

Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

RECEIVED

MAY 31 2012

DEPARTMENT OF
WATER RESOURCES

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Idaho Falls
Pocatello

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May 30, 2012

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Norman M. Semanko, *of counsel*

Willis C. Moffatt, 1907-1980
Eugene C. Thomas, 1931-2010
John W. Barrett, 1931-2011
Kirk R. Helvie, 1956-2003

Jeff Peppersack
Water Allocation Bureau Chief
Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, ID 83720-0098

**Re: In the Matter of Water Users Association of Grays Creek Ditch Lateral
Response to Petition for Appointment of Lateral Manager**
MTBR&F File No. 25226.0000

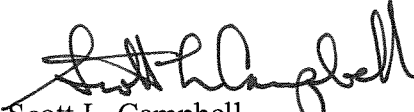
Dear Mr. Peppersack:

Please find enclosed an original and one copy of Grays Creek Canal Association's Response to the Legg Family Trust's Petition for Appointment of Lateral Manager. Please conform the copy and return it the envelope provided. Done SRA

Additionally, Exhibit D to the Response is enclosed on a CD-Rom for your convenience. Should the Department need the shape file of this exhibit, please advise and we will have SPF Water Engineers provide it promptly.

Thank you for your attention.

Very truly yours,


Scott L. Campbell

SLC/dll
Enclosure

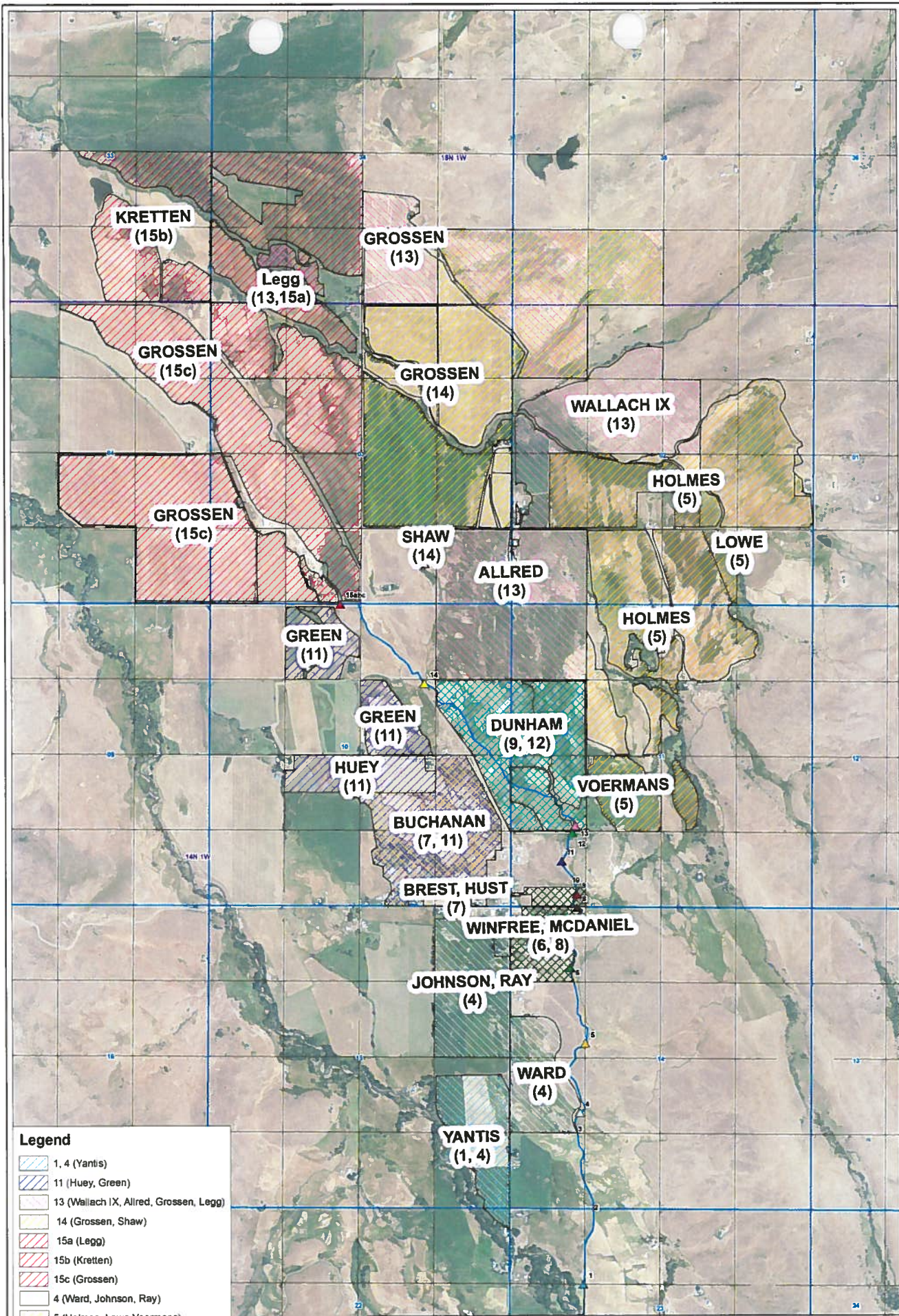
cc: Dana L. Hofstetter
Grays Creek Canal Association

