and forty-two between IDAHO FARMS, INCORPORATED, a corporation duly organized and existing under the laws of the State of Idaho, and having its principal office in Idaho at Boise, in the County of Ada, party of the first part, and THE WESTERN LOAN & INVESTMENT COMPANY, a corporation, of Boise, County of Ada, State of Idaho, party of the second part,

WITNESSETH, That the said party of the first part, having been hereunto duly authorized by resolution of its Board of Directors, for and in consideration of the sum of TEN & NO/100 (\$10.00) DOLLARS, lawful money of the United States of America, and other good and valuable consideration to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargain, sell, convey and confirm unto the said party of the second part, and to its successors and assigns forever, all the following described real estate situated in the County of Ada, State of Idaho, to-wit:

The South Half of the Northeast Quarter (S $\frac{1}{2}$ NE $\frac{1}{4}$), the Southeast Quarter of the Northwest Quarter (SE $\frac{1}{4}$ NW $\frac{1}{4}$), the Southwest Quarter (SW $\frac{1}{4}$) and the Southeast Quarter (SE $\frac{1}{4}$) of Section Three (3), Township Four (4) North, Range One (1) East Boise Meridian, less right-of-way for roads.

Together with all water rights, ditch and ditch rights, and the irrigation pumping plant thereunto belonging and used in connection therewith. Said water right consisting principally of 128 inches of what is known as the Jacob's Water right, being water right #1 from the Boise River, as shown by the decree adjudicating the rights of Boise River, and 50 inches of what is known as the Davis Right, or right #2, from the Boise River, as shown by the decree adjudicating the priority of right from the Boise River, which said water rights, and the whole thereof, are diverted from the Boise River into the canal known as the Farmer's Union Ditch, operated by the Farmer's Union Ditch Company, Limited.

Subject to taxes and assessments for the year 1942.

(U.S.I.R. Stamps \$41.25 cancelled)
(3-11-42 Wm.B.D.)

TOGETHER With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said party of the first part.

TO HAVE AND TO HOLD, all and singular, the above mentioned and described premises, together with the appurtenances, unto the party of the second part, and to its successors and assigns forever. And the said party of the first part, and its successors, the said premises in the quiet and peaceable possession of the said party of the second part, its successors and assigns, against the said party of the first part, and its successors, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, The party of the first part has caused its corporate name to be hereunto subscribed by its President and its corporate seal to be affixed by its Secretary in pursuance to said resolution the day and year first above written.

SIGNED, SEALED AND DELIVERED
IN PRESENCE OF - - - - -
(CORPORATE SEAL)

IDAHO FARMS, INCORPORATED
By J. W. Cunningham, Its President
Attest: J. P. G. - - - - -

SCANNED

20 APR 1942

STATE OF IDAHO }
County of ADA } ss.

On this 6th day of March in the year 1942, before me, the undersigned, a Notary Public in and for said State, personally appeared J. W. Cunningham and J. R. Cornell, known to me to be the President & Secretary, respectively, of the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

(SEAL)

Wm. B. Davidson
Notary Public for the State of Idaho,
Residing at Meridian, Idaho.
My commission expires: 12-1-43

Recorded at the request of WESTERN LOAN & INVESTMENT CO. at 15 minutes past 9 o'clock
A.M., this 14 day of March, A.D. 1942.
Fees, \$1.40



Recorder

SCANNED

JUN 29 2006

COMPAP11

To

Alfred M. Popma

352/548

Dated January 2, 1951

THIS INDENTURE, Made this 2nd day of January, in the year of our Lord one thousand nine hundred and fifty-one between The Western Loan & Investment Company, a corporation duly organized and existing under the laws of the State of Idaho, and having its principal office in Idaho at Boise in the County of Ada, State of Idaho, party of the first part, and Alfred M. Popma, whose wife is Dorothy Popma, of Boise, County of Ada, State of Idaho, parties of the second part,

WITNESSETH, That the said party of the first part, having been hereunto duly authorized by resolution of its Board of Directors, for and in consideration of the sum of Ten and no/100 DOLLARS, lawful money of the United States of America, to it in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargain, sell, convey and confirm unto the said parties of the second part, and to their heirs and assigns forever, all the following described real estate, situated in __, County of Ada, State of Idaho, to-wit:

The South half of the Northeast quarter (S $\frac{1}{2}$ NE $\frac{1}{4}$); the Southeast quarter of the Northwest quarter (SE $\frac{1}{4}$ NW $\frac{1}{4}$); the Southwest quarter (SW $\frac{1}{4}$); and the Southeast quarter (SE $\frac{1}{4}$) of Section Three (3), in Township Four (4) North; Range 1 (1) E.B.M., in Ada County, Idaho, excepting all road rights-of-way, and also excepting the property described in that certain warranty deed, dated December 30, 1947, between The Western Loan & Investment Company, a corporation, and Hervey L. Bingham and Bertha Bingham, husband and wife, said warranty deed being recorded in the office of the county recorder of Ada County, Idaho, at Page 209, Book 313 of Deeds.

Together with all water rights, ditch and ditch rights, and the irrigation pumping plant thereunto belonging and used in connection therewith. Said water right consisting principally of 128 inches of what is known as the Jacob's Water right, being water right #1 from the Boise River, as shown by the decree adjudicating the rights of Boise River, and 50 inches of what is known as the Davis Right, or right #2, from the Boise River, as shown by the decree adjudicating the priority of right from the Boise River, which said water rights, and the whole thereof, are diverted from the Boise River into the canal known as the Farmer's Union Ditch, operated by the Farmer's Union Ditch Company, Limited. (U.S.I.R. Stamps \$55.00 Cancelled)
(P.S.B. 1-2-51)

TOGETHER With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said party of the first part.

TO HAVE AND TO HOLD, all and singular, the above mentioned and described premises, together with the appurtenances, unto the parties of the second part, and to their heirs and assigns forever. And the said party of the first part, and its

SCANNED

JAN 29 1951

successors, the said premises in the quiet and peaceable possession of the said parties of the second part, their heirs and assigns, against the said party of the first part, and its successors, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, The party of the first part has caused its corporate name to be hereunto subscribed by its President and its corporate seal to be affixed by its Secretary in pursuance to said resolution the day and year first above written.

SIGNED, SEALED AND DELIVERED
IN PRESENCE OF---

THE WESTERN LOAN & INVESTMENT COMPANY

BY Laurence Bettis
Its President

(CORP. SEAL)

Attest J. R. Cornell
Its Secretary

STATE OF IDAHO)
County of Ada) ss.

On this 2nd day of January in the year 1951, before me, the undersigned, a Notary Public in and for the said State, personally appeared Laurence Bettis and J. R. Cornell, known to me to be the President and Secretary respectively, of the corporation that executed this instrument or the person_ who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

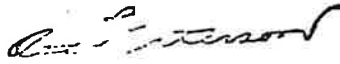
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(SEAL)

R. Roland Towls
Notary Public for the State of Idaho,
Residing at Boise, Idaho

Recorded at the request of Idaho Title Co. at 49 minutes past 9 o'clock A. M.
this 3 day of January, 1951.

Fees \$2.00


Recorder

Completed

SCANNED

2019 2 9 2006

and seal to be herunto affixed by its duly authorized officers, this 11th day of December A. D., 1952.

(CORP. SEAL)

UNION PACIFIC STAGES, INCORPORATED,

Attest:

By R. J. Walsh
President.

A. J. Babel
Assistant Secretary

STATE OF NEBRASKA)
COUNTY OF DOUGLAS) ss.

