

10-24-2013

Big Wood Ranch, LLC v. Water Users' Ass'n of
Broadford Slough and Rockwell Bypass Lateral
Ditches, Inc. Clerk's Record v. 2 Dckt. 41265

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Vol. 2 of 4

IN THE SUPREME COURT OF THE STATE OF IDAHO

BIG WOOD RANCH, LLC.,)
)
 Plaintiff/Counterdefendant/ Appellant,)
)
 vs.)
)
 WATER USERS' ASSOCIATION OF)
 THE BROADFORD SLOUGH AND)
 ROCKWELL BYPASS LATERAL)
 DITCHES, INC.,)
)
 Defendant/ Counterclaimant/ Respondent)
)

Supreme Court No.
41265 LAW CLERK



RECORD ON APPEAL

Appeal from the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Blaine.

HONORABLE ROBERT J. ELGEE, DISTRICT JUDGE

SEE AUGMENTATION RECORD

RICHARD C. BOARDMAN
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Boise, ID 83702

GARY D. SLETTE
PO Box 1906
Twin Falls, ID 83303

Attorney for
Plaintiff/Counterdefendant/Appellant

Attorney for
Defendant/Counterclaimant/ Respondent

COPY 41265

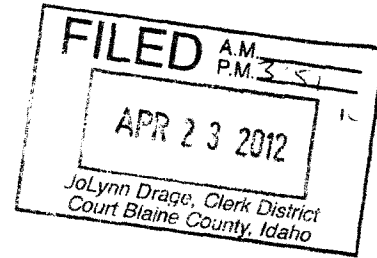
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Attorneys for Plaintiff/Counterdefendant
Big Wood Ranch, LLC

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

BIG WOOD RANCH, LLC,

Plaintiff,

v.

WATER USERS' ASSOCIATION OF
THE BROADFORD SLOUGH AND
ROCKWELL BYPASS LATERAL
DITCHES, INC.,

Defendant.

WATER USERS' ASSOCIATION OF
THE BROADFORD SLOUGH AND
ROCKWELL BYPASS LATERAL
DITCHES, INC.,

Counterclaimant,

v.

BIG WOOD RANCH, LLC,

Counterdefendant.

Case No. CV 2010-842

**AFFIDAVIT OF ERIKA E. MALMEN IN
SUPPORT OF PLAINTIFF/
COUNTERDEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

STATE OF IDAHO)
 : ss
County of Ada)

ERIKA E. MALMEN, being first duly sworn upon oath, deposes and says:

1. I am one of the attorneys for Big Wood Ranch, LLC in the above-entitled action. I have personal knowledge of and am competent to testify to the matters stated herein and the documents attached hereto.

2. Attached hereto as **Exhibit A** is a true and correct copy of the Water Users' Association of the Broadford Slough and Rockwell Bypass Lateral Ditches, Inc.'s Articles of Incorporation, marked as Deposition Exhibit 3 to the deposition of Mark Reinemann taken April 16, 2012, in the above matter.

3. Attached hereto as **Exhibit B** are true and correct copies of relevant excerpts from Defendant's Responses to Plaintiff's First Set of Discovery Requests served in this matter.

4. Attached hereto as **Exhibit C** are true and correct copies of relevant excerpts from the transcript of the deposition of Marc Reinemann, the Association's Secretary/Treasurer, taken on April 16, 2012.

5. Attached hereto as **Exhibit D** are true and correct copies of the Real Estate Purchase and Sale Agreement documents, bates numbered BWR000206-222 and 334-337, which were produced by the Plaintiff in response to the Association's written discovery requests served in this matter.

6. Attached hereto as **Exhibit E** is a true and correct copy of Decree and Findings of Fact and Conclusions of Law in the matter of Rockwell v. Coffin, dated August 25, 1949, produced by the Plaintiff in response to the Association's written discovery requests served in

this matter.

7. Attached hereto as **Exhibit F** is a true and correct copy of communications from the Association, dated February 1, 2012, bates numbered WUA000494, which was produced by the Association in response to Plaintiff's written discovery requests served in this matter.

8. Attached hereto as **Exhibit G** are true and correct copies of 2009 aerial photographs prepared by Brockway Engineering, PLLC, which were marked as Deposition Exhibit 2 to the deposition of Mark Reinemann taken April 16, 2012, in the above matter.

9. Attached hereto as **Exhibit H** is a true and correct copy of email communications between Kevin Lakey and Allen Merritt of Idaho Department of Water Resources dated March 21, 2011, which was marked as Deposition Exhibit 14 to the deposition of Mark Reinemann taken April 16, 2012, in the above matter.

10. Attached hereto as **Exhibit I** is a true and correct copy of Annual Meeting Minutes for the Association, dated April 14, 2008, which was marked as Deposition Exhibit 7 to the deposition of Mark Reinemann taken April 16, 2012, in the above matter.

11. Attached hereto as **Exhibit J** are true and correct copies of Annual Meeting Minutes of the Association, bates numbered WUA000424, which was produced by the Association in response to Plaintiff's written discovery requests served in this matter.

12. Attached hereto as **Exhibit K** are true and correct copies of Annual Meeting Minutes of the Association, dated April 13, 2009 and bates numbered WUA000501, which were produced by the Association in response to Plaintiff's written discovery requests served in this matter.

13. Attached hereto as **Exhibit L** are true and correct copies of the Water Users' Association of the Broadford Slough and Rockwell Bypass Lateral Ditches, Inc.'s Bylaws which

were marked as Deposition Exhibit 5 to the deposition of Mark Reinemann taken April 16, 2012, in the above matter.

14. Attached hereto as **Exhibit M** are true and correct copies of Annual Meeting Minutes of the Association, dated April 12, 2010 and bates numbered WUA000499-500, which were produced by the Association in response to Plaintiff's written discovery requests served in this matter.


15. Attached hereto as **Exhibit N** are true and correct copies of Annual Meeting Minutes of the Association, dated March 19, 2007 and bates numbered WUA000497-498, which were produced by the Association in response to Plaintiff's written discovery requests served in this matter.

16. Attached hereto as **Exhibit O** are true and correct copies of Annual Meeting Minutes for the Association, dated January 29, 2003, which was marked as Deposition Exhibit 12 to the deposition of Mark Reinemann taken April 16, 2012, in the above matter.

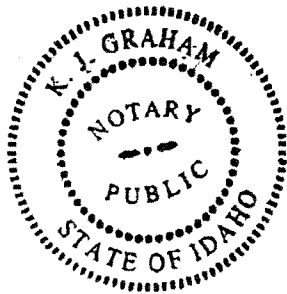
17. Attached hereto as **Exhibit P** is a true and correct copy of the 2011 Annual Meeting Notice, bates numbered WUA000456, which was produced by the Association in response to Plaintiff's written discovery requests served in this matter.


18. Attached hereto as **Exhibit Q** are true and correct copies of the Annual Meeting Minutes of the Association, dated April 16, 2002 and bates numbered WUA000443-447, produced by the Association in response to Plaintiff's written discovery requests served in this matter.

DATED: April 23, 2012


Erika E. Malmen

SUBSCRIBED AND SWORN TO before me this 23rd day of April, 2012.




Notary Public for Idaho
Residing in Meridian
My Commission Expires: 02/05/13

CERTIFICATE OF SERVICE

I, the undersigned, certify that on April 23, 2012, I caused a true and correct copy of the foregoing to be forwarded with all required charges prepaid, by the method(s) indicated below, in accordance with the Idaho Rules of Procedure, to the following person(s):

Gary Slette
Robertson & Slette, PLLC
P.O. Box 1906
Twin Falls, ID 83303-1906
FAX: 208-933-0701

Hand Delivery
U.S. Mail
Facsimile
Overnight Mail

 Exhibits via email

Attorneys for Defendant/Counterclaimant


Erika E. Malmén

FILED/EFFECTIVE

2002 MAY -3 PM 2:05

SECRETARY OF STATE
STATE OF IDAHO

ARTICLES OF INCORPORATION

OF

WATER USERS' ASSOCIATION OF THE BROADFORD
SLOUGH AND ROCKWELL BYPASS LATERAL DITCHES, INC.

KNOW ALL MEN BY THESE PRESENTS:

That we, the undersigned, being natural persons of full age and residents of the State of Idaho, do hereby voluntarily associate ourselves together for the purpose of incorporating a non-profit lateral ditch water users' association under the provisions of Title 30, Chapter 3, and Title 42, Chapter 13, of the Idaho Code, and we hereby certify in writing:

ARTICLE I

NAME

The name of the corporation shall be Water Users' Association of the Broadford Slough and Rockwell Bypass Lateral Ditches, Inc.

ARTICLE II

NON-PROFIT CORPORATION

The corporation shall be a non-profit corporation complying with the Idaho Non-Profit Corporation Act, and shall have certificates of membership rather than capital stock, and which shall not declare or issue dividends or pecuniary profits to any of its members.

ARTICLE III

DURATION

The corporation shall be perpetual, unless dissolved in accordance with the provisions of applicable law.

ARTICLE IV

INITIAL REGISTERED AGENT AND OFFICE

The mailing address of the Registered Office of the corporation, and its principal place of business, shall be 125 Lower Broadford Road, Bellevue, Idaho, 83313, and the initial Registered Agent at such address shall be Mr. Brian Brockett.

IDAHO SECRETARY OF STATE
05/03/2002 05:00
CK: 58138 CT: 79389 BH: 463488
1 @ 30.00 = 30.00 INC NDWP # 2

C143766
WUA000002

ARTICLE V

PURPOSES AND POWERS

The purpose for which this corporation is formed is the transaction of any lawful activity, including, without limitation, the ownership, operation and maintenance of the Broadford Slough and Rockwell Bypass lateral ditches located in Blaine County, Idaho, into which certain waters of the Big Wood River are diverted and conveyed to the members of the corporation, and to levy and assess from its members, in the manner prescribed by law, annual assessments reasonably calculated to provide for the necessary improvement, repair, maintenance and operation of said lateral ditches, including sufficient monies to establish a contingency fund for unexpected or emergency repairs or replacements; and to purchase, lease and dispose of such real and personal property as may be necessary or expedient for the proper conduct of its business; and all other purposes and powers granted to lateral ditch water users' associations pursuant to the provisions of Title 42, Chapter 13, Idaho Code.

ARTICLE VI

MEMBERSHIP

Interest in this non-profit corporation shall be memberships, all of single class, evidenced by certificates of membership. Every owner of an Idaho state water right validly entitled to be conveyed through either the Broadford Slough lateral ditch or the Rockwell Bypass lateral ditch shall be a member of the corporation, and upon receiving water through either of said lateral ditches shall be deemed to consent to membership, and to the provisions of these Articles of Incorporation and the By-laws of this corporation, as the same may now read or are hereafter duly amended to read. Such membership shall at all times be identified with, and be appurtenant to, the ownership of said water rights. Should any of said water rights, or any portion thereof, be transferred by sale or otherwise, all such transferees shall, upon acceptance of the transfer, become members of the corporation. No person or entity who is not the owner of a water right conveyed through the Broadford Slough lateral ditch or the Rockwell Bypass lateral ditch, shall become or remain a member of the corporation.