CD-ROM
Disk 1 of 1
May 30, 2012














Exhibit D
SPF Map of Grays
Creek Ditch Delivery
Area

Grays Creek Canal Association's Response to
Petition for Appointment of Lateral Manager

Moffatt Thomas
MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.
101 S. Capitol Blvd., 10th Floor
Boise, ID 83702
208-345-2000 ~ 208-385-5384 Fax



Legend

-  1, 4 (Yantis)
-  11 (Huey, Green)
-  13 (Wallach IX, Allred, Grossen, Legg)
-  14 (Grossen, Shaw)
-  15a (Legg)
-  15b (Kretten)
-  15c (Grossen)
-  4 (Ward, Johnson, Ray)
-  5 (Holmes, Lowe, Voermans)
-  6, 8 (Winfree, McDaniel)
-  7 (Brest, Hust)
-  7, 11 (Buchanan)
-  9, 12 (Dunham)

Grays Creek Ditch Delivery Area



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Attorneys for Grays Creek Canal Association

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF WATER USERS
ASSOCIATION OF GRAYS CREEK DITCH
LATERAL

RESPONSE TO PETITION FOR
APPOINTMENT OF LATERAL MANAGER

The Grays Creek Canal Association (the "Association") by and through its undersigned counsel of record, Scott L. Campbell of Moffatt Thomas Barrett Rock & Fields, Chtd., hereby responds to the Petition for Appointment of Lateral Manager (the "Petition") submitted to the Idaho Department of Water Resources on May 10, 2012, by the Legg Family Trust (the "Trust").

I.
INTRODUCTION

The Association will respond to the Petition by initially describing the organizational status and composition of the Association. It will then deny or admit the allegations of the Petition, and then it will state and allege other factual information and legal argument supporting the position of the Association.

II.
ORGANIZATIONAL STATUS AND COMPOSITION OF ASSOCIATION

The Association was established on April 1, 2012. *See* Exhibit A. The purpose of the Association is to construct a dam on the Little Weiser River and distribute water to the lateral ditches from the Grays Creek Canal. The Directors of the Association are: Jim Buchanan, President; Loren Brest, Director; Dean Dunham, Director; and Adrian Hust, Secretary/Treasurer.

Subsequent to its organization, the Association met on April 19, 2012, to discuss actions for delivery of water through the Grays Creek Canal. *See* Exhibit B. Subsequently, on May 8, 2012, the Association met to consider actions dealing with water delivery. *See* Exhibit C. Prior to its organization on April 1, 2012, the Association conducted its affairs as an informal ditch association. On or about March 26, 2012, a meeting of that ditch association was conducted pursuant to the actions of the Legg Family Trust.