On the 11th day of December A. D., 1952, personally appeared before me R. J. WALSH and A. J. BABEL, who being by me duly sworn, did say, each for himself, that he, the said R. J. Walsh, is the President and he, the said A. J. Babel, is the Assistant Secretary of Union Pacific Stages, Incorporated, and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of the Board of Directors, and said R. J. Walsh and A. J. Babel each duly acknowledged to me that said corporation executed the same and that the seal affixed is the seal of said corporation.

(SEAL)

G. W. Fouser
NOTARY PUBLIC Residing at: Omaha, Nebr.

My Commission Expires:
Aug. 24, 1957.

Recorded at the request of Union Pacific R. R. Co. at 15 minutes past 9 o'clock A. M., this 24 day of December, 1952.

Fees: \$1.50

G. W. Fouser
Recorder

Stamped

Alfred M. Popma, et ux

Instrument Number 340264.

to

Ann Frances Popma

Dated: September 30, 1952.

WARRANTY DEED

This indenture made this 30th day of September, 1952, between Alfred M. Popma and Dorothy W. Popma, husband and wife, of Boise, Ada County, Idaho, the parties of the first part, and Ann Frances Popma, a spinster, of Boise, Ada County, Idaho, the party of the second part.

WITNESSETH: That the parties of the first part for and in consideration of the love and affection which the parties of the first part have and bear unto their daughter, the party of the second part, as also for the better maintenance, support, protection and livelihood of the party of the second part, do by these presents give, grant, alien and confirm, unto the second party of the second part, and to her heirs and assigns forever an undivided one-fourth ($\frac{1}{4}$) interest in and to that certain lot, piece or parcel of land, particularly described as follows: located in Ada County, state of Idaho, to-wit: The south half of the northeast quarter ($S. \frac{1}{2} NE \frac{1}{4}$); southeast quarter of the northwest quarter ($SE \frac{1}{4} NW \frac{1}{4}$); southwest quarter ($SW \frac{1}{4}$); and the southeast quarter ($SE \frac{1}{4}$) of Section 3, Tp. 4 N., R. 1., E. 3. E., all in Ada County, Idaho, excepting all rights of way heretofore granted, and except that portion described in that certain warranty deed, dated December 30, 1947, recorded December 31, 1947, in the office of the County Recorder of Ada County, Idaho, in Book 313 of Deeds, at page 209;

SCANNED

2014 2 9 2006

Together with all water rights, ditch and ditch rights, and the irrigation pump-
ing plant thereunto belonging and used in connection therewith. Said water right
consisting principally of 128 inches of what is known as Jacob's water right,
being water right #1 from the Boise River, as shown by the decree adjudicating
the rights of Boise River, and 50 inches of what is known as the Davis River,
or Right #2, from the Boise River, as shown by the decree adjudicating the
priority of right from the Boise River which said water rights, and the whole
thereof, are diverted from the Boise River into the canal known as the Farmer's
Union Ditch, operated by Farmer's Union Ditch Company, Lt.

Together with all and singular the tenements, hereditaments, and appurtenances
thereunto belonging or in anywise appertaining, the reversion and reversions, remainder
and remainders, rents, issues and profits thereof; and all estate, right, title and in-
terest in and to the said property, as well in law as in equity, of the said parties of
the first part.

TO HAVE AND TO HOLD, all and singular the above mentioned and described premises,
together with the appurtenances, unto the party of the second part, and to her heirs and
assigns forever and the said parties of the first part, and their heirs, the said prem-
ises in the quiet and peaceable possession of the said party of the second part, her heirs
and assigns, against the said parties of the first part, and their heirs and against all
and every person and persons whomsoever, lawfully claiming or to claim the same shall
and will WARRANT and by these presents forever DEFEND.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hand
and seal, the day and year first above written.

SIGNED, SEALED AND DELIVERED

IN PRESENCE OF Paul S. Boyd

Alfred M. Popma

(SEAL)

Paul S. Boyd

Dorothy W. Popma

(SEAL)

STATE OF IDAHO)
COUNTY OF ADA) ss.

On this 30th day of September, 1952, before me the undersigned, a Notary Public in
and for said state, personally appeared Alfred M. Popma and Dorothy W. Popma, husband
and wife, known to me to be the persons whose names are subscribed to the within instru-
ment, and acknowledged to me that they executed the same.

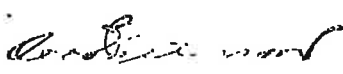
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the
day and year in this certificate first above written.

(SEAL)

Paul S. Boyd
NOTARY PUBLIC, BOISE IDAHO

Recorded at the request of Paul S. Boyd at 54 minutes past 9 o'clock A. M., this
24 day of December, 1952.

Fees: \$1.75


Recorder

Comptrol

Alfred M. Popma, et ux

to

Instrument Number 340265.

Mary Louise Popma

Dated: September 30, 1952.

WARRANTY DEED

This Indenture made this 30th day of September, 1952, between Alfred M. Popma and

SCANNED

28 2006

Albert P. Barker
John A. Rosholt
John K. Simpson
Travis L. Thompson
Shelley M. Davis
Paul L. Arrington



Paul L. Arrington
pla@idahowaters.com

October 17, 2008

113 Main Avenue West, Suite 303
Post Office Box 485
Twin Falls, Idaho 83303-0485
(208) 733-0700 telephone
(208) 735-2444 facsimile
jar@idahowaters.com

1010 West Jefferson, Suite 102
Post Office Box 2139
Boise, Idaho 83701-2139
(208) 336-0700 telephone
(208) 344-6034 facsimile
brs@idahowaters.com

Special Master Booth
Snake River Basin Adjudication
253 Third Avenue North
Twin Falls, ID 83303-2707

John M. Marshall
Givens Pursley, LLP
P.O. Box 2720
Boise, Idaho 83701

RECEIVED

OCT 20 2008

DEPARTMENT OF
WATER RESOURCES

RE: Lexington Home Owner's Proposed Findings & Fact & Conclusions of Law

Dear Special Master & Mr. Marshall:

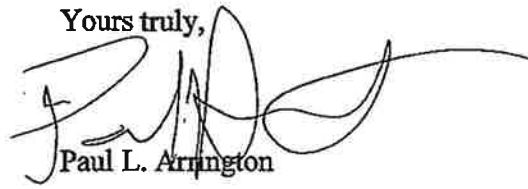
Attached you will find a copy of the Lexington Hills Homeowners' Association's *Proposed Findings of Fact & Conclusions of Law*.

During the hearing, David Shaw discussed excerpts from a department transcript. The following are Mr. Shaw's recollection of the location of that testimony on the IDWR hearing tapes:

- Phil Barber begins his presentation on the first tape at 550 on the tape counter on IDWR's 4 channel recorder.
- Dave Roylance begins his testimony at tape count 1770 on the first tape and the excerpted portion of his testimony came from the range of about 3638 to 3775 still on the first tape.

Page 2

Feel free to call if you have any questions.

Yours truly,

Paul L. Arrington

PLA/jf

Encs.