ARTICLE VII
MEMBERSHIP VOTING

At all annual and special meetings of the members of the corporation, duly called and constituted in accordance with the bylaws of the corporation, each member shall be entitled to vote in person or by written proxy, dated and signed by the member; provided, however, that no such proxy shall be valid beyond 11 months after its execution unless a longer period is expressly provided in the written proxy, and it shall expire in any event if the person or entity executing it is no longer a member of the corporation. Each member shall be entitled to one (1) vote for each inch of water, and a fractional vote equal to each fraction of an inch of water, which said member is entitled to receive through the Broadford Slough or Rockwell Bypass lateral ditches. In the event a water right which entitles membership is owned by more than one person or entity, the membership appurtenant to that water right shall be held by said persons or entities in the same fractional interests, provided that all such owners shall collectively designate one (1) person or entity to cast their respective votes.

ARTICLE VIII
DUES AND ASSESSMENTS

Each member shall be deemed to covenant and agree with every other member, and with the corporation, to pay any assessments duly levied by the corporation for the purposes provided in these Articles of Incorporation. Said assessments shall be levied against the members, pro rata in proportion to the water which the member is entitled to receive from Broadford Slough lateral ditch or the Rockwell Bypass lateral ditch. The Board of Directors shall fix the amount of said assessments, from time to time, and may make them payable at such times or intervals, and upon such notice and by such methods as the directors may prescribe. Assessments may be enforced by civil action, consistent with the provisions of Section 42-1304 of the Idaho Code, and no member shall be entitled to receive water from said lateral ditches whenever any assessment levied against said member is due and unpaid unless otherwise approved and ordered by the Board of Directors as provided for in Idaho Code § 42-1305.

ARTICLE IX

BY-LAWS

By-laws not inconsistent with the Articles of Incorporation may be adopted, altered, amended or repealed at any duly constituted meeting of the Board of Directors, by an affirmative vote of a majority of the directors present at such meeting.

ARTICLE X

BOARD OF DIRECTORS

The corporation shall be managed by a Board of Directors comprised of three (3) persons. The first Board of Directors shall be Ralph Garton, P.O. Box 820, Bellevue, ID, 83313; Kate Rosekrans, 26 Townsend Gulch Rd., Bellevue, ID, 83313; and Leroy Lewis, 3774 S 5th West, Idaho Falls, ID, 83404, who shall serve until the first meeting of the members, at which time a new Board of Directors shall be elected for an initial term of one (1) year. Thereafter, all terms shall be for a period of one (1) year from the date of election, or until a successor has been duly elected, whichever shall last occur. Directors may be elected for successive terms. Each member of the Board of Directors shall be elected by a majority of the votes cast at annual meetings of the members at which a quorum is present, a quorum being defined as the presence, in person or proxy, of members entitled to vote more than fifty percent (50%) of the total votes to which all members are entitled.

ARTICLE XI

DISTRIBUTION OF ASSETS ON DISSOLUTION

Upon dissolution, the corporation shall make distributions only in conformity with the provisions of Section 30-3-109 of the Idaho Code.

ARTICLE XII

AMENDMENTS

These Articles of Incorporation may be amended only upon the following approvals:

- A. By the affirmative vote of a majority of the full Board of Directors at a duly constituted meeting of the Board called for the purpose of considering said amendments; or
- B. By the affirmative vote of a majority of the total votes eligible to

be cast by all of the members of the corporation, cast at a duly constituted meeting of the members called for that purpose.


ARTICLE XIII

INCORPORATORS

The Incorporators of this corporation are as follows:

- A. Ralph Gurton, P.O. Box 820, Bellevue, ID, 83313
- B. Kate Rosekrans, 26 Townsend Gulch Rd., Bellevue, ID, 83313
- C. Leroy Lewis, 3774 S 5th West, Idaho Falls, ID, 83404

IN WITNESS WHEREOF, the undersigned have set their hands this 16th day of April, 2002.



 RALPH GURTON
 Incorporator



 KATE ROSEKRANS
 Incorporator

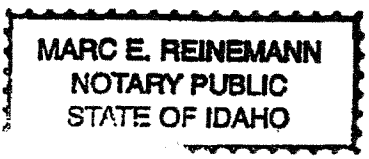


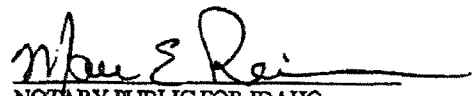
 LEROY LEWIS
 Incorporator

STATE OF IDAHO)
)
 County of BLAINE)
 ss.

On this 16th day of APRIL, 2002, before me, a Notary Public for said County and State, personally appeared RALPH GURTON, known or identified to me, to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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





 NOTARY PUBLIC FOR IDAHO
 Residing at SUN VALLEY ID
 My commission expires 06/18/2004

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Gary D. Slette ISB # 3198
ROBERTSON & SLETTE, PLLC
P.O. Box 1906
Twin Falls, Idaho 83303-1906
Telephone: (208) 933-0700
Facsimile: (208) 933-0701
lrm\VER\broadford\disc respns

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

BIG WOOD RANCH, LLC,)
)
Plaintiff/Counterdefendant,) Case No. CV-10-842
)
v.) DEFENDANT'S RESPONSES TO
) PLAINTIFF'S FIRST SET OF
WATER USERS' ASSOCIATION OF) DISCOVERY REQUESTS
THE BROADFORD SLOUGH AND)
ROCKWELL BYPASS LATERAL)
DITCHES, INC.,)
)
Defendant/Counterclaimant.)
_____)

COMES NOW the Defendant/Counterclaimant, Water Users' Association of The Broadford Slough and Rockwell Bypass Lateral Ditches, Inc. ("Association"), and responds to Plaintiff/Counterdefendants' First Set of Discovery Requests as follows:

I. GENERAL OBJECTIONS

The Association's investigation of these matters is ongoing. Accordingly, the responses that follow are based upon the best knowledge, information, and belief of the Association at this time. The Association reserves the right to make any further responses if it appears that any omission or error has been made in connection with these responses or that more accurate information is or has become available. These responses are made without prejudice to the Association's rights to use in later discovery or to present at hearing, such evidence as may later be

1
2 **RESPONSE TO REQUEST FOR PRODUCTION NO. 17:** Copy of check from Jann
3 Wenner.

4 **REQUEST FOR PRODUCTION NO. 18:** All documents and ESI, including minutes
5 and notes, relating to any meeting held by the Association.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 18:** See attached. The
7 Association reserves the right to supplement this Response. The Association is seeking to obtain
8 files from prior officers, board members and members of the Association in order to respond to
9 this request.

10 **IV. REQUESTS FOR ADMISSION**

11 **REQUEST FOR ADMISSION NO. 1:** Admit that the "Ditch," as that term is used in
12 your Counterclaim, is commonly known as the "Broadford Slough."

13 **RESPONSE TO ADMISSION NO. 1:** Admit.

14 **REQUEST FOR ADMISSION NO. 2:** Admit that the Broadford Slough is a naturally
15 occurring distributary channel of the Big Wood River.

16 **RESPONSE TO ADMISSION NO. 2:** The Association objects to this Request for
17 Admission on the basis that the term "naturally occurring distributary channel" is an undefined
18 term. Without waiving the foregoing objection, Defendant denies the request for the reason that
19 the flow is controlled by a headgate at the point where the Ditch diverts water out of the Big
20 Wood River.

21 **REQUEST FOR ADMISSION NO. 3:** Admit that the Broadford Slough is not a canal
22 or reservoir.

23 **RESPONSE TO ADMISSION NO. 3:** The Association objects to this Request for
24 Admission on the basis that portions of the Broadford Slough are treated as a canal or water
25 delivery system while portions at the lower reach thereof may be regarded as a natural channel.
26 Without waiving the foregoing objections, the Association denies this Request.

REQUEST FOR ADMISSION NO. 4: Admit that the Big Wood River is not a canal or
reservoir.

RESPONSE TO ADMISSION NO. 4: Admit.

1
2 **REQUEST FOR ADMISSION NO. 5:** Admit that the Rockwell Bypass is not a canal
3 or reservoir.

4 **RESPONSE TO ADMISSION NO. 5:** The Association objects to this Request for
5 Admission on the basis that the request as worded is confusing and misleading. Without waiving
6 the foregoing objection, the Association denies this Request and affirmatively asserts that the
7 Rockwell Bypass is a canal.

8 **REQUEST FOR ADMISSION NO. 6:** Admit that not all Association members' water
9 rights share the same source.

10 **RESPONSE TO ADMISSION NO. 6:** Admit, only to the extent it is impossible to
11 distinguish between Big Wood River surface flows and water from gaining reaches of the
12 Broadford Slough.

13 **REQUEST FOR ADMISSION NO. 7:** Admit that not all Association members' water
14 rights share the same point of diversion.

15 **RESPONSE TO ADMISSION NO. 7:** Admit.

16 **REQUEST FOR ADMISSION NO. 8:** Admit that the Bypass was constructed in order
17 to develop what became referred to as water right no. 37-00833.

18 **RESPONSE TO ADMISSION NO. 8:** Deny. After making reasonable inquiry, and
19 because the information known to the Association is insufficient to enable it to admit or deny the
20 complete reason or basis for construction of the bypass, Association denies this request.

21 **REQUEST FOR ADMISSION NO. 9:** Admit that Big Wood Ranch's surface water
22 rights' (nos. 37-537B and 37-538B) priority dates predate the construction of the Rockwell
23 Bypass.

24 **RESPONSE TO ADMISSION NO. 9:** Admit.

25 **REQUEST FOR ADMISSION NO. 10:** Admit that the Rockwell Bypass was
26 constructed by or on behalf of Irvin E. Rockwell on or around 1936 in order to develop waters of
the Big Wood River.

RESPONSE TO ADMISSION NO. 10: The Association objects to this Request for
Admission on the basis that it is unaware of the characterization of the source of such water in the

1
2 Bypass or the proper characterization of the same as either saved or developed waters. Without
3 waiving the foregoing objection, Association denies this Request.

4 **REQUEST FOR ADMISSION NO. 11:** Admit that the Association has treated
5 Association membership as optional and/or voluntary.

6 **RESPONSE TO ADMISSION NO. 11:** Deny.

7 **REQUEST FOR ADMISSION NO. 12:** Admit that all Association members' water
8 rights are considered natural flow rights (as opposed to storage rights).

9 **RESPONSE TO ADMISSION NO. 12:** Deny.

10 **REQUEST FOR ADMISSION NO. 13:** Admit that the Association does not hold title
11 (legal or equitable) to any Association members' water rights.

12 **RESPONSE TO ADMISSION NO. 13:** Admit.

13 **REQUEST FOR ADMISSION NO. 14:** Admit that the Association does not issue
14 shares of stock.

15 **RESPONSE TO ADMISSION NO. 14:** Admit.

16 **REQUEST FOR ADMISSION NO. 15:** Admit that the Association has no authority to
17 restrict transfer of any Association members' water rights.

18 **RESPONSE TO ADMISSION NO. 15:** Admit.

19 **REQUEST FOR ADMISSION NO. 16:** Admit that the Association does not own the
20 Big Wood River.

21 **RESPONSE TO ADMISSION NO. 16:** Admit.