III.
RESPONSE TO PETITION ALLEGATIONS

The Association responds to the following numbered allegations contained in the Petition.

1. The Association does not have sufficient information to admit or deny the allegations contained in Paragraphs 1, 2, or 3 of the Petition, and therefore denies them all.
2. The Association denies the allegation that the Idaho Department of Water Resources has jurisdiction over this proceeding pursuant to Idaho Code Section 42-1308 contained in Paragraph 4 of the Petition.
3. The Association denies the allegation contained in Paragraph 5 of the Petition.
4. The Association denies the allegations of Paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 contained in the Petition.

IV.
FACTUAL INFORMATION AND LEGAL ARGUMENT

The Association fundamentally disagrees with the allegations of the Trust regarding any duty to deliver water to the property allegedly owned by the Trust. At no time within the last 50 years, has the Grays Creek Canal/Ditch assumed any responsibility for delivery of water past the designated point known as the Concrete Splitter, designated as Location No. 13 on the map prepared by SPF Water Engineers. *See* Exhibit D. These facts are demonstrated by the attached witness statements of Joe Holmes and Malcolm Huey. *See* Exhibits E and F, respectively. Additionally, this description of the facts is supported by the witness statement of Ronald D. Dunham. *See* Exhibit G.

Based upon the historical facts of the operation of Grays Creek Canal/Ditch, there is no legitimate basis for the Petition. This is particularly true regarding the Trust's allegations that the entire Grays Creek Canal/Ditch is responsible for delivery of water to the Trust property. In fact, the Grays Creek Canal/Ditch has only assessed and been responsible for delivery of water from the Little Weiser River to the Concrete Splitter, designated as Location No. 13 on the SPF map.


The Association further asserts that the actions of the Trust are an attempt to force the entire group of water users benefiting from the Grays Creek Canal/Ditch to pay for and assure the delivery of water through the individual lateral ditch which supplies the water to the Trust property. The delivery of water through that lateral has historically been the responsibility of the individual water users on that lateral and not the responsibility of the entire Grays Creek Canal/Ditch Association.

Based upon these historical facts, the Association respectfully requests that the Director of the Idaho Department of Water Resources deny the Petition. Alternatively, if the

Director determines there is any question about the historic basis for water delivery on the Grays Creek Canal/Ditch, the Association requests that a formal hearing be conducted before the Director in order to fully evaluate the credibility of witnesses, the entire historical record, and the applicable Idaho law in this matter.

Respectfully submitted this 30th day of May, 2012.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 


Scott L. Campbell – Of the Firm
Attorneys for Gray Creek Canal
Association

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of May, 2012, I caused a true and correct copy of the foregoing **RESPONSE TO PETITION FOR APPOINTMENT OF LATERAL MANAGER** to be served by the method indicated below, and addressed to the following:

Dana L. Hofstetter
HOFSTETTER LAW OFFICE, LLC
608 West Franklin Street
Boise, ID 83702
Fax: (208) 424-8774
Email: Dana@IdahoWaterLaw.com

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile



Scott L. Campbell

Grays Creek Canal Association

644 Indian Valley Road

Indian Valley, ID 83632

May 7, 2012

The Grays Creek Canal Association was established on April 1, 2012. Its purpose is to build a dam on the Little Weiser and distribute water to various laterals on the Grays Creek Canal. The directors will assess each share holder appropriately and collect fees annually. The Grays Creek Canal is overseen by Board of Directors which are elected yearly and current directors are as follows:

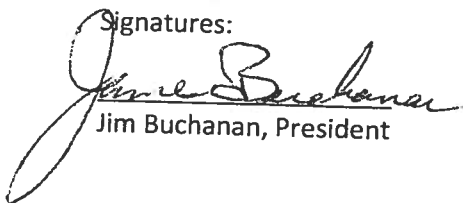
Jim Buchanan, President

Loren Brest, Director

Dean Dunham, Director

Adrian Hust, Secretary/Treasurer

Signatures:


Jim Buchanan, President


Adrian Hust, Secretary/Treasurer

04-19-2012

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Meeting of the Grays Creek Canal Association came to order 4-19-12 at 6:05 pm. Meeting started by telling everyone about the maps of the Grays Creek Canal and laterals. Everyone was invited to take a look at them any time.