John K. Simpson, ISB #4242
Paul L. Arrington, ISB #7198
BARKER ROSHOLT & SIMPSON LLP
1010 W. Jefferson, Suite 102
P.O. Box 2139
Boise, Idaho 83701-2139
Telephone: (208) 336-0700
Facsimile: (208) 344-6034

RECEIVED

OCT 20 2008

DEPARTMENT OF
WATER RESOURCES

Attorneys for Lexington Hills Homeowners' Association

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

In Re: SRBA

Case No. 39576

)
) Subcase Nos. 63-00123D, 63-00123F & 63-
) 00123G
)
) **LEXINGTON HILLS HOMEOWNERS'**
) **ASSOCIATION'S PROPOSED FINDINGS**
) **OF FACT AND CONCLUSIONS OF LAW**
)
)

COMES NOW, Lexington Hills Homeowners' Association ("LHOA"), by and through its attorneys of record, Barker Rosholt & Simpson, LLP, and submits its *Proposed Findings of Fact and Conclusions of Law*.

FINDINGS OF FACT

Snake River Basin Adjudication

1. The Idaho legislature explained the purpose of the SRBA succinctly in I.C. § 42-1406A (uncodified), under which the adjudication was commenced in November, 1987:

Effective management in the public interest of the waters of the Snake River basin requires that a comprehensive determination of the nature, extent and priority of the rights of all users of surface and ground water from that system be determined.

2. The SRBA statutes were amended in 1994. House Concurrent Resolution No. 70, passed that session, directed the Legislative Council Committee on the SRBA to study and report back to the 1995 Idaho Legislature on several matters related to the adjudication, including

actions the Legislature should take to facilitate the development of a long-term management plan for the administration of surface and ground water supplies in Idaho.

3. In its report, the Committee explained that: "The Legislature authorized the adjudication in 1985 to provide finality and certainty with respect to all water rights and to address the federal government's impending claims." After considering testimony by "Chief Justice McDevitt, representing the judiciary, members of the executive branch and, in particular, the detailed comments made by claimants," the Committee developed the following "statement of substantive goals for the SRBA":

A. Goals for the Snake River Basin Adjudication

1. All water rights within the Snake River Basin should be defined in accordance with Chapter 14, title 42 so that all users can predict the risks of curtailment in times of shortage. ***It is vital to all water users that they have as high a degree of certainty as possible with respect to their water rights.*** Uncertainty discourages development, undermines the ability of agencies to protect stream systems and fosters further litigation. (Emphasis added).

4. Stated simply, the purpose of the SRBA was to provide the Idaho Department of Water Resources ("IDWR") and the various watermasters with an accurate list of water rights to distribute water pursuant to the SRBA Court's decrees.

Procedural History

5. Three SRBA Claims were originally filed for water appurtenant to what is commonly known as the Lexington Hills Subdivision (hereinafter, the "Subdivision lands"). Claims were filed by LHOA (63-123G), Lexington Hills, Inc. ("INC") (63-123F) and East Hills Development, LLC ("East Hills") (63-123D). The three water rights were claimed, in part, as follows:

Claimant	LHOA	INC	East Hills
Water Right #	63-123G	63-123F	63-123D
Diversion Rate	4.605 cfs	1.93 cfs	0.5246 cfs
Acres	303	270	50

6. The Subdivision lands include three developments, Lexington Hills (1-12), East Hills (1-2) and Lexington on the Rim.

7. LHOA was created to, among other things, effectuate the delivery of irrigation water to the landowners within the developments and to be responsible for irrigation and maintenance of the common areas in accordance with the Covenants, Conditions and Restrictions ("CCRs"), duly recorded together with the necessary land conveyances.

8. LHOA was the only claimant to claim as the place of use for irrigation, the entire Subdivision lands and the quantity of water historically used to irrigate all of the Subdivision lands.

9. Based upon a review of the claims and submissions from the Farmers Union Ditch Company (*see* Testimony of Jan Shurte), IDWR recommended the rights with the following diversion rates:

Claimant	LHOA	INC	East Hills
Water Right #	63-123G	63-123F	63-123D
Diversion Rate	2.15 cfs	1.93 cfs	0.5246 cfs

IDWR recommended these water rights at 1 inch per acre.

10. LHOA filed objections to all three recommendations. LHOA objected to IDWR's failure to recommend water right 63-123G as claimed. LHOA claimed ownership of all water historically diverted to the Subdivision lands and disputed the interests of either East Hills or INC. Neither East Hills nor INC filed any objections or responses to the three water right recommendations. No other parties to the SRBA filed objections or responses to the three water right recommendations.

11. Motions for Summary Judgment were filed by LHOA and INC, addressing the issue of ownership, based solely upon the interpretation of the CCRs and the *Affidavit of David Roylance*. *See generally, Motions for Summary Judgment and Briefs in Support* (filed winter/spring 2007).

12. The Special Master entered an interlocutory order determining that both the LHOA and INC had an ownership interest. *See Memorandum Decision & Order on Cross Motions for Summary Judgment* (April 18, 2007). In the summary judgment order, the Special Master determined that East Hills did not have any interest in the claimed water.

13. In his summary judgment order, the Special Master indicated that "Lexington HOA will be provided an opportunity at trial to show whether Lexington Hills has, in fact, transferred the amount of water that it is obligated to transfer under the ... Master Declaration." In other words, the duty of water associated with the Subdivision lands will dictate the extent, if any, of INC's on-going ownership interest in any portion of the water.

14. Following issuance of the summary judgment order, LHOA discovered information indicating that INC, or its predecessor in interest, had made assurances to IDWR that it would not attempt to transfer any of the surface water appurtenant to the Subdivision lands off of the Subdivision lands. The assurances were made to resolve objections to a new ground water permit (63-11413), acquired in 1991. These objections were resolved only after the "applicants agreed to not sell or transfer to another location any of the surface water rights that are presently associated with the property." *Proposed Memorandum Decision & Order Approving Application for Permit No. 63-11413* (Aug. 7, 1991) at 5-6, ¶ 22 (emphasis added). Furthermore, the "sale or transfer of" the above captioned water rights "from any portion of the property will void the department's approval to use [water right 63-11413] for irrigation purposes." *Id.* at 11-12, ¶ 5 (emphasis added). A comment recognizing this agreement was placed on the permit for water right 63-11413.

15. On September 3, 2008, a one-day hearing was held in front of the Special Master to present evidence on the disputed elements of the water rights. Based upon the objections filed by LHOA, the outstanding issues to be decided in the hearing were ownership, duty of water, place of use, and other provisions necessary to effectively administer the right. Pre-filed testimony was submitted by both LHOA and INC regarding the duty of water and water requirements for the Subdivision lands. The testimony David Shaw was presented on behalf of LHOA regarding irrigation requirements, place of use and conditions of the use of the water which affects both ownership and conditions as to the use of the water. *See FF#14*. Inc submitted the testimony of Terry Scanlan and David Roylance.

16. No testimony or evidence was presented on claim #63-123D, as it was denied by the Special Master in the summary judgment order.

Findings of Fact 17 through 34 are submitted to address the outstanding issues or elements of claims #s 63-123F and 63-123G regarding **Ownership**, including the conveyance of land, **Quantity** through the duty of water, **Purpose and Period of Use**, **Place of Use** and **Other Provisions** Language.

Ownership/Conveyance of Water from INC to LHOA

17. As Subdivision lands were developed and conveyed to LHOA or the homeowners, INC conveyed to LHOA water rights appurtenant to *specific* enumerated lands, within Lexington Hills (1-6), for the *specific* purpose of irrigating those enumerate private and community areas within Lexington Hills (1-6).