22 **REQUEST FOR ADMISSION NO. 17:** Admit that the Association does not own the
23 Broadford Slough.

24 **RESPONSE TO ADMISSION NO. 17:** Admit.

25 **REQUEST FOR ADMISSION NO. 18:** Admit that the Association does not own the
26 Rockwell Bypass.

RESPONSE TO ADMISSION NO. 18: Admit.

REQUEST FOR ADMISSION NO. 19: Admit that the Association does not own or
have any interest in the Property.

1
2 **RESPONSE TO ADMISSION NO. 19:** The Association objects to this Request for
3 Admission on the basis that "Property " is not a defined term. Without waiving the foregoing
4 objection, the Association admits this Request only if the term "Property" is in reference to
5 Plaintiff's property.

6 **REQUEST FOR ADMISSION NO. 20:** Admit that the Association does not possess an
7 easement for the Big Wood River, Broadford Slough or Rockwell Bypass.

8 **RESPONSE TO ADMISSION NO. 20:** Admit.

9 **REQUEST FOR ADMISSION NO. 21:** Admit that the Association has not held annual
10 elections for its chairman, vice-chairman, and secretary-treasurer.

11 **RESPONSE TO ADMISSION NO. 21:** Deny.

12 **REQUEST FOR ADMISSION NO. 22:** Admit that Association members did not elect
13 a lateral manager as set forth in Idaho Code § 42-1302.

14 **RESPONSE TO ADMISSION NO. 22:** Deny.

15 **REQUEST FOR ADMISSION NO. 23:** Admit that the Association has failed to
16 provide annual assessment notices to each of its members by April 15 of each year, as required by
17 Idaho Code § 42-1304.

18 **RESPONSE TO ADMISSION NO. 23:** Admit.

19 **REQUEST FOR ADMISSION NO. 24:** Admit that the predecessor-in-interest to the
20 Property did not pay Association dues for years 2004 and 2005.

21 **RESPONSE TO ADMISSION NO. 24:** Admit, only for the reason that timely billings
22 were not provided to him, but that billings in arrears were sent to all members for such years.

23 **REQUEST FOR ADMISSION NO. 25:** Admit that per the 1949 Rockwell v. Coffin
24 decree, attached hereto as Exhibit A, Irvin E. Rockwell was ordered to maintain the Rockwell By-
25 Pass from the entrance thereof at the entrance crib therefore to its discharge into the Broadford
26 Slough stream.

RESPONSE TO ADMISSION NO. 25: Admit.

REQUEST FOR ADMISSION NO. 26: Admit that an Idaho Department of Water
Resources' condition of approval for water right nos. 37-833D, 37-833F, 37-833H, 37-833K, 37-

1
2 833P, 37-833Q and 37-833R is that "Rockwell By-Pass owners must maintain the by-pass for the
3 entire length of the by-pass capable of carrying 17.36 cfs of water during the irrigation season."

4 RESPONSE TO ADMISSION NO. 26: Admit.

5 REQUEST FOR ADMISSION NO. 27: Admit that the Property's surface water rights
6 (water right nos. 37-537B and 37-538B) do not contain a condition of approval that "Rockwell
7 By-Pass owners must maintain the by-pass for the entire length of the by-pass capable of carrying
8 17.36 cfs of water during the irrigation season."

8 RESPONSE TO ADMISSION NO. 27: Admit.

9 REQUEST FOR ADMISSION NO. 28: Admit that the Plaintiff has not provided
10 consent to Association membership.

11 RESPONSE TO ADMISSION NO. 28: Admit, solely because membership in the
12 Association was voluntary at the time of its formation, and no consent has been sought of the
13 Plaintiff for Association membership.

14 *The Association reserves the right to supplement any answers and responses in*
15 *this Response to Request for Discovery in accordance with the Idaho Rules of Civil*
16 *Procedure, and any and all pre-hearing orders issued by the court in this matter.*

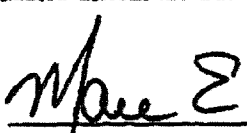
17 DATED this 22 day of February, 2012.

18 VERIFICATION

19 STATE OF IDAHO)
20 County of Blaine) .ss

21 MARC REINEMANN, being duly sworn, upon oath deposes and says:

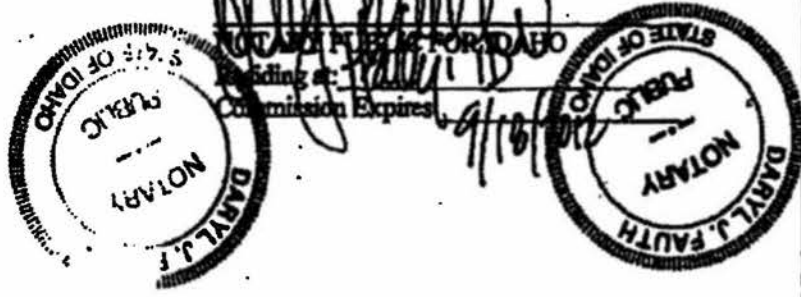
22 That he is the Secretary of the Plaintiff in the above-entitled action, that he has read the
23 foregoing Defendant's Responses to Plaintiff's First Set of Requests for Admissions, knows the
24 contents thereof, and that the statements contained therein are true to the best of his knowledge
25 and belief.

26 
MARC REINEMANN

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SUBSCRIBED AND SWORN TO before me this 27 day of February, 2012.

[Handwritten signature]




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CERTIFICATE OF SERVICE

The undersigned certifies that on the 22nd day of February, 2012, he caused a true and correct copy of the foregoing instrument to be served upon the following persons in the following manner:

Erika E. Malmen	<input type="checkbox"/> Hand Deliver
Cynthia L. Yee-Wallace	<input type="checkbox"/> U.S. Mail
PERKINS COIE LLP	<input checked="" type="checkbox"/> Overnight Courier
1111 W. Jefferson St., Ste. 500	<input type="checkbox"/> Facsimile Transmission 208-343-3232
Boise, ID 83702-5391	<input type="checkbox"/> Email EMalmen@perkinscoie.com
	CYeeWallace@perkinscoie.com



Gary D. Slette

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

BIG WOOD RANCH, LLC,)
Plaintiff,)
vs.)
WATER USERS' ASSOCIATION OF THE) Case No.
BROADFORD SLOUGH AND ROCKWELL) CV 2010-842
BYPASS LATERAL DITCHES, INC.,) 30(b)(6) DEPOSITION
Defendant.) OF DEFENDANT WATER
_____) USERS' ASSOCIATION OF
WATER USERS' ASSOCIATION OF THE) THE BROADFORD SLOUGH
BROADFORD SLOUGH AND ROCKWELL) AND ROCKWELL BYPASS
BYPASS LATERAL DITCHES, INC.,) LATERAL DITCHES, INC.,
Counterclaimant,) TESTIMONY OF:
vs.) MARC REINEMANN
BIG WOOD RANCH, LLC,) APRIL 16, 2012
Counterdefendant.)
_____)

REPORTED BY:

DIANA KILPATRICK, CSR No. 727, RPR

Notary Public

Page 22

1 '90s that there were issues then, and they tried to form
 2 an association at that time. The issue that they had at
 3 that time was there was a large impoundment of water
 4 behind a large beaver dam that was located on some
 5 property owned by the Tidwells. And I believe that an
 6 ordinance or a statute was written then that we call the
 7 Beaver Statute, that put the approval of the removal of
 8 the dams in the hands of Fish and Game.
 9 Q. Did that help solve the issues?
 10 A. I think it was a step towards it. I think
 11 that what they did was agree to try using a
 12 pond-leveling device.
 13 Q. Did you find that Fish and Game was
 14 responsive to members' complaints and requests?
 15 A. I think -- at that time you're talking
 16 about?
 17 Q. I think the Beaver Statute may have been
 18 1996.
 19 A. I think I mentioned I wasn't involved with
 20 the Association at that time, so I really can't tell
 21 you.
 22 Q. Now, you mentioned generally having issues
 23 with IDWR. Can you give me an example of the issues?
 24 A. Are you talking about the mid '90s?
 25 Q. I'm talking about the formation of the

Page 23

1 Association.
 2 A. We would always consult with Terry Blau, who
 3 was the stream bank specialist, and we would always get
 4 his --
 5 Q. Did you say Terry Blau was their stream bank
 6 specialist?
 7 A. Yes. I don't know if that's his correct
 8 title, but something along those lines.
 9 Q. The issues with IDWR, were they mostly
 10 related to maintenance of the slough?
 11 A. Yes.
 12 Q. Was it the members' opinion that IDWR was
 13 not doing what they should have been doing in terms of
 14 maintenance?
 15 A. IDWR really doesn't do maintenance.
 16 Q. Doesn't do maintenance generally or doesn't
 17 do maintenance on the slough?
 18 A. I think generally, but I don't know. My
 19 experience is with the slough, but I think generally
 20 they don't. I think their responsibility is to turn
 21 waters when called for and monitor those waters.
 22 Q. Does the Association now call IDWR to open
 23 the headgate at the slough where it departs from the Big
 24 Wood River?
 25 A. No. We do that ourselves.

Page 24

1 Q. Do you know who installed that headgate that
 2 you say you are now opening that's at the point where
 3 the slough departs from the Big Wood River?
 4 A. There have been a number of installations.
 5 The most recent one we repaired a few years ago, and
 6 replaced. I think that the concrete structure that
 7 currently exists was placed by the Army Corps of
 8 Engineers sometime in the 1960s.
 9 Q. So it's fair to say that that particular
 10 headgate has been worked on quite a bit since it was
 11 originally installed in or about the 1960s, we think.
 12 A. In at least the instance where we did a few
 13 years ago, yes.
 14 Q. Do you know any other instances where the
 15 Association has repaired the headgate there?
 16 A. The Association's only been in existence
 17 since 2002, so I couldn't speak before that. I do know
 18 that one of the water right holders replaced, I believe,
 19 the weir, or improved the weir, which we've also done in
 20 recent years.
 21 Q. How did the Association get its funding?
 22 A. Originally one of the members funded it for
 23 attorney's fees and for the very heavy maintenance that
 24 needed to go on in the beginning, and then we agreed to
 25 reimburse him over time. We assessed pretty heavily in

Page 25

1 the beginning to do that, and eventually found ourselves
 2 using those assessments to run the Association. So what
 3 we've been doing is simply forgiving him his annual dues
 4 to try and compensate for the fact that he funded it in
 5 the beginning.
 6 Q. When you say he, are you talking about
 7 Mr. Eccles?
 8 A. Yes.
 9 Q. And did Mr. Eccles have a stake in the
 10 formation of the Association?
 11 A. Yes. He has a water right.
 12 Q. And would you consider him one of the
 13 driving forces behind the forming of the Association?
 14 Would you consider him and people who helped him do it
 15 to be the driving forces?
 16 A. Yes.
 17 Q. Folks that were working on his behalf sort
 18 of spearheaded the effort, it sounds like.
 19 A. Yes. Myself and Brian Brockette.
 20 Q. Has Mr. Eccles been fully reimbursed?
 21 A. No.
 22 Q. Do you know how much the Association still
 23 owes Mr. Eccles?
 24 A. I would guess it's somewhere between five to
 25 \$10,000.