Next there was talk about flood waters and how to charge for it. Jim Buchanan and Dean Dunham said should they charge $5/8$ on a full share? Some on Grays Creek Canal get flood water and some don't, so Jerry Jaeger explained how some other irrigation associations do the charging. Some discussion was done on the matter, Ron Dunham made a motion, if you have 100 acres you pay for 100 acres. The Board of Grays Creek Canal Assn. (Jim Buchanan, Dean Dunham, Loren Brest) carried the motion.

M. Malcolm Huey talked about cleaning the lateral ditches on each persons property and how it is each persons duty to clean their own ditch. Marion Ogle said where the water comes out of the river it becomes G.C.D.A.'s water and they should take care of the ditches. Ron Dunham said is G.C.D.A. then liable for Bridges and all other maintenance? Jim Buchanan wondered was there a legal precedence refer to appendix D. Jerry Jaeger said it was spelled out very clearly in Appendix D. Jerry Jaeger said when problems occur the Board has the right to hire a

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Water master. He said Lateral 42-905 users Little Weir River Irrigation Ditch Co. steps to getting water when you don't get your fair share. But LWRID Co. can't help with a water master.

Ken Dunham said what is the Lateral ditch, please establish the meaning. Dave Veselka said Weir River is not a Lateral ditch, 42-908 says any 3 persons drawing off of one Lateral can hire their own water master. Jerry Peagin said it won't work, because the manager has authority over the Lateral he must put in weirs on all ditches.

Discussion on why do we need a ditch master, and maintenance on the ditch, and continuous water flow nothing was settled.

Dean Dunham talked about splitting the ditch and putting in a weir on the top. Marion Ogle said the ditch is LCC Ave's and they are responsible for her ditch. Debut Ogle and Marion don't like the facts. Dean Dunham said we need to get a Ditch master.

Dean Dunham talked about seeing a lawyer the next day at the cost of \$200⁰⁰ an hour. Ken Dunham wants to appoint someone to make sure Ogle's get their water. People seemed to think Jim Stippich would be a great for that job. Ken wanted to appoint him and compensate him as he had check on some things. Then the talked about putting weirs on all the ditches.

Dave Veselka made a motion to hire a lawyer motion was carried by the Board. A warning to the Board the Leav Family Trust would pursue a ditch master, Dean Dunham said he already said there would be a water master.

Talked about having the Books audited. Marion Egle asked when was the last time they had been done. Ron Dunham said there was too tax money involved so we could have an internal audit of the Books. Board approved internal audit.

Motion was made by Jim Buchanan to elect Adrian R. Hust Secretary & Treasurer for Grays Creek Canal Association motion carried. Board members Jim Buchanan, Dean Dunham, and Loren Brest all said yes. Meeting adjourned.

Secretary Adrian R. Hust

05-08-12

10:05 am

Grays Creek Canal Association Meeting

Meeting called to order by Jim Buchanan President. Received Bills to pay Moffatt \$180⁰⁰ also pay Fire Department \$25⁰⁰ for room for 04-16-2012 meeting. Jim B. signed checks to pay bills.

Discussion of all the papers the lawyer needed us to send them. Board signed the agreement for the Charges we will pay for the lawyer's services.

Discussion on ditch master Norma Radcliff.

Adrian Hunt got U.S. Bank manager Janet Meyer to credit the Books all the way back to 2005. At no cost to GCC Assoc.

Discussed when ditch would be turned on, no date just new soon.