18. INC has not conveyed water rights specifically appurtenant to all the Subdivision lands that have been developed and conveyed to LHOA or a homeowner. In the first six deeds, attached as Exhibits D through I of the *Affidavit of Paul L. Arrington in Support of Motion for Summary Judgment*, Lexington Hills deeded 119.4 inches (2.388 cfs) of water to LHOA as shown in the following chart:

Aff. Ex.	Miner's Inches Deeded	Cfs Equivalent ¹
D	30.60	0.612
E	7.30	0.146
F	4.50	0.09
G	32.0	0.64
H	17.0	0.34
I	28.0	0.56
TOTAL	119.4	2.388

Each of the deeds indicates that the water being deeded was "for purposes of irrigating" specific portions of the Lexington Hills Subdivision. *Id.* at Ex. D-I.

¹ 1 cfs = 50 Miner's Inches

19. Ten other deeds were executed to transfer additional tracts of land to LHOA. *Arrington Aff.* Exs. J through S. These deeds were silent as to the quantity of water that was being transferred.

20. LHOA, and the landowners, beneficially use the water historically diverted in the irrigation of individual lots and common areas. LHOA does not waste the water that it uses to irrigate the common areas.

21. Pursuant to claim 63-123G, LHOA claimed water use over the entire Subdivision lands. LHOA is either the user of the water or delivers the water for use by landowners within the Subdivision lands. There is no dispute as to LHOA's ownership interest on behalf of the landowners.

22. Both LHOA and East Hills (63-123D) filed competing claims for water appurtenant to lands commonly known as East Hills. In the summary judgment order, the Special Master found that East Hills did not have any interest in the water. In addition, no Objection was filed as to LHOA's ownership of this water. Therefore, sole ownership of this water appurtenant to the East Hills lands should be decreed in the name of LHOA, under 63-123G.

23. By summary judgment order, the Special Master found that the LHOA (63-123G) and INC (63-123F) each held an ownership interest, subject to the Special Master hearing evidence as to the duty of water for the Subdivision lands. Testimony of David Shaw and documents in support of said testimony identify a clear intent on behalf of INC to leave all water historically diverted on the Subdivision lands. Very pertinent to this issue are the statements and testimony attributed to counsel for INC and Mr. Roylance as a part of the administrative process in acquiring groundwater for the early and late season irrigation requirements of the development. *See also, infra*, "Other Provisions."

Duty of Water

24. IDWR's recommendations under 63-123D, 123F and 123G were premised upon two facts. First, water appurtenant to the Subdivision lands was originally decreed in the Stewart Decree, at a decreed amount of one inch per acre. Second, a review of the Farmers Union Ditch Company's records revealed a history of assessments being paid by the three claimants, East Hills, INC and LHOA.

25. At hearing, LHOA expert, David Shaw identified an irrigation demand of 1.13 inches per acre during periods of high water demand. INC's engineer, Terry Scanlan, in written testimony agreed with Mr. Shaw in his method of analysis, but recommended the crop (landscaping) be water stressed during high water demand periods rather than providing the crop water needs from available irrigation water. On cross-examination, Mr. Scanlan acknowledged that the irrigation demand was in excess of one inch per acre and that the water could be put to beneficial use. In fact, Mr. Scanlan's written testimony showed that under high water demand conditions, LHOA could put to beneficial use 1.08 inches per acre and stress would still occur.

Purpose & Period of Use

26. IDWR's recommendations identified only irrigation as a use of the water. While there was some limited testimony at hearing that the various ponds utilized for irrigation deliveries do have some temporary storage capabilities, the record is incomplete as to determine whether such storage would contribute to a multiple day water supply or be attributable to a storage claim. Further, the testimony identified a practice of filling the aesthetic ponds during the day and then pumping the ponds during the evening to facilitate irrigation deliveries. Any retention of water in the ponds is temporary and the record is incomplete as to whether or not this practice would contribute additional water for irrigation purposes.

27. INC failed to either make a storage claim or provide notice of such an assertion. As such, no finding shall be made.

Place of Use

28. IDWR's recommendations for the three claims identified all lands being irrigated for a total of 230.3 acres. No party, East Hills, LHOA or INC objected to either the individual recommended acres or the total acres. There appears, based upon the clear record, to be no dispute as to the place of use description and the acreage figures provided. The only reconciliation necessary is to include the East Hills acreage duty of water and place of use within the LHOA water right.

29. With a duty of water of 1.13 inches per acre, only 204 acres may be irrigated within the 230.3 acre place of use.

30. At hearing, Mr. Shaw testified that the LHOA irrigated acre requirement, including the common areas, individual lots and mitigation for the ponds, equaled approximately 183 acres. Given a duty of water of 1.13 inches per acre, 4.136 cfs would be required to irrigate these acres.

Other Provisions Necessary for Definition or Administration

31. Irrespective of resolution of ownership, the record is clear that as a condition of irrigation of the Subdivision lands, INC or its predecessor in interest, Floating Feather, agreed to leave all surface water appurtenant to the lands. Such statements made in the context of the administrative hearing amounted to a condition of future use on said water. To find otherwise, might jeopardize the on-going delivery of water to the development

32. It is not necessary for the Special Master to interpret the intent of the statements. Rather, accepting that the statements were made is foundation enough for requiring a condition be placed upon the use of the water.

33. In addition, IDWR testimony at hearing supports such a condition, linking the various sources and uses of water. *See testimony of Jan Shurte*. Further, the only testimony offered by INC to address early understandings of the water use, was that of Mr. Roylance, who simply stated that early on INC did not fully understand the amount of water that was available or needed. *See Testimony of Roylance*.

34. The record reveals that no dispute exists as to the "Source of Water", "Priority" or "Point of Diversion."

CONCLUSIONS OF LAW

1. "Effective management in the public interest of the waters of the Snake River basin requires that a comprehensive determination of the nature, extent and priority of the rights of all users of surface and ground water from that system be determined." I.C. § 42-1406A (uncodified).

2. In order for a water right to be adjudicated in the SRBA, a claim must be filed, unless the water right is specifically exempted from the filing requirements. I.C. § 42-1409. No exemption applies in this case. See I.C. § 42-1420(1). Unless a water right is claimed in the SRBA, no decree will be entered for that water right and it will be "lost by failure to file a notice of claim." *Id.*

3. A party may file a late *Notice of Claim* or amend its *Notice of Claim* pursuant to the procedures in AO1 4(d)(2). "A claimant may not amend a claim by filing an objection or a response." AO1 4(d)(1)(b). The party must follow the procedural mechanisms established for seeking leave to amend a notice of claim pursuant to Idaho Code § 42-1409A, which provides that "no amendments to a notice of claim or late notices of claim shall be allowed except as authorized" by section 42-1409A. See also *Second Amended Order on Summary Judgment* (36-00003A, *et al.*), 1 SRBA 60, 60.16-60.17 (1996).

4. A party may file an *Objection* on any element of a recommended water right pursuant to AO1 4(d)(1). *Responses* to the *Objection* may also be filed. *Id.*

5. Absent any *Objection* or *Response* to a recommendation for a water right, the water rights will be decreed as recommended. I.C. § 42-1412(7).

6. "The notice of claim, objections, and responses to objections, shall identify the issues to be heard for water rights acquired under state law." I.C. § 42-1412(3). As such, in light of section 42-1412(7), any element of a water right that is not objected to, will not be at "issue to be heard" at hearing.

7. In recommending a water right, IDWR will include "such remarks and other matters as are necessary for definition of the right, for clarification of any element of a right, or for administration of the right by the director." I.C. § 42-1411(2)(j).

8. When the SRBA Court issues a partial decree, IDWR is bound to accept the court's findings as to the quantity element that a right holder is entitled to divert and beneficially use. I.C. §§ 42-1401A(5); 1420(1); *Crow v. Carlson*, 107 Idaho 461, 465 (1984) ("The [] decree is conclusive proof of diversion of the water, and of application of the water to a beneficial use.").