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1 Q. Does Mr. Brockett also work for the Flying
2 Hat Ranch?
3 A. No. I think you asked earlier, and I told
4 you he worked for the Window Rock Ranch.
5 Q. So he is employed by the Window Rock Ranch?
6 A. Yes. He is not employed by the Flying Hat
7 Ranch.
8 Q. I'm now looking at Article 2 in the Articles
9 of Incorporation, so we're back on page 1 of the
10 Articles of Incorporation. Article 2 indicates that
11 membership -- that the Association will issue
12 certificates of membership.
13 MR. SLETTE: Object to the form of the
14 question. I think that's misstating what that article
15 states.
16 MS. MALMEN: I can try and rephrase it.
17 BY MS. MALMEN:
18 Q. I'll read it. "The corporation shall be a
19 non-profit corporation complying with the Idaho
20 Non-Profit Corporation Act, and shall have certificates
21 of membership." I'm going to stop in the middle of the
22 sentence. Does the Association have certificates of
23 membership?
24 A. No. We have a book that was provided to the
25 Association, to the then secretary-treasurer, and they

Page 39

1 were never filled out.
2 Q. Okay. When you say you have a book, do you
3 mean you have a stack of blank certificates that were
4 never filled out? Is that what you mean?
5 A. Yes.
6 Q. In the discovery produced by the
7 Association, I was able to locate one membership
8 certificate, issued to someone identified as Specimen.
9 (Exhibit No. 4 Marked.)
10 BY MS. MALMEN:
11 Q. Exhibit 4 is Bates No. WUA000015. Can you
12 explain what this is?
13 A. It appears to be a specimen of a certificate
14 for the Broadford Ditch User's Association.
15 Q. Okay. But this wasn't issued to anyone, as
16 far as you know?
17 A. No.
18 Q. I'm going to hand you the copy that you
19 produced of the bylaws for the Association.
20 (Exhibit No. 5 Marked.)
21 BY MS. MALMEN:
22 Q. These bylaws are going to be Exhibit 5, and
23 they are numbered WUA0000 --
24 MR. SLETTE: Eight through 14.
25 MS. MALMEN: Thank you.

Page 40

1 BY MS. MALMEN:
2 Q. Marc, do these look like the current bylaws
3 for the Association?
4 A. They do.
5 Q. To your knowledge, has the Association
6 strictly followed all the provisions set forth in the
7 bylaws?
8 A. I don't read as fast as Gary. I'm going
9 take another minute to read. He probably is familiar
10 with legal documents.
11 Q. Take all the time you need.
12 A. Thank you. I would say we generally adhere
13 to these bylaws. I know that you have made, in some of
14 your discoveries, a mention of the facts that the
15 meetings are not always held before the last Monday in
16 March, and I will tell you the meetings were set by our
17 president, Ralph Girton, who was about 90 years old, and
18 he would travel sometimes, so we would meet at his
19 leisure, or leisure, whatever you want to use. I would
20 say that's one of them that I can tell you we may not
21 have strictly adhered to them. But I can also tell you,
22 contrary to places in Boise, our irrigation season
23 didn't begin until mid May.
24 Q. I'm looking now at the bylaws, Article 2,
25 Section 1, Admission to Membership, and essentially it

Page 41

1 says, "Membership in the corporation shall be governed
2 by the terms and the conditions of its Articles of
3 Incorporation." In the Articles of Incorporation,
4 Article 6, Membership, it indicates, "Interest in the
5 non-profit corporation shall be memberships, all of a
6 single class, evidenced by certificates of membership."
7 Is it your position that the admission to
8 membership, it complies with the Articles of
9 Incorporation?
10 A. We already stated that the certificates were
11 not issued.
12 Q. So how would a member know it was a member
13 if it did not receive a certificate?
14 A. We -- in the beginning, of course, I think
15 it was voluntary. We called meetings and told people
16 what we were doing as far as forming. There was a time
17 period where dues were not assessed. The
18 secretary-treasurer did not do what she was supposed to
19 do, and there were properties that had transferred in
20 the meantime, and when I then became
21 secretary-treasurer, I made it a point to find out who
22 owned the pieces of property, and therefore water
23 rights, and made a point of attempting or actually
24 contact each individual, to let them know who we were
25 and what we were.

Page 42

1 Q. So it would be fair to say that members
 2 found out that they were a member from a communication
 3 from you or someone else from the Association?
 4 A. Yes.
 5 Q. I'm now looking at the bylaws, Article 3,
 6 Section, Meetings. Annual Meetings, is the title of
 7 this section. Has the Association held an annual
 8 meeting every year since it was formed?
 9 A. I believe that we have, yes.
 10 Q. Was there an annual meeting in 2006?
 11 A. Do you have something that says that we
 12 didn't? Are you referring to something?
 13 Q. I'm referring, yes -- or the basis for my
 14 question is some March 19th -- excuse me, March 19, 2007
 15 minutes from one of the Association meetings, indicating
 16 that they were approving minutes from the 2005 annual
 17 meeting, and I wasn't able to locate any notice or
 18 meeting minutes for the 2006 meeting in the discovery
 19 materials you provided, so those two things lead me to
 20 believe there may not have been an annual meeting in
 21 2006. That's the basis for my question.
 22 A. I'm not sure I know. I'm sure I could try
 23 to find out.
 24 Q. Were you aware that Big Wood Ranch purchased
 25 its property known as 303 Broadford Road in July, 2006?

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1 A. Are you asking was I aware in July of 2006
 2 that they had bought it?
 3 Q. Yes.
 4 A. I don't think I was in July of 2006. I
 5 think I was aware some time that fall.
 6 Q. Some time after that?
 7 A. Yes.
 8 Q. How did you become aware?
 9 A. I'm a real estate broker. I think probably
 10 by word of mouth. I don't know that we had computerized
 11 systems at that point, so reporting wasn't as quick or
 12 as accurate.
 13 Q. When you say we --
 14 A. The Sun Valley Multiple Listing.
 15 Q. Your real estate --
 16 A. Right.
 17 Q. Did the Association have computerized
 18 records in 2006?
 19 A. You know, I wasn't secretary-treasurer
 20 during that timeframe, but I think that when I became --
 21 2007, 2008 is when we started to get this all in better
 22 shape, if you will. So I don't know that we did or
 23 didn't, but I would doubt it.
 24 Q. So when you started as secretary-treasurer,
 25 is it fair to say that the Association was fairly

Page 44

1 unorganized?
 2 A. Yes. It's fair to say. We had over -- it
 3 was formally organized, but the secretary-treasurer was
 4 not doing her job.
 5 Q. In the bylaws, Section 4, it's on page 2
 6 under Article 3, Notice of Meeting, do you know whether
 7 the Association has complied with this provision to
 8 provide notice of meetings?
 9 A. Yes. We've always attempted to do that,
 10 yes.
 11 Q. Have you attempted to do it, or have you
 12 done it?
 13 A. I don't know that things actually get
 14 delivered, as we talked about earlier.
 15 Q. I understand.
 16 A. So have we mailed in advance 10 days, to
 17 give 10 days, yes. Was proper notice given? I don't
 18 know.
 19 That's why I use the word attempt.
 20 Q. Do you usually or always confirm a quorum
 21 before you vote at Association meetings?
 22 A. Yes.
 23 Q. Is the quorum confirmed by the number of
 24 inches of surface water rights?
 25 A. Yes.

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1 Q. We touched on this a little bit earlier, but
 2 I have the question of, how is it that the Association
 3 determines its members? How do you know who is a member
 4 of the Association?
 5 A. That was -- those people who have valid
 6 water rights.
 7 Q. How do you get that information?
 8 A. We update our list periodically from the
 9 Water Master.
 10 Q. And when you say -- you get the records from
 11 the Water Master?
 12 A. Yes.
 13 Q. And when you say periodically, how often do
 14 you evaluate your membership list?
 15 A. I would say we go through a, you know, an
 16 attempt to discover every time we mail out notices. We
 17 try to ascertain whether or not properties have changed
 18 hands. We always ask our members to notify us if their
 19 property is going to be changing hands.
 20 Q. When the Association first formed, how did
 21 it communicate to members that they are members of an
 22 association?
 23 A. Well, it was voluntary. I think, as you saw
 24 in some of the documents, we obtained lists of water
 25 right holders and mailed out to all those people to

Page 46

1 encourage them to come to the organizational meetings.
 2 Q. So the letters that the Association mailed
 3 to water rights holders indicated that membership was
 4 voluntary?
 5 A. Yes.
 6 Q. At what point does membership in the
 7 Association become involuntary?
 8 A. Upon transfer of the property.
 9 Q. Do you know if reference to the Association
 10 is made in any of the transfer documents, the Purchase
 11 and Sale Agreement or otherwise?
 12 A. I would doubt that it is.
 13 Q. So a prospective purchaser of property would
 14 not have notice that the Association exists when they
 15 purchase the property.
 16 A. That's probably true.
 17 Q. First time that a new property owner would
 18 receive notice would be through some kind of
 19 communication from the Association, either a notice of a
 20 meeting or a letter. Would that be correct?
 21 A. Or perhaps a phone call.
 22 Q. Or a phone call. Okay. So once an owner of
 23 property joins the Association voluntarily, that member
 24 is binding all the successors in interest to his or her
 25 real property.

Page 47

1 MR. SLETTE: Is that a question? Do you
 2 want to rephrase it as a question?
 3 BY MS. MALMEN:
 4 Q. Is it true that owners of property bind
 5 future owners through their voluntary membership in the
 6 Association?
 7 A. By the Articles of Incorporation, that
 8 appears to be true, yes.
 9 Q. Where are you looking in the Articles of
 10 Incorporation?
 11 A. Article 6.
 12 Q. Membership?
 13 A. Membership. Yes.
 14 Q. And this is the same section that says the
 15 interest in the non-profit corporation shall be
 16 memberships, all of a single class, evidenced by
 17 certificates of membership. Correct?
 18 A. Same membership paragraph, yes.
 19 Q. While we're looking at this, I'm going to
 20 ask you a couple other things about this paragraph in
 21 the Articles, Article 6. The second sentence says,
 22 "Every owner in Idaho state water rights validly
 23 entitled to be conveyed through either the Broadford
 24 Slough lateral ditch or the Rockwell Bypass lateral
 25 ditch be shall be a member of a corporation." I believe

Page 48

1 you told me earlier that there are certain water rights
 2 holders that you believe are members of the Association,
 3 but that no longer have their water conveyed through the
 4 slough or the bypass. Is that correct?
 5 A. That's correct.
 6 Q. Have you read that decree?
 7 A. Yes.
 8 Q. We'll talk about that in a little bit.
 9 We'll have a chance to go over that. So for now, can we
 10 call them for ease of reference the Rockwell water
 11 rights holders?
 12 A. Rockwell Bypass saved water rights holders.
 13 Q. So the Rockwell Bypass saved water rights
 14 holders, these are the predecessors in interest --
 15 MR. SLETTE: I'll object to the form of the
 16 question. I think they would be successors.
 17 BY MS. MALMEN:
 18 Q. We're calling them Rockwell Bypass saved
 19 water rights holders?
 20 A. Correct.
 21 Q. And the Rockwell Bypass saved water rights
 22 holders are considered by the Association to be members.
 23 Correct?
 24 A. We have brought them into the Association,
 25 by virtue of the fact that they have an obligation to

Page 49

1 maintain the Rockwell Bypass.
 2 Q. When you say you have brought them into the
 3 Association, can you be more specific?
 4 A. They've participated in the past. They
 5 participated in the expense of the headgate, they have
 6 participated in the expense of the repair of the weir,
 7 and we formally said to them, There is ongoing
 8 maintenance. You really ought to be part of the ongoing
 9 maintenance of the Rockwell Bypass Ditch Users
 10 Association, and they've agreed to that.
 11 Q. So are all the Rockwell Bypass saved water
 12 rights holders members of the Association?
 13 A. They participate in the assessments and the
 14 maintenance of the slough. The distinction you're
 15 trying to do, I don't know if I could go there.
 16 Q. I think you just said that the Rockwell
 17 saved water rights holders participate in the
 18 maintenance of the slough. Is that what you meant to
 19 say, or did you perhaps mean to say they participate in
 20 the maintenance of the bypass?
 21 A. They participate in the maintenance of the
 22 slough and the bypass.
 23 Q. Okay. Are they paying dues?
 24 A. Yes.
 25 Q. To the Association?