Discussed Legg Family Trust (Marion Ogle) acres (how many 137 + 136) and ditch master. Ditch master for Kratten and Grossen, Legg and Grossen just those laterals would need a ditch master. Dave Allred, Bob Elias, Tom Grossen, and Legg all on the same ditch. The Ditch Master would be paid by the people on the ditch. They are going to talk to all of them and see what they think.

Talked about some maintenance on the ditch that needed done

Coren B. moved to adjourned
the meeting Jim B seconded
Meeting adjourned

Present were

President Jim Buchanan

Coren Brest

Dean Dunham

Adrian R. Hunt Secretary

I Joe Holmes have lived in Indian Valley all my life (51 yrs). Our Family has maintained the Caylor ditch from diversion #5 since the mid 1950's. with no compensation from anyone else. I was also in charge of the Grays Creek ditch from 2004 - 2011 duties included putting dam in the River maintaining the Headgate and measuring device and cleaning the ditch to diversion #5.

Joe Holmes

I, Malcolm Huey, purchased our Indian Valley ranch in 1969. In 1971 I was appointed in charge of the Grays Creek Ditch by Jim Cole. The duty required me to keep water in the ditch by putting a dam in the Little Weiser River to divert water into the Grays Creek Ditch, and to maintain the ditch – removing all obstructions and cleaning the ditch using zylene if necessary.

A new diversion for the Caylor Ditch (lateral 5) was constructed in what is now property owned by Victor Ward approximately one mile from the river.

The Grays Creek Ditch ended at the concrete splitter (map #13) on property currently owned by Ronald Dunham approximately 1 3/4 miles from the river. The concrete splitter (map #13) was in existence when I took charge of the ditch. The Grays Creek Ditch runs from the Little Weiser River to this splitter (map #13).

Several laterals serve the individual water users from the Grays Creek Ditch. I, as Ditch Master of the Grays Creek Ditch for approximately 33 years, did not maintain or supervise the water distribution on any of the individual laterals. The approximately 14 laterals each maintain their own ditches and settle their own disputes.

Funds were assessed by Scotti Yantis, secretary-treasurer, to maintain the Grays Creek Ditch and to pay for equipment to install the river dam. This assessment was not used for the maintenance or management of the individual laterals leading from the main ditch.

In June 2010 we sold our ranch and I no longer have an interest in this or any other irrigation system. This information is provided to inform those interested how I operated the Grays Creek Ditch for approximately 33 years. I turned the duties over to Joe Holmes in 2004 with no formal organizational action, the same way I received the job.

May 3, 2012

Malcolm Huey

A handwritten signature in black ink that reads "Malcolm Huey". The signature is written in a cursive style with a large initial "M".

I, Ronald D. Dunham, moved to my current residence in Indian Valley, Idaho, in 1972. This statement is made to document what I know about the historic use of the Grays Creek Ditch.

It is the main lateral running from the Little Weiser River to the concrete splitter (map pt 13) located in the southeast corner of my property. Several sub-laterals are served by this main lateral known as the Grays Creek Ditch.

Each sub-lateral is operated and maintained by the individuals using water from that particular sub-lateral. The names used to identify the sub-laterals have changed through the years as the land owners have changed. An example is, what was once known as the Caylor Ditch is now commonly referred to as the Holmes Ditch, as the Holmes family owns the majority of the water and therefore does the majority of the maintenance on that sub-lateral ditch. Other sub-laterals are the Huey Ditch, the Orielle Lewis Ditch, the Indian Valley Village Ditch, and several other smaller ditches.

Funds were assessed to pay for the river dam and ditch maintenance from the Little Weiser River to the splitter in Dunham's pasture (map pt 13). The sub-lateral ditch users were responsible for their own headgates and ditch maintenance.

The ditch assessments have been kept to only what is absolutely necessary to meet current expenses. The only physical assets are the ditch with weir and the headgate at the river.


Ronald D. Dunham

May 4, 2012