9. The duty of water represents the amount of water necessary for beneficial use:

Water rights are valuable property, and a claimant seeking a decree of a court to confirm his right to the use of water by appropriation must present to the court sufficient evidence to enable it to make definite and certain findings as to the amount of water actually diverted and applied, as well as the amount necessary for the beneficial use for which the water is claimed.

Head v. Merrick, 69 Idaho 106, 108 (1949).

A water right is the right, in due order of priority and within the maximum appropriated, to use that amount of water which reasonably suffices for the owner's needs at any particular time.

U.S. v. American Ditch Assoc., 2 F. Supp. 867, 869 (D. Idaho 1933)

10. Until an order is final, the Court may revise the order:

[A]ny order or other form of decision, however designated, which adjudicates less than all the claims or the rights and liabilities of less than all the parties shall not terminate the actions as to any of the claims or parties, and *the order or other form of decision is subject to revision at any time before the entry of judgment* adjudicating all the claims and the rights and liabilities of all the parties.

I.R.C.P. 54(b) (emphasis added).

CONCLUSION

Based on the testimony at hearing, and the Findings of Fact and Conclusion of Law, set forth above, the water rights should be recommended as follows:

- 63-123D: Should be disallowed in accordance with the Special Master's summary judgment order
- 63-123F: Should be recommended in the name of Lexington Hills, Inc., with a diversion rate of 0.469 cfs, for the irrigation of 21 acres within a 47.3 acre permissible place of use, for irrigation consistent with a duty of water of 1.13 inches per acre.
- 63-123G: Should be recommended in the name of Lexington Hills Homeowners' Association with a place of use consisting of 183 acres and a diversion rate of 4.136 cfs for irrigation purposes, consistent with a duty of water of 1.13 inches per acre.

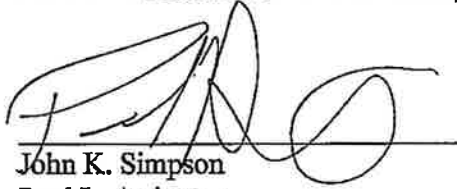
In addition, in accordance with the settlement agreement entered in relation to permit 63-11413, the following comment should be placed on water rights 63-123F and 63-123G:

Pursuant to a settlement reached in the permitting process for permit 63-11413, no surface water may be sold or transferred from any portion of the place of use identified within the lands commonly known as Lexington Hills Subdivision.

The undisputed testimony at hearing supports a recommendation of the water rights as described above. The Special Master should issue a report and recommendation in accordance with these findings.

Dated this 17th day of October, 2008.

BARKER ROSHOLT & SIMPSON, LLP

A handwritten signature in black ink, appearing to be "John K. Simpson", written over a horizontal line.

John K. Simpson

Paul L. Arrington

Attorneys for Lexington HOA

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 17th day of October, 2008, I caused to be served a true and correct copy of the foregoing **LEXINGTON HILLS HOMEOWNERS' ASSOCIATION'S PROPOSED FINDINGS OF FACTS AND CONCLUSIONS OF LAW** by the method indicated below, and addressed to each of the following:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
Twin Falls, ID 83303-2707

☐ U.S. Mail, Postage Prepaid
☒ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Director of IDWR
P.O. Box 83720
Boise, Idaho 83720-0098

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

John M. Marshall
Givens Pursley, LLP
P.O. Box 2720
Boise, Idaho 83701

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile


Paul L. Arrington

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 63-123F
Date Received: 5/27/2004
Receipt No: X777777
Received By:

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

LEXINGTON HILLS INC Phone: (208)939-6000
1815 E STONYBROOK CT
EAGLE ID USA 83616

2. Date of Priority: 06/01/1864

3. Source: BOISE RIVER Trib. to: SNAKE RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
03N	02E	5	NE SE NE	ADA	

5. Description of diverting works:

This right is diverted into the Farmers Union Canal and delivered to the Lexington Hills subdivision under a water delivery contract.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	03/15	11/15	1.93	

7. Total Quantity Appropriated is:
1.93 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
04N	01E	3	SW	NE	IRRIGATION	40
			SE	NW	IRRIGATION	40
			NE	SW	IRRIGATION	40
			NW	SW	IRRIGATION	40
			SW	SW	IRRIGATION	40
			SE	SW	IRRIGATION	40
			NW	SE	IRRIGATION	15
			SW	SE	IRRIGATION	15
Section Acres						270
Total Acres						270

11. Place of use in counties: ADA

12. Do you own the property listed above as place of use? No

13. Other Water Rights Used:

14. Remarks:

Lexington Hills Inc. acquired the approximately 270 acre place of use associated with this claim subsequently developed the property as a residential subdivision. Lexington Hills Inc. has retained a 96.5 inch (1.93 cfs) portion of this right.

THIS RIGHT IS A SPLIT FROM FORMER RIGHT 63-123.

15. Basis of Claim: Decreed

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 RIGHT TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576
Ident. Number ALB-123F
Date Received 5-27-04
Receipt Number W031767

RECEIVED
MAY 27 2004
WATER RESOURCES
WESTERN REGION

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

Please type or print clearly

1. Name of Claimant(s) Lexington Hills, Inc. Phone (208) 939-6000
Mailing Address 1815 E. Stonybrook Ct., Eagle, ID Zip 83616
2. Date of Priority (only one (1) per claim) June 1, 1864
3. Source of water supply (a) Boise River
which is tributary to (b) Snake River
4. a. Location of existing point of diversion is: Township 03N Range 02E Section 5,
NE 1/4 of SE 1/4 of NE 1/4, Govt. Lot, _____ B.M., County of _____
Additional points of diversion if any: _____
b. If instream flow, beginning point of claimed instream flow is:
Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4,
Govt. Lot _____ B.M., County of _____
ending point is: Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____
1/4, Govt. Lot _____ B.M., County of _____
5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),
Including the dates of any changes or enlargement in use, the dimensions of the diversion works as
constructed and as enlarged and the depth of each well. The right is diverted into the Farmer's Union Canal
and delivered to the Lexington Hills subdivision under a water delivery contract.

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JUN 7 9 2006

ORIGINAL

6. Water is claimed for the following purposes

(both dates are inclusive) (cfs) (acre feet)

For Irrigation purposes from 3/15 to 11/15 amount 1.93 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 1.93 (cfs) and/or (b) _____ (acre feet)

8. Total consumptive use claimed is (not applicable) acre feet per annum.

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

10. 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.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
04N	01E	03			40					40	40	40	40	40		15	15		270

Total number of acres irrigated 96.5 within the 270-acre place of use

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

12. 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.

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

Water delivered pursuant to shares in the Farmers Union Ditch Co., Ltd. or None ()

14. Remarks:

1. Lexington Hills, Inc. acquired the appx. 270-acre place of use associated with this claim and subsequently developed the property as a residential subdivision. Lexington Hills Inc. has retained a 96.5-inch (1.93 cfs) portion of this right.

2. Exhibit A is a contract between Farmer's Union Ditch Co., Ltd. and W.A. Keyt memorializing an agreement whereby Farmers Union agrees to convey water right 63-123.

3. Exhibit B is a 2001 invoice from Farmers Union to Lexington Hills showing that Lexington Hills owns a 96.5-inch portion of the "Jacobs Water," which is right 63-123.