Page 110

1 voluntarily agreed?

2 A. They've all paid, yes.

3 Q. And they're current, I believe you said.

4 A. Yes.

5 Q. Are you ever involved in meetings that

6 involve water users in the Broadford Slough, Rockwell

7 Bypass area, that aren't official Broadford Slough and

8 Rockwell Bypass Ditch Users' Association meetings?

9 A. Say that again.

10 Q. Are there -- do you participate in meetings

11 that involve water users from the slough or the bypass,

12 that are not official Association meetings?

13 A. Do I ever meet with individuals who have

14 water rights on the slough? Is that what you're trying

15 to say?

16 Q. In a group setting.

17 A. In a group setting, no.

18 Q. The reason I asked is, what we just talked

19 about right before the break, these minutes are entitled

20 Owners of the Water Rights of the Broadford Slough or

21 Rockwell Bypass. It's not titled minutes of the -- so

22 I'm just wondering, are there two different

23 organizations?

24 A. There's only one.

25 Q. We're only talking about one organization

Page 111

1 here.

2 A. Yes. There's only one. As we like to call

3 it, the one and only.

4 Q. Before the Association was formed formally,

5 did you provide notice to relevant water users that the

6 Association was going to form?

7 MR. SLETTE: I'll object to the form. I

8 think it's been asked and answered, that he testified

9 that they obtained the addresses from the Water Master

10 and then mailed those to all those people. If you can

11 elaborate to anything different, you can answer.

12 BY MS. MALMEN:

13 Q. Was that before the Association was formed,

14 or after, do you think?

15 A. What's before or after?

16 Q. The letter that you sent to potential

17 members indicating that they have been identified by the

18 Water Master as --

19 A. Before.

20 Q. And then at that time, folks that responded,

21 it was a voluntary process?

22 A. Yes.

23 Q. And I believe that you indicated that it

24 becomes involuntary once a property is sold and there's

25 a new owner, whose predecessor in interest was a member?

Page 112

1 A. Right.

2 MS. MALMEN: I think that's it.

3 (Deposition Was Concluded at 1:00 p.m.)

4 (Signature Was Requested.)

5 * * * * *

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Page 113

1 CERTIFICATE OF WITNESS

2

3 I, MARC REINEMANN, being first duly sworn, depose

4 and say:

5 That I am the witness named in the foregoing

6 deposition, consisting of pages 1 through 112;

7 that I have read said deposition and know the

8 contents thereof; that the questions contained

9 therein were propounded to me; and that the

10 answers contained therein are true and correct,

11 except for any changes that I may have listed on

12 the Change Sheet attached hereto.

13 DATED this ____ day of _____, _____.

14

15 _____

16 MARC REINEMANN

17 SUBSCRIBED AND SWORN to before me this

18 ____ day of _____, _____.

19

20 _____

21 NAME OF NOTARY PUBLIC

22

23 RESIDING AT _____

24 MY COMMISSION EXPIRES _____

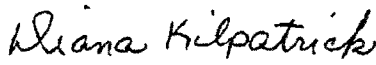
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Page 114

1 CHANGE SHEET FOR MARC REINEMANN
 2 Page ___ Line ___ Reason for Change
 3 Reads
 4 Should Read
 5 Page ___ Line ___ Reason for Change
 6 Reads
 7 Should Read
 8 Page ___ Line ___ Reason for Change
 9 Reads
 10 Should Read
 11 Page ___ Line ___ Reason for Change
 12 Reads
 13 Should Read
 14 Page ___ Line ___ Reason for Change
 15 Reads
 16 Should Read
 17 Page ___ Line ___ Reason for Change
 18 Reads
 19 Should Read
 20 Page ___ Line ___ Reason for Change
 21 Reads
 22 Should Read
 23
 24 Please use a separate sheet if you need
 25 more room.

WITNESS SIGNATURE _____

Page 115

1 REPORTER'S CERTIFICATE
 2
 3 I, DIANA KILPATRICK, CSR No. 727, Certified
 4 Shorthand Reporter, certify;
 5 That the foregoing proceedings were taken before
 6 me at the time and place therein set forth, at which
 7 time the witness was put under oath by me;
 8 That the testimony and all objections made were
 9 recorded stenographically by me and were thereafter
 10 transcribed by me, or under my direction;
 11 That the foregoing is a true and correct record
 12 of all testimony given, to the best of my ability;
 13 I further certify that I am not a relative or
 14 employee of any attorney or party, nor am I financially
 15 interested in the action.
 16 IN WITNESS WHEREOF, I set my hand and seal this
 17 18th day of April, 2012
 18
 19 
 20 _____
 21 DIANA KILPATRICK, CSR, RPR
 22 Notary Public
 23 Hailey, Idaho 83333
 24 My Commission expires January 13, 2017
 25

Real Estate Purchase And Sale Agreement



Purchase Price \$ 5,000,000.00 Five Million Dollars

Buyer: Marc Richards and/or Assignees
Seller: Wenner (as per M.L.S.#:04-207684) or current owner or record
Property Address: 303 Broadford Road
Legal Description: Tax Lot 0949

City: _____ County: Blaine State: Idaho

Buyer hereby offers to purchase the above described Property on the following terms and conditions:

Terms: The purchase price is payable as follows:
\$ 3,000,000.00 Cash, cashier's check, loan proceeds, or certified funds at closing, including Earnest Money
\$ 2,000,000.00 Buyer Financing - See Financing Contingency "Other Financing Terms"
\$ 0.00 Other - See Financing Contingency "Other Financing Terms"
\$ 5,000,000.00 Total Purchase Price - Not including closing costs

Earnest Money \$ 100,000.00 One Hundred Thousand Dollars

Evidenced By:
 Personal Check
 Cashier's Check
 Promissory Note

To be Held By:
 Listing Broker
 Selling Broker
 Title Company

Other Remarks:
Earnest Money shall be wired to an interest-bearing "Sun Valley Real Estate-Real Estate Trust Account" within 2 business days following mutual acceptance.

Earnest Money to be deposited in a trust account upon written acceptance of this Agreement by all parties.

Offer Expires On: Date: 06/12/2006 Time: Noon Mon, June 12, 2006 (MDT)

Closing Date: Thirty (30) days following mutual acceptance of this Agreement
Possession Date: On closing date OR Other:

Responsible Closing Broker / Office: Dennis Hanggl/Sun Valley Real Estate LLC
Responsible Closing Agency / Title Co: to be designated by Seller upon Seller's acceptance of this Agreement.

New Construction or Recent Improvements: Yes No
If "YES", see Standard Terms, paragraph 6, of this Agreement.

Inspection Contingency Yes No
1) This offer is contingent upon Buyer's acceptance of the condition of the Property, subject to paragraph 7, below. If Buyer does not object to the condition of the Property in writing on or before 15 business days following mutual acceptance of this Agreement ("inspection contingency period"), pursuant to paragraph 6, below, this inspection contingency shall be deemed released.
2) Buyer shall have the right to, and is strongly advised to, conduct inspections, tests, surveys and other studies ("inspections") at Buyer's sole cost to confirm all information provided to Buyer, and to thoroughly inspect the Property.
3) Square footage verification: Buyer is aware that any reference to the square footage of the Property or its improvements is approximate. Alternative methods of measurement and calculation may vary significantly. If square footage is material to the Buyer, Buyer must verify same during the inspection period.
4) Water Rights verification: It is strongly advised that the Buyer contact a knowledgeable attorney of the Buyer's choice, experienced in water law, to advise the Buyer of the validity, quality, and quantity of any water right acquired with real estate described in this Agreement. Buyer must verify same during the inspection period.
5) Buyer to select own professionals with appropriate qualifications to conduct all inspections and verifications.
6) Seller shall provide reasonable access for such inspections; Buyer shall indemnify Seller and hold Seller harmless from all injury, loss or liability regarding such inspections.

Inspection Contingency - Continued

Document # and: MR-0P2
Date of Document: 06/10/2006
Buyer's Initials: _____ Date: _____
Seller's Initials: _____ Date: _____

Inspection Contingency - Continued

7) THIS INSPECTION CONTINGENCY MAY NOT BE USED BY BUYER TO OBJECT TO ANY MATTER OTHER THAN A MATERIAL CONDITION OR DEFECT UNKNOWN TO BUYER AT THE TIME THIS AGREEMENT WAS SIGNED.

8) If Buyer objects to the condition of the Property, Buyer shall, prior to the expiration of the inspection contingency period, give one of the following written notices to Seller:

A. Notice of the previously unknown material condition(s) and/or defect(s) to which Buyer objects and declaring this Agreement null and void, in which case the Earnest Money shall be refunded to Buyer (less any unpaid expenses incurred on behalf of Buyer pursuant to the "Costs To Be Paid By" section); or

B. Notice of the previously unknown material condition(s) and/or defect(s) to which Buyer objects and Buyer's desired remedy shall be set forth on a Contingency Release form, in which case this Agreement shall remain in effect, subject to sub-paragraph C, below.

C. Upon receipt of notice under paragraph B, above, Seller shall have 3 business days to give Buyer written notice (by signing the Buyer's Contingency Release form) that Seller will correct such condition(s) and/or defect(s) prior to closing. If Seller does not sign the Buyer's Contingency Release form, Buyer may, within 3 business days following Seller's notice period, above, release the contingency in writing, or this Agreement shall be null and void, in which case the Earnest Money shall be refunded to Buyer (less any unpaid expenses incurred on behalf of Buyer pursuant to the "Costs To Be Paid By" section). Buyer's closing of the transaction shall constitute acceptance of the condition of the Property, unless otherwise stated in writing signed by both parties.