Last Name Lexington Hills, Inc

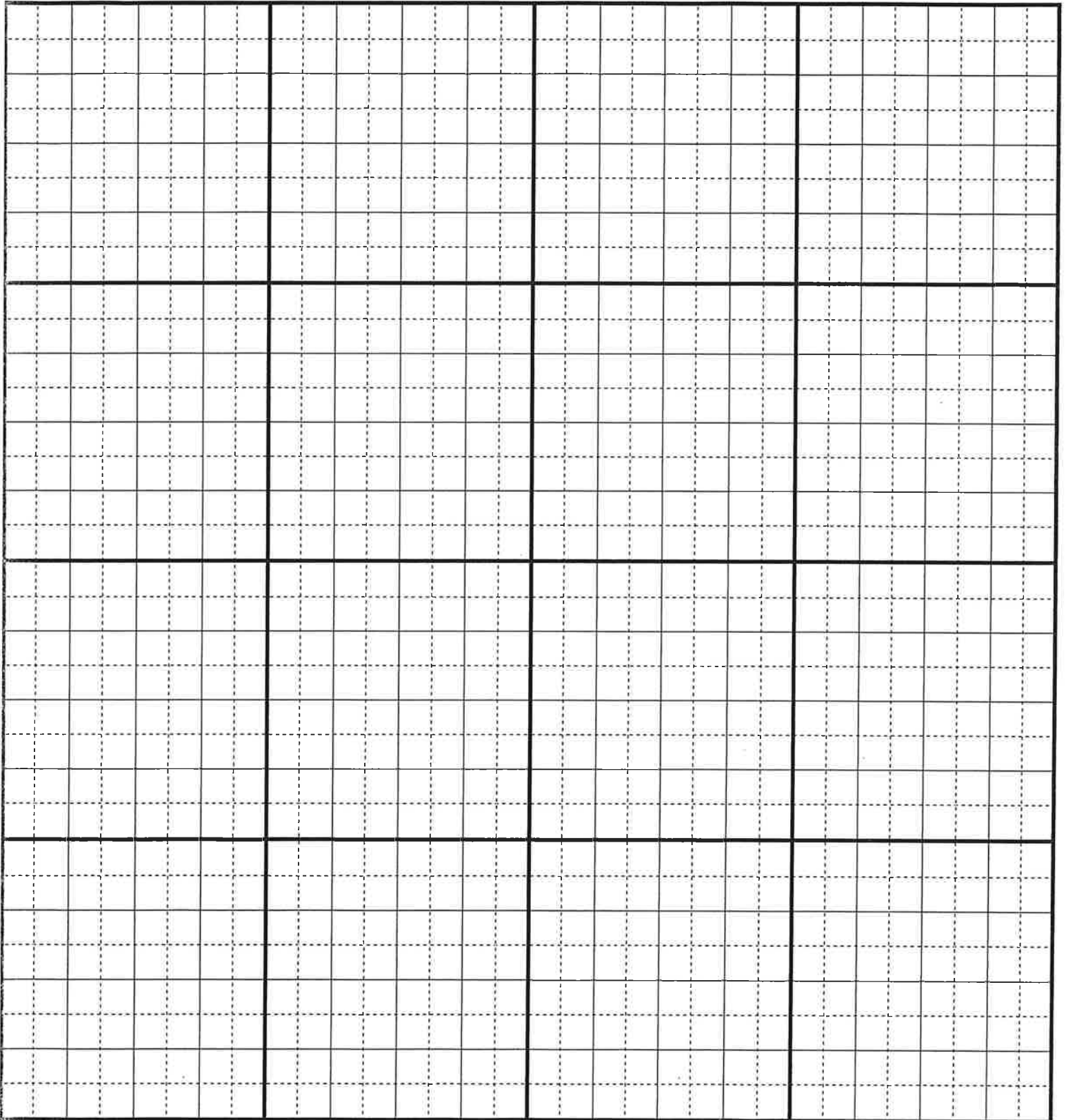
Ident. Number 63-123

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Map of Project: show clearly the point of diversion, place of use, section number, township, and range number.

Scale: 2 inches equals 1 mile **Please see Exhibit C, which is a 1987 aerial photograph of the property.**



Last Name Lexington Hills, Inc Ident. Number 63-123

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JUN 28 2006

15. Basis of Claim (check one) Beneficial Use _____ Posted Notice _____ License _____ Permit _____
Decree ☒

If applicable provide IDWR Water Right Number **63-123**

Court _____ Case Number _____ Decree Date _____

Plaintiff vs Defendant _____

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 ☒
wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments 2

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s) [Signature] Date 4-27-04
Date _____

For Organizations: I do solemnly swear or affirm that I am Dave Roylance Title (Member)

of Lexington Hills, Inc. , that I have signed the foregoing
Organization

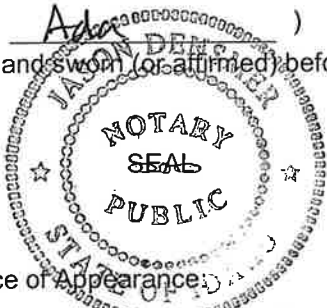
document in the space below as member of Lexington Hills, Inc.
Title Organization

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

Signature of Authorized Agent [Signature]
Title and Organization Member Lexington Hills Inc. Date 4-27-04

State of Idaho/or _____)
_____) SS.

County of Ada)
Subscribed and sworn (or affirmed) before me this 27th day of APRIL 2004



Notary Public Jason Denson
Residing at Eagle, Idaho
My Commission Expires Jul. 12, 2006

17. Notice of Appearance: Please Print Name

Notice is hereby given that, Christopher H. Meyer and John M. Marshall will be acting as attorneys at law on 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 us at the address listed below.

Signature _____

John M. Marshall, Givens Pursley LLP

Address **601 W. Bannock, PO Box 2720, Boise, ID 83702**

Telephone **208-388-1200**

Date _____

Last Name Lexington Hills, Inc Ident. Number 63-123

SCANNED
JUN 28 2006

EXHIBIT A

SCANNED

JUN 29 2006

Farmer's Union Ditch
Company, Limited, a
corporation.

to

48.

W. A. Keyt

AGREEMENT

Dated July 17th, 1916

Ack'd July 29th, 1916 before

Blanche Myer N.P. Ada Co. Idaho.

Seal. Residence, Boise, Ada Co.

Idaho, By President and Secretary

Ack'd W.J. Bishop N.P. Polk Co. July 22, 1916

Oregon. Seal. Residence, McMinnville,

Polk County, Oregon. My commission

expires Jan 29- 1917. By W.A. Keyt

Recorded April 11th, 1917

Book 7 of Contracts page 232

WITNESSETH, That, whereas, the party of the first part is the owner and in the possession of a certain canal or irrigation ditch, together with a right-of-way therefor, situate in Ada and Canyon Counties, State of Idaho, and described as follows, to-wit: Commencing at the headgate of said canal at a point on the northerly side of the Boise River in the Southeast Quarter of the Southeast Quarter of Section 32 in Township 4 North of Range 2 East of the Boise Meridian, and running thence in a northwesterly direction through Townships 4 North of Range 2 East; 4 North of Range 1 East; 5 North of Range 1 West; 4 North of Range 2 West, and 5 North of Range 2 West of the Boise Meridian, being the said ditch known as the Farmers Union Ditch, together with the right to divert certain waters from the Boise River into said ditch at the headgate thereof, for the use of the stockholders of said Farmers Union Ditch Company, Limited, and that said Farmers Union Ditch Company Limited, is, and since the year 1895 has been, engaged in conveying and distributing through its said ditch waters to its said stockholders for irrigation and domestic purposes; and

Whereas, the party of the second part is interested in certain lands situate in Township 5 North, Range 1 East, B. M. which lie adjacent to and north of the canal of the party of the first part where it crosses said Township and Range, which land is arid in character and requires artificial irrigation for the production of profitable crops thereon, and,

Whereas, the party of the second part is the owner of that certain water right generally known as the Jacobs Canal water right for 1000 miner's inches, or twenty cubic feet per second of time, of the waters of Boise river, Idaho, adjudicated to said canal company in that certain suit wherein the Farmers Co-operative Ditch Company, a corporation, was plaintiff, and the Riverside Irrigation District, Limited, et al., were defendants, then pending in the District Court of the Third Judicial District of the State of Idaho, in and for the County of Ada, now pending in the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Canyon, said decree being dated January 18, 1906, and said water right being designated therein as "right No. 2," said water right having been specifically enumerated in certificate of transfer No 136 issued by the State Engineer of the State of Idaho, dated June 8, 1914, and of record in the office of the State Engineer of Idaho; said described water right now being diverted at the intake of the canal of the party of the first part herein and,

Whereas, in order for the party of the second part to apply the water which he owns as hereinabove described to said lands in Township 5 North, Range 1 East, adjacent to and north of the canal of the party of the first part herein, it is necessary that he convey the same through the canal of the party of the first part to a point in the Southwest Quarter (SW $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) of Section Thirty-four (34) Township Five (5) North, Range One (1) East, B. M., hereinafter more particularly described.

(Continued)

39
SCANNED
JUN 28 2006

(Continuation of Entry 7-2)
Now, therefore, it is mutually understood and agreed between the parties hereto as follows, to-wit:

That for and in consideration of the party of the second part conveying, transferring and delivering to the party of the first part a one-third interest in the water right of said Jacobs Canal water right hereinabove described, the said Farmers Union Ditch Company, Limited, hereby agrees to perpetually carry and deliver to the party of the second part, his heirs or assigns, during the entire irrigation season of each and every year after the date hereof, except as hereinafter provided, at the point of diversion hereafter described, the waters represented by two-thirds of said Jacobs Canal water right herein above described, and at the elevation hereinafter described.

It is specially understood and agreed that the party of the first part shall be under no obligation to deliver to the party of the second part more water under this agreement than two-thirds of the amount which it is ultimately determined is represented by the water right of said Jacobs Canal Company, designated as "right No.2" in the priority suit on the Boise river hereinabove referred to, and which the party of the second part is entitled to have diverted from the Boise river by virtue of the ownership of said right, less proper deductions for seepage and evaporation.

It is further agreed that the party of the first part shall not be required to undergo any expense whatever in representing or defending said Jacobs Canal right in the litigation now pending in the Seventh Judicial District of the State of Idaho, in and for Canyon County, or any suit or action involving the transfer or use of said water but that said party of the second part shall cause the amount of water represented by said "right No.2" to be finally determined without expense to the party of the first part, and shall defend any suit or action involving the right to transfer, or use the same without expense to the party of the first part.

DELIVERY.

It is Expressly understood and agreed that the party of the second part and his assigns shall acquire no right or interest in or be entitled to the use of any part or portion of the waters now owned or hereafter acquired by the party of the first part by virtue of this agreement, and the party of the first part shall be under no obligation to carry or deliver the waters herein agreed to be carried and delivered until the party of the second part shall first have caused said waters represented by said "right No.2" to be delivered and maintained at the headgate of the party of the first part for diversion into its canal.

POINT OF DIVERSION.

It is agreed that the place of diversion from the canal of the party of the first part by the party of the second part, his heirs or assigns, of said water herein agreed to be carried and delivered, shall be on the following described tract of land to-wit:

On the North line of the canal of said Farmers Union Ditch Company, Limited, on the following described tract,

Beginning at the section corner on the township line common to Sections Thirty-three (33) and Thirty-four (34) in Township Five (5) North, Range One (1) East, B. M.; thence north 25° 10 Min. east, 520 ft. being the place of beginning; thence south 66° 56 Min. west, 54.5 ft; thence north 21° 10 Min. west, 390 ft. to a point 30 ft. east of

(Continued)

the section line common to sections 33 and 34, Township 5 North, Range 1 East, B. M.; thence north 507 ft. parallel to said section line; thence east 10 Ft.; thence south 382 ft.; thence east 58 ft.; thence south 21° 10' Min. east, 480 ft; thence south 66° 56' Min. west, 54.5 ft. to the place of beginning containing 1.11 acres more or less.

ELEVATION OF DELIVERY.

It is understood and agreed that the party of the second part intends to elevate the water herein agreed to be carried, on to the lands to be irrigated by the same, by means of pumps. For the purpose of pumping the same he shall construct a sump on the north or right bank of the canal of the party of the first part at such distance from said canal as may be determined by the party of the second part; said sump shall be connected with the canal of the party of the first part by means of an open ditch so constructed that the waters to which the party of the second part is entitled may be measured into said ditch where it diverts from the canal of the party of the first part. A headgate or tap shall be constructed at the head of said ditch in such a manner and at such elevation as shall be approved by the party of the first part.

It is agreed that the party of the first part shall be under no obligation to deliver the water herein agreed to be carried and delivered to the party of the second part at an elevation greater than the present grade of the canal of the party of the first part where it passes the point of diversion described in the preceding paragraph, and the party of the first part shall have the same right to regulate the elevation and construction of the tap or headgate of the party of the second part as it has to regulate the taps or headgates of its stockholders or water users along the line of said canal.

MAINTANANCE.

For the purpose only of determining the annual maintenance to be paid by the party of the second part to the party of the first part for the carriage and delivery of said water hereinabove provided for, it is hereby agreed that the stock of the party of the first part represents eleven inches to the share and that the party of the second part shall pay to the party of the first part on each eleven inches diverted into and carried through the canal of the party of the first part for the party of the second part, the same annual maintenance as is paid by the stockholders of the party of the first part upon one share of the stock of said party of the first part; said estimate of the amount of water represented by one share of stock of said party of the first part being based upon the present capital stock of said party of the first part, to-wit: 500 shares.

It is agreed, however, that the party of the second part shall pay no maintenance to the party of the first part until he diverts water from said canal of the party of the first part and then only upon the amount so diverted, provided, however, that when he shall have diverted or caused to be diverted the maximum amount which he is entitled to divert under this agreement he shall henceforth pay maintenance upon the maximum amount he is entitled to divert.

It is further agreed that in lieu of the payment of maintenance before the party of the second part diverts water from the canal of the party of the first part under this agreement, he shall give the party of the first part free use of all the water represented by said "right No.2" of the Boise river herein agreed to be carried and delivered.

(Continued)

41
SCANNED

JUN 29 2006

In the event said party of the second part, his heirs or assigns should fail or refuse to pay the maintenance as herein agreed, then the party of the first part shall be relieved during such delinquency only, from its obligation to carry and deliver said water herein agreed to be carried and delivered, and when said delinquent payments are made, together with 12% penalty on the amount of such delinquency the party of the first part shall resume its carriage and delivery of said water.

The maintenance charges herein provided for shall be paid by the party of the second part, his heirs or assigns, at the same time and in the same manner as assessments for maintenance are paid by the stockholders of the party of the first part.