Lead-Based Paint Disclosure / Contingency The subject Property is "Target Housing" (built prior to 1978) regarding lead-based paint and/or lead-based paint hazards: Yes No If "YES", Buyer shall be provided with Seller's completed and signed "Disclosure of Information and Acknowledgement: Lead-Based Paint and / or Lead-Based Paint Hazards" ("Disclosure") and a copy of the pamphlet "Protect Your Family From Lead in Your Home" ("Pamphlet") no later than 3 business days following acceptance of this Agreement by both parties, and one of the following boxes must be checked:

Buyer shall have the unconditional right to cancel this Agreement upon receipt of Seller's Disclosure and Pamphlet and shall be allowed not less than ten (10) days after receipt of these documents to conduct an inspection for lead-based paint hazards. Should Buyer elect to conduct a lead-based paint inspection following Buyer's receipt of the Disclosure and Pamphlet, a "Lead-Based Paint Inspection Contingency Addendum" shall be attached hereto;

OR

Buyer hereby acknowledges receipt of the Disclosure and Pamphlet and hereby waives the right to conduct a lead-based paint inspection.

Financing Contingency

Yes No

This offer is contingent upon Buyer securing the following financing:

Assume Existing Loan:

New Loan:

Amount: \$

Years:

Type of Loan: Conv.

Maximum % Rate:

Maximum Points:

FHA

Fixed Rate

Institutional Lender

VA

Adj. Rate

Private Lender

Other Financing Terms: Buyer shall execute a note and deed of trust in favor of Seller in the amount of One Million Five Hundred Thousand Dollars. Said principal amount shall be due and payable one (1) year following the Closing Date plus interest at the rate of 6% per annum; there shall be no prepayment penalty.

Buyer agrees to make a best effort to obtain such financing and to make written application to the lender within ___ business days after acceptance of this Agreement by both parties.

Property must appraise at no less than the purchase price.

Preliminary Approval: Buyer shall, on or before ___

provide Seller with a letter from Buyer's lender evidencing preliminary approval of Buyer's ability to qualify for the loan amount and terms set forth above, subject only to such reasonable and customary conditions as the lender typically imposes on such preliminary approval letters.

If Buyer has not released this contingency in writing on or before ___

this Agreement shall terminate and the Earnest Money shall be refunded to Buyer (less any unpaid expenses incurred on behalf of Buyer pursuant to the "Costs To Be Paid By" section of this Agreement).

Document # dnw-NR-BF2

Buyer's Initials *JW*

Date *6/10/06*

Seller's Initials _____

Date _____

Date of Document: 06/10/2006

Buyer's Initials *JW*

Date *6/10/06*

Seller's Initials _____

Date _____

Sale of Buyer's Property Contingency

Yes No

This offer is contingent on the closing of a sale of Buyer's property located at:

Listed with: _____ Listing Agent: _____ Phone: _____
If Buyer has not released this contingency in writing on or before _____

this Agreement shall terminate and the Earnest Money shall be refunded to Buyer (less any unpaid expenses incurred on behalf of Buyer pursuant to the "Costs To Be Paid By" section of this Agreement).

Seller's Right to Accelerate Buyer's Contingency Releases

Yes No

Should Seller receive another acceptable offer to purchase, prior to Buyer's contingencies being released, Seller shall give Buyer written notice of such new offer. In the event the Buyer does not release all contingencies in writing within _____ business days after the receipt of such notice then this Agreement shall terminate and the Earnest Money shall be returned to Buyer (less any unpaid expenses incurred on behalf of Buyer pursuant to the "Costs To Be Paid By" section of this Agreement). In the event the Buyer does release the contingencies, the Buyer shall proceed to purchase the Property under the remaining terms and conditions of this Agreement, notwithstanding that the terms of the new offer may be more or less favorable.

Other Contingencies

Yes No See Addendum(s)

General Due Diligence Contingency. In addition to Buyer's Inspection Contingency that shall pertain only to the physical condition of the Property's improvements, Buyer's offer herein is further subject to Buyer's review and approval of a feasibility study, which includes but shall not be limited to Buyer's review and approval of all documentation and any other characteristics of Property. On or before the release deadline date Buyer may elect to terminate this Agreement for any unspecified reason whatsoever without penalty, and all Earnest Money shall be returned to Buyer.

If Buyer has not released this / these contingency(ies) in writing on or before fifteen (15) business days following mutual acceptance of this Agreement, this Agreement shall terminate and the Earnest Money shall be refunded to Buyer (less any unpaid expenses incurred on behalf of Buyer pursuant to the "Costs To Be Paid By" section of this Agreement).

Additional Terms

Yes No See Addendum(s)

- (1) Within three (3) business days following mutual acceptance, Seller shall provide Buyer with any and all unrecorded maps, surveys, reports and/or any other studies or documentation (including water rights) pertinent to Property that are in Seller's possession or accessible to Seller;
- (2) Buyer & Seller acknowledge that the guest house is not included in the purchase and will be removed by Seller prior to Closing Date.

Document # 066-MR-BF2
Date of Document: 06/10/2006

Buyer's Initials: *JW* Date: *6/10/06*
Buyer's Initials: *GW* Date: *6/10/06*

Seller's Initials: _____ Date: _____
Seller's Initials: _____ Date: _____

Included Items (In addition to Standard Terms, paragraph 4)	Excluded Items
All existing wheel lines and other irrigation equipment, all water rights.	All remaining Seller's personal property including artwork and furnishings.

Costs To Be Paid By	Appraisal	Standard Title Ins.	Closing Escrow Fee	Assess ments	Well Insp.	Septic Insp.	Septic Pumping	Other:
Buyers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sellers	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Share Equally	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
N/A	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
See Addl. Terms:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Broker working with Seller Broker's Name: Dennis Hanggi Listing Agent: Tom Drougas Brokerage: Sun Valley Real Estate LLC Mailing Address: PO Box 2277 City, State, Zip: Ketchum, ID 83340 Office Phone: 208-726-8000 Fax: 208-726-1717 E-Mail: info@sunvalleyrealestate.com	Broker working with Buyer Broker's Name: Dennis Hanggi Selling Agent: Dennis Hanggi Brokerage: Sun Valley Real Estate LLC Mailing Address: PO Box 2277 City, State, Zip: Ketchum, ID 83340 Office Phone: 208-726-8000 Fax: 208-726-1717 E-Mail: info@sunvalleyrealestate.com
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REPRESENTATION CONFIRMATION AND ACKNOWLEDGMENT OF DISCLOSURE
 Check one (1) box in Section 1 below and one (1) box in Section 2 below to confirm that in this transaction, the brokerage(s) involved had the following relationship(s) with the BUYER(S) and SELLER(S).

- Section 1:**
- The brokerage working with the BUYER(S) is acting as an AGENT for the BUYER(S).
 - The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S), without an ASSIGNED AGENT.
 - The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S) and has an ASSIGNED AGENT acting solely on behalf of the BUYER(S).
 - The brokerage working with the BUYER(S) is acting as a NONAGENT for the BUYER(S).
- Section 2:**
- The brokerage working with the SELLER(S) is acting as an AGENT for the SELLER(S).
 - The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S), without an ASSIGNED AGENT.
 - The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S) and has an ASSIGNED AGENT acting solely on behalf of the SELLER(S).
 - The brokerage working with the SELLER(S) is acting as a NONAGENT for the SELLER(S).

Each party signing this document confirms that he has received, read and understood the Agency Disclosure Brochure adopted or approved by the Idaho real estate commission and has consented to the relationship confirmed above. In addition, each party confirms that the brokerage's agency office policy was made available for inspection and review.
EACH PARTY UNDERSTANDS THAT HE IS A "CUSTOMER" AND IS NOT REPRESENTED BY A BROKERAGE UNLESS THERE IS A SIGNED WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.

Standard Terms. All parties are advised to carefully review the following:

- 1) **Withdrawal of Offer/Counteroffer** - By delivery of a written notice of withdrawal to the office of the broker working with the Seller or Offeree (whether Buyer or Seller), (A) Buyer can withdraw this offer at any time prior to Buyer's receipt of Seller's written acceptance of this Agreement, and (B) an Offeror (whether Buyer or Seller) may withdraw his Counteroffer at any time prior to Offeror's receipt of Offeree's written acceptance of such Counteroffer.
- 2) **Closing Date** - On or before the closing date, Buyer and Seller shall deposit with the closing agency all funds and instruments necessary to complete the sale. Closing means the date on which all documents are either recorded or accepted by an escrow agent and the sale proceeds are available to Seller. Taxes, insurance, dues, assessments (using the last available assessment as a basis), rent, interest and reserves, liens, encumbrances or obligations assumed and utilities shall be pro-rated as of the Closing Date.

Standard Terms - Continued

Document # 0610-MR-0F2 Buyer's Initials Date 6/10/06 Seller's Initials Date
 Date of Document: 06/10/2006 Buyer's Initials Date 6/12/06 Seller's Initials Date

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Version 3.2 - 05/2005

Standard Terms - Continued

- 3) **Closing Costs** - Costs in addition to those listed may be incurred by Buyer and Seller. Unless otherwise agreed herein, or provided by law or required by lender, Buyer shall purchase Seller's reserve account if Seller's loan is assumed.
- 4) **Included Items** - If present at time of offer, all items attached, including but not limited to, floor coverings, attached television antennae, attached plumbing, bathroom and lighting fixtures, window screens, window coverings, screen doors, storm windows, storm doors, garage door opener(s), transmitter(s), exterior trees, plants, shrubbery, water heating apparatus and fixtures, attached fireplaces and free-standing fireplaces, awnings, ventilating, cooling and heating systems, built-in and drop-in ranges (but excluding all other ranges), any alarms (burglar, fire, etc.), fences and gates, fuel tanks, irrigation fixtures and equipment, any and all water and water rights, and all ditches and ditch rights that are appurtenant thereto shall be included in the sale unless otherwise provided herein.
- 5) **Seller's Property Disclosure** - If required by Title 55, Chapter 25 Idaho Code, Seller shall within ten (10) calendar days after the execution of this Agreement provide to the Buyer a "Seller's Property Disclosure Form" and Buyer shall have three (3) business days from receipt of the disclosure report to waive or not waive the right to rescind the offer based upon information contained in the report, a copy of which shall be delivered upon execution to Seller.
- 6) **New Construction or Recent Improvements** - If Residential Property is newly constructed or has a recent improvement of over \$2,000.00, the General Contractor is required by Title 45, Chapter 5, Idaho Code, to provide certain disclosures to the prospective residential real property purchaser. If applicable, Buyer should obtain such completed forms from the General Contractor.
- 7) **Existing Loans** - Within three (3) business days of acceptance, Seller shall provide Buyer with all Notes and Deeds of Trust or other financing documents to be assumed or taken subject to. Within five (5) business days of receipt thereof, Buyer shall in writing notify Seller of his / her approval or disapproval of the terms of said documents. Buyer's approval shall not be unreasonably withheld.
- 8) **Definitions** - "Business Day" shall mean Monday through Friday, excluding Saturday and Sunday, and excluding holidays as defined by Idaho Code, Section 87-5302. "Notice(s)" shall mean a written document specifying the necessary information. "Delivery" shall mean transmittal of information by mail, facsimile transmission, courier, or hand delivery, but shall not mean e-mail, to the addresses stated herein. "Receipt" shall mean possession of the item of information by the named recipient or within the office of the appropriate broker. "Written Acceptance" shall mean receipt of a document signed and dated by all undersigned parties, specifying a certain Offer or Counteroffer. "Signed" shall mean a document containing the original, facsimile, or photocopied signature of a party, any of which shall be binding on the signatory.
- 9) **Counterparts / Facsimile Transmission** - This Agreement may be executed in one or more counterparts, each is deemed to be the original hereof, and all of which together constitute one and the same instrument. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission shall be the same as personal delivery of the original. At the request of either party, or the Closing Agency, the parties will confirm facsimile transmitted signatures by signing an original document.
- 10) **Standard Title Insurance** - The Seller shall within a reasonable time after closing furnish to the Buyer a title insurance policy in the amount of the purchase price of the property showing marketable and insurable title subject to the liens, encumbrances and defects elsewhere set out in this Agreement to be discharged or assumed by the Buyer. Prior to closing the transaction, the Seller shall furnish to the Buyer a commitment of title insurance policy showing the condition of the title to said property. Buyer shall have either five (5) business days from the receipt of the commitment or until twenty-four (24) hours prior to the closing, whichever first occurs, within which to object to the condition of the title as set forth in the commitment. If the Buyer does not object, the Buyer shall be deemed to have accepted the conditions of the title.
- 11) **Extended and Other Coverage Title Policies** - A standard policy of title insurance does not cover certain potential problems or risks such as liens (i.e., a legal claim against property for payment of some debt or obligation), boundary disputes, claims of easement, and other matters of claims if they are not of public record at the time of closing. However, under Idaho law such potential claims against the property may have become a legal obligation before the purchase of the home and may not yet be of public record until after the purchase. Title insurance companies may be able to issue an "extended coverage" policy for an additional premium. In addition to the premium for an extended coverage title policy, there may be other costs involved, i.e., survey or additional closing fees. Such a policy may protect the Buyer against such problems. It is recommended that the Buyer talk to a title insurance company about what it offers in the way of extended coverage and other coverages, that may be appropriate. Only the policy itself shows exactly what type of coverage is offered, so contact a title company for particulars.

Standard Terms - Continued

Document # dmh-MR-DF2	Buyer's Initials <i>JW</i>	Date <i>6/13/06</i>	Seller's Initials _____	Date _____
Date of Document: 06/10/2006	Buyer's Initials <i>JW</i>	Date <i>6/13/06</i>	Seller's Initials _____	Date _____

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Standard Terms - Continued

- 12) Title Conveyance - Title of Seller is to be conveyed by warranty deed, unless otherwise provided, and is to be marketable and insurable except for rights reserved in federal patents, state or railroad deeds, building or use restrictions, building and zoning regulations and ordinances of any governmental unit, and rights of way and easements established or of record. Liens, encumbrances or defects to be discharged by Seller may be paid out of purchase money at date of closing. No liens, encumbrances, defects, except those which are to be discharged or assumed by Buyer or to which title is taken subject to, shall exist unless otherwise specified in this Agreement.
- 13) Default by Buyer - If the Buyer defaults in the performance of this Agreement, Seller will have the option of (1) accepting the Earnest Money as liquidated damages and this Agreement shall terminate; or (2) pursuing any other lawful right or remedy to which the Seller may be entitled, which may include specific performance. In the case of option (1), Seller shall make demand in writing upon the holder of the Earnest Money, upon which demand said holder shall pay from the Earnest Money any unpaid costs incurred by or on behalf of Seller and Buyer related to the transaction, as set forth in the "Costs To Be Paid By" section above, and said holder shall pay any remaining balance of the Earnest Money to the Seller. Seller and Buyer specifically acknowledge and agree that if Seller elects to accept the Earnest Money as liquidated damages, such shall be the Seller's sole and exclusive remedy, and such shall not be considered a penalty or forfeiture.
- 14) Default by Seller - It is agreed that if the title of said property is not marketable, or cannot reasonably be made so within twenty (20) business days after notice containing a written statement of defects is delivered to the Seller, or if the Seller defaults in the performance of this Agreement including Seller's obligations (if any) to correct defects pursuant to Paragraph 8) C of the Inspection Contingency, the Buyer has the option of (1) having the Earnest Money returned to the Buyer and this Agreement shall terminate; or (2) pursuing any other lawful right or remedy to which the Buyer may be entitled, including specific performance. In the case of option (1), the Buyer shall make demand in writing upon the holder of the Earnest Money. Upon such demand, and provided there is no dispute as to the Seller's default, said holder shall refund the Earnest Money to the Buyer. Seller shall pay for the unpaid costs incurred of title insurance and escrow fees, if any, and any unpaid costs incurred by or on behalf of the Seller and the Buyer related to the transaction, as set forth in this Agreement.
- 15) Interpleader - If a dispute arises as to Buyer's or Seller's default and entitlement to the Earnest Money, and such dispute is not resolved within ten (10) business days of a demand for payment of the Earnest Money by the Buyer or the Seller, the holder of the Earnest Money shall file an interpleader action in a court of competent jurisdiction, and shall recover its attorneys fees and costs therefore, as provided by Idaho Code Section 5-321.
- 16) Attorney's Fees - If either party initiates or defends any arbitration or legal action or proceedings, which are in any way connected with this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and attorneys' fees (including such costs and fees on appeal and in any bankruptcy proceeding).
- 17) Risk of Loss - Prior to closing of this sale, all risk of loss shall remain with Seller. In addition should the Property be materially damaged by fire or other cause prior to the closing, this Agreement shall be voidable at the option of the Buyer. Buyer shall give written notice of intent to void the Agreement to Seller or Seller's Agent and shall be entitled to a full refund of the Earnest Money.
- 18) Entire Agreement - This Agreement contains the entire agreement of the parties respecting the matters herein set forth and supersedes any prior agreements or negotiations respecting such matters. No agreement, representations, or warranties including, without limitations, any warranty of habitability, not expressly set forth herein shall be binding on either party.
- 19) Time is of the Essence in this Agreement.
- 20) Agent Representations - The Agents representing the Buyer and Seller in this transaction relay information to Buyers and Sellers that has been received from third parties. However, Agents do not make any representations regarding flood plain, wetlands, avalanche zone, hazardous waste, environmental or health hazards, code compliance, survey data, finished square footage, property size, zoning or other physical factors nor do the Agents make any representations regarding law or taxation, unless specifically set forth in writing in this Agreement. The Buyer and Seller specifically waive all claims against the Agents regarding any of these matters which are not specifically included in this Agreement. It may be diligent and prudent for the Seller and/or Buyer to employ the services of qualified independent professionals who perform services or provide opinions regarding these matters, and the Agents may, during the course of this transaction, identify such individuals or entities. However, Agents are not warranting in any way the services or opinions provided by such individuals or entities, and the Buyer and Seller specifically waive any and all claims against the Agents regarding such identification.

Standard Terms - Continued

Document # dmh-MR-8P2	Buyer's Initials <i>JW</i>	Date <i>6/10/06</i>	Seller's Initials _____	Date _____
Date of Document: 06/10/2006	Buyer's Initials <i>JW</i>	Date <i>6/10/06</i>	Seller's Initials _____	Date _____

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Standard Terms - Continued

21) FIRPTA - Tax Withholding at Closing - The parties agree that they shall fully comply with the Foreign Investment in Real Property Tax Act ("FIRPTA"). If Seller is not a "foreign person" under FIRPTA, at closing, Seller shall sign an affidavit stating the same. If Seller is a "foreign person" under FIRPTA, at closing the Closing Agent shall withhold from the sale proceeds the appropriate tax amount and submit such amount and any required forms to the Internal Revenue Service. Seller hereby indemnifies and holds Buyer and Closing Agent harmless from any and all liability, including attorney's fees, related to Seller's taxes under FIRPTA, or otherwise, which indemnification and hold harmless shall survive closing of the transaction.

THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD, THE PARTIES ARE ADVISED TO SEEK THE ADVICE OF AN ATTORNEY.

In the event this form is received by electronic transmission and / or email, the parties hereto acknowledge that they have not changed or altered the content of this form template.

Buyer(s) Acceptance Buyer hereby acknowledges having read this Agreement in its entirety, including the Standard Terms, and having received a copy of this Agreement. Addendum(s) attached

Seller's Signature

[Signature]
Signature _____ Date *6/16/06*
Printed Name: Marc Richards
Physical Address:
Mailing Address: Box 9180
City, State, Zip: Seattle, WA 98109-0180
Home Phone: _____ Fax: _____
Business Phone: 206-383-7011 Fax: 206-217-9325
E-Mail: _____

Buyer's Signature

[Signature]
Signature _____ Date _____
Printed Name:
Physical Address:
Mailing Address:
City, State, Zip:
Home Phone: _____ Fax: _____
Business Phone: _____ Fax: _____
E-Mail: _____

Seller(s) Acceptance On the specified date, Seller acknowledges having read this Agreement in its entirety, including the Standard Terms, and Seller hereby approves and accepts the offer to purchase set forth in the above Agreement.

"AS-IS" Subject to attached Counteroffer

Seller agrees to carry out all of the terms hereof on the part of the Seller and acknowledges receipt of a true copy of this Agreement signed by all parties.

Seller's Signature

[Signature]
Signature _____ Date _____
Printed Name:
Physical Address:
Mailing Address:
City, State, Zip:
Home Phone: _____ Fax: _____
Business Phone: _____ Fax: _____
E-Mail: _____

Seller's Signature

On behalf of Jann S. Wenner and Jane Wenner, Co-Owner
[Signature]
Signature _____ Date _____
Printed Name:
Physical Address:
Mailing Address:
City, State, Zip:
Home Phone: _____ Fax: _____
Business Phone: _____ Fax: _____
E-Mail: _____

Addendum # 1

Date of Addendum:



This is an ADDENDUM to the Real Estate Purchase and Sale Agreement, Identified as:
Document # dmh-MR-BF2

Date of Document: 06/10/2006

Page 1 of 1

Property Address: 303 Broadford Road

Buyer(s): Marc Richards or assigns

Seller(s): Jann Wenner

The undersigned Parties hereby agree as follows:

1. The Guest House shall be removed by Seller ~~on or before August 30, 2006.~~ ^{promptly} Following removal of the Guest house the Seller shall repair any damage caused by the removal of the guest house and reclaim the landscape to a condition similar to the reclamation of landscape adjacent to the swimming pool. Exceptions to the reclamation and replacement may be removal of some aspen trees, approximately those marked on the property prior to the date of release of Inspection Contingency and Other Contingencies.

~~Seller shall use reasonable efforts to remove the Guest House and reclaim damaged landscape as soon as possible. If Seller cannot complete these actions by August 30, 2006, this date shall be extended to September 30, 2006.~~

2. The Title Company shall be Blaine County Title Company.

AS SOON AS REASONABLY POSSIBLE
after Seller obtains permit approval
from the planning and zoning
commission to relocate it, but
in no event later than November
30, 2007.

This ADDENDUM, upon its execution by both parties, is made an integral part of the aforementioned Agreement. In the event of any conflict or inconsistency between the provisions of this Addendum and the aforementioned Agreement, the provisions of this Addendum shall control in all respects.

Buyer's Signature

Buyer's Signature

X _____
Signature Date

X _____
Signature Date

Seller's Signature

Seller's Signature

X _____
Signature Date

X _____
Signature Date

Counteroffer #1 Submitted by: Buyer Seller Date of Counteroffer: 06/12/2006



This is a COUNTEROFFER to the Real Estate Purchase and Sale Agreement, identified as:
Document # dmh-MR-BF2 Date of Document: 06/10/2006 Page 1 of 1
Property Address: 303 Broadford Road

Buyer(s): Marc Richards and/or assigns

Seller(s): Jann S. Wenner

If this is submitted by Seller, the Seller is the Offeror. If this is submitted by Buyer, the Buyer is the Offeror. All other terms and conditions of the Purchase and Sale Agreement and non-conflicting provisions of previous counteroffers to remain the same.

1. Purchase Price shall be \$6,125,000 with \$3,125,000 at closing and \$2,000,000 payable on a note secured by a mortgage due one year from closing plus interest at 6%.
2. The form of the Note and Mortgage shall be provided by Seller to Buyer within 10 business following mutual acceptance of this agreement and Buyer's approval of the Note and Mortgage shall be a contingency to be released within 15 business days following mutual acceptance of this agreement.
3. Seller shall have no obligation to provide maps, surveys, reports per Paragraph 1 of Additional Terms.

Counteroffer Expiration: Date: 06/13/2006 Time: Noon MDT

Other Terms: This Counteroffer, upon its acceptance by both parties, is made an integral part of the aforementioned Agreement. Offeree accepts Offeror's changes or amendments to previous Counteroffer and agrees to sell on the above terms and conditions. Receipt of a copy hereof is hereby acknowledged.

Other Offers: If the Offeror is the Seller, the Seller reserves the right to withdraw this offer prior to Buyer's written acceptance of this Counteroffer. If the Offeror is the Buyer, the Buyer reserves the right to withdraw this offer prior to Seller's written acceptance of this Counteroffer.

Buyer's Signature

Buyer's Signature

X _____
Signature Date Time

X _____
Signature Date Time

Seller's Signature

Seller's Signature


X _____
Signature Date Time

X _____
Signature Date Time

06/12/2006 16:15 2862179325

SEATTLE QUALITY HOME

PAGE 01

Counteroffer #2 Submitted by: Buyer Seller Date of Counteroffer: 06/12/2006 

This is a COUNTEROFFER to the Real Estate Purchase and Sale Agreement, identified as:
Document # dmh-MR-BF2 Date of Document: 06/10/2006 Page 1 of 1
Property Address: 303 Broadfor Road, Tax Lot

Buyer(s): Marc Richards and/or assigns

Seller(s): Jann S. Wenner


If this is submitted by Seller, the Seller is the Offeror. If this is submitted by Buyer, the Buyer is the Offeror. All other terms and conditions of the Purchase and Sale Agreement and non-conflicting provisions of previous counteroffers to remain the same.


1. Purchase Price shall be Five Million Dollars (\$5,000,000.00) with Three Million Dollars (\$3,000,000.00) cash at closing and a note in the amount of Two Million Dollars (\$2,000,000.00) secured by a mortgage in favor of Seller due and payable one (1) year from Closing Date plus interest at the rate of six percent (6.00%) per annum, no prepayment penalty.

Counteroffer Expiration: Date: 06/13/2006 Time: Noon MDT

Other Terms: This Counteroffer, upon its acceptance by both parties, is made an integral part of the aforementioned Agreement. Offeror accepts Offeror's changes or amendments to previous Counteroffer and agrees to sell on the above terms and conditions. Receipt of a copy hereof is hereby acknowledged.

Other Offers: If the Offeror is the Seller, the Seller reserves the right to withdraw this offer prior to Buyer's written acceptance of this Counteroffer. If the Offeror is the Buyer, the Buyer reserves the right to withdraw this offer prior to Seller's written acceptance of this Counteroffer.

Buyer's Signature:  Date: 6/12/06 Time: 5:10 PM
Buyer's Signature: _____ x _____ Date: _____ Time: _____

Seller's Signature:  Date: 6/12/06 Time: 1:45 PM ET
Seller's Signature: _____ x _____ Date: _____ Time: _____

BCT

BLAINE COUNTY TITLE

Dennis Hanggi
Sun Valley Real Estate
Hand Deliver

RE: Wenner/Richards
303 Broadford Road Bellevue, ID 83333

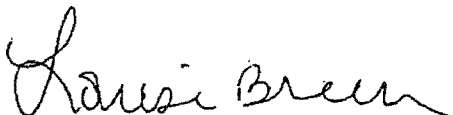
In connection with the above referenced transaction, please find the following document(s) for your records:

- Title Commitment - If you have any title questions regarding your commitment, please contact our title department.
- Your Escrow Officer for this transaction will be Kathy Seal.
- This transaction is now available online at www.blainecountytitle.com using our secure online transaction management system called SureClose. Using SureClose, you can review your title commitment, closing documents, communicate with your real estate agent, lender or escrow officer and have instant access to your file 24 hours a day, 7 days a week. To request your username and password, e-mail us at info@blainecountytitle.com. Be sure to include your e-mail address and a secure username and password will be forwarded to you.

Thank you for choosing Blaine County Title, your title company for the past, present and future.

Feel free to call or e-mail us with any questions or concerns.

Sincerely,
BLAINE COUNTY TITLE ASSOCIATES


Louise Breen
Escrow Assistant

Attachments(s)

TITLE INSURANCE COMMITMENT
BY



Order Number: 6014761

We agree to issue policy to you according to the terms of the Commitment. When we show the policy amount and your name as the proposed insured in Schedule A, this Commitment becomes effective as of the Commitment Date shown in Schedule A.

If the Requirements shown in this Commitment have not been met within six months after the Commitment Date, our obligation under this Commitment will end. Also, our obligation under this Commitment will end when the Policy is issued and then our obligation to you will be under the Policy.

Our obligation under this Commitment is limited by the following:

- The Provisions in Schedule A.
- The Requirements in Schedule B-I.
- The Exceptions in Schedule B-II.
- The Conditions on Page 2.

This Commitment is not valid without SCHEDULE A and Sections I and II of SCHEDULE B.

IN WITNESS WHEREOF, Stewart Title Guaranty Company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers on the date shown in Schedule A.





Chairman of the Board




President

Countersigned:


Authorized Countersignature

Blaine County Title
360 Sun Valley Road, P.O. Box 3176
Ketchum, ID 83340

Order Number: 6014761
Page 1 of 2 Commitment - 235 W/O Disclosure

COMMITMENT FOR TITLE INSURANCE
SCHEDULE A

1. **Effective Date:** June 12, 2006 at 8:00 a.m.

Order No. 6014761 tw

2. **Policy or Policies To Be Issued:**

Amount of Insurance

(a) A.L.T.A. Owner's (Standard)

\$5,000,000.00

Proposed Insured: Marc Richards

(b) A.L.T.A. Loan

3. **The estate or interest in the land described or referred to in this Commitment and covered herein is:**

Fee Simple

4. **Title to the estate or interest in said land is at the effective date hereof vested in:**

Jann S. Wenner and Jane Wenner, Husband and Wife

5. **The land referred to in this Commitment is described as follows:**

See Attached Legal Description

Purported Address:
303 Broadford Road
Bellevue, Idaho 83333

STATEMENT OF CHARGES

These charges are due and payable
before a Policy can be issued:

Owner's Policy: \$10,780.00

EXHIBIT "A"

A parcel of land located within the N $\frac{1}{2}$ SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 26, Township 2 North, Range 18 East, Boise Meridian, Blaine County, Idaho, more particularly described as follows:

Commencing at an iron pin marking the center one-quarter corner (NE corner of said N $\frac{1}{2}$ SW $\frac{1}{4}$), which point is the REAL POINT OF BEGINNING;

Thence South 0°07'33" East, 1342.16 feet along the East Boundary of said N $\frac{1}{2}$ SW $\frac{1}{4}$ to an iron pin by JUB Engineers, 1972, marking the Southeast corner of said N $\frac{1}{2}$ SW $\frac{1}{4}$;

Thence North 89°29'52" West 1216.35 feet along the South Boundary of said N $\frac{1}{2}$ SW $\frac{1}{4}$ to an old fence line;

Thence South 16°55'55" East, 41.93 feet along said old fence to a fence corner post;

Thence North 89°37'51" West, 118.57 feet along an old fence to the East Boundary of the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 26;

Thence South 0°02'26" East, 256.21 feet along said East Boundary of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ to the intersection of said East Boundary of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ with the intersection of said Northeast Boundary of the Original Broadford Townsite;

Thence North 20°45'09" West, 566.07 feet along said Northeast Boundary of the Original Broadford Townsite to an iron pin and aluminum cap by Jim Koonce, R.L.S. at the Northeast corner of said Townsite;

Thence South 70°15'27" West, 919.11 feet along the Northerly boundary of said Broadford Townsite to an iron pin by Galena Engineering, Inc. on the East Boundary of the present Broadford Road;

Thence North 13°03'45" West, 375.72 feet, more or less, along said East Boundary of the present Broadford Road to an iron pin by JUB Engineers in 1972;

Thence North 18°47'24" West, 512.55 feet, more or less, along said East Boundary of the present Broadford Road to an iron pin by JUB Engineers in 1972;

Thence North 0°21'01" East, 568.96 feet, more or less, along said East Boundary of Broadford Road to an iron pin by JUB Engineers in 1972;

Thence North 0°14'09" East, 1331.07 feet, more or less, along said East Boundary of Broadford Road to an iron pin by JUB Engineers in 1972;

Thence South 89°37'40" East, 1303.93 feet along the North Boundary of said SW $\frac{1}{4}$ NW $\frac{1}{4}$ to an iron pin by Clyde Porter, R.L.S. marking the Northeast corner of said SW $\frac{1}{4}$ NW $\frac{1}{4}$;

Thence South 0°02'32" West, 1328.77 feet along the East Boundary of said SW $\frac{1}{4}$ NW $\frac{1}{4}$ to an iron pin by Clyde Porter, R.L.S. marking the Southeast corner of said SW $\frac{1}{4}$ NW $\frac{1}{4}$;

Thence South 89°44'50" East 1321.38 feet along the North Boundary of said N $\frac{1}{2}$ SW $\frac{1}{4}$, Section 26 to the point of beginning. (TL 6949)

COMMITMENT FOR TITLE INSURANCE

SCHEDULE B - Section I

REQUIREMENTS

Order No. 6014761 tw

Requirements

The following are the requirements to be complied with:

- (a) Payment to or for the account of the grantor(s) or mortgagor(s) of the full consideration for the estate or interest to be insured.
- (b) Proper instrument(s) creating the estate or interest to be insured must be executed and duly filed for record, to wit:
 - 1. Delivery of a Warranty Deed from Jann S. Wenner and Jane Wenner, Husband and Wife to Marc Richards to convey the property described herein.
 - 2. The Company requires evidence of the marital history and status of Marc Richards. If said person is married the Company requires the joinder of the spouse.
 - 3. If the policies to be issued are in excess of \$ 1,500,000.00 or involve unusual risks, approval to issue such policies must be obtained from Stewart Title Guaranty Company. This commitment and any policies to be issued are subject to any additional limitations, requirements or exceptions made by Stewart Title Guaranty Company.
 - 4. Delivery to the Company of the Affidavit as