The party of the second part shall not be liable for any portion of bonded or mortgaged indebtedness, or interest on bonds, mortgages or notes given by the party of the first part, whether outstanding at the date hereof or hereafter to be made or issued, for the purpose of developing, acquiring or purchasing water for said party of the first part. Should the party of the first part supplement its water supply by means of wells, sumps, reservoirs or other artificial means, the party of the second part shall pay no part of the expenses in developing, acquiring or maintaining the same or securing water therefrom, but the party of the second part shall be liable for its portion of the maintenance of the main canal as hereinabove provided. Party of the second part shall not be liable for any portion of moneys expended for the purpose of increasing the water supply of the stockholders of the party of the first part, which expenditures do not increase the amount of water to be delivered under this agreement by the party of the first part to the party of the second part. Charges for betterments shall be considered as maintenance.

The party of the second part, his heirs or assigns, shall have no right, under this agreement, to exercise any management or control in the affairs, or of the property of the first part.

This contract is executed in duplicate, one copy of which is delivered to each of the parties hereto, and the same shall extend and bind the successors and assigns of the party of the first part and heirs, executors, administrators and assigns of the party of the party of the second part.

This contract is executed on behalf of the party of the first part by its President and Secretary by virtue of authority conferred upon said officers by resolution of its Board of Directors.

Farmers Union Ditch Co Ltd

(NO SEAL)

By Emil Jullion
President
Party of the first part.

Attest:

James M. Potter
Secretary.

W.A. Keyt
Party of the second part.

EXHIBIT B

SCANNED

JUN 29 2006

Farmers Union Ditch Co., Ltd.

NOTICE OF 2001 WATER ASSESSMENT

Notice is hereby given that on January 18, 2001 an assessment has been levied by the Board of Directors of the Farmers Union Ditch Co., Ltd. on all of the capital stock of said corporation, and on all other water carried and delivered through the canal of said corporation.

Farmers Union Ditch Co., Ltd. shares are to be assessed at \$200.00 per share. All other water delivered through the Farmers Union Canal will be assessed at \$18.18 per miners inch. Storage water from Arrowrock and Anderson Ranch Reservoirs will be assessed at \$.30 per acre foot.

Bureau of Reclamation charge for the replacement of the ensign valves on Arrowrock Dam causes us to charge a SPECIAL ASSESSMENT of \$41.00 per share of FUD and \$3.75 per miners inch of other water delivered through Farmers Union Canal.

This assessment is due and payable to the Secretary of said corporation on or before March 15, 2001.

Any assessment which remains unpaid after March 15, 2001 will be declared delinquent and subject to a penalty of fifteen percent (15%) of the assessment. The penalty will be added to the total assessment, and no water will be delivered until the assessment and penalty are paid in full.

Int #2502

2001 WATER ASSESSMENT

338	FARMERS UNION	67.60
	ARROWROCK	2.55
	ANDERSON	
	BOISE VALLEY	
76.4	JACOBS WATER	1752.55
	MIDDLETON WATER	
285	DEVELOPED WATER	46.36
	OTHER WATER	
	CREDIT	
	DELINQUENT	
	ACCOUNT SERVICE	10.00
	SPECIAL ASSESSMENT (ARROWROCK)	384.92
	PLEASE PAY THIS AMOUNT	2263.98

Detach and return lower portion with your remittance.

RECEIVED FEB 13 2001

LEXINGTON HILLS, INC.
1815 E. STONYBROOK CT.
EAGLE, ID 83616

Please make checks payable to:
Farmers Union Ditch Co. Ltd.
2153 N. Pollard Lane
Star, ID 83669

Amount Paid \$

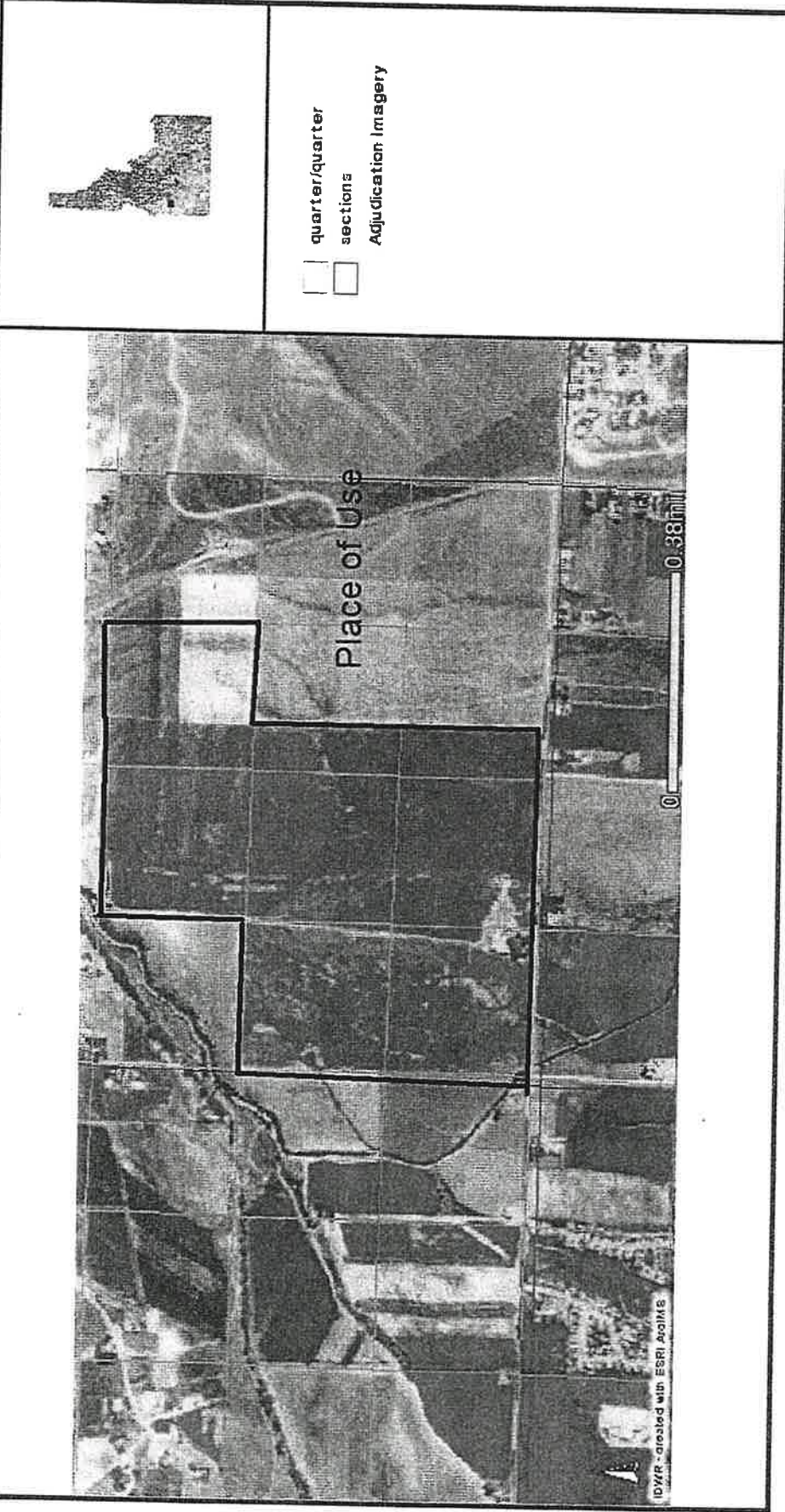
SCANNED
JUN 29 2005

EXHIBIT C

SCANNED

JUN 19 2006

ArcIMS 3.0 HTML Viewer Map



SCANNED
JUN 29 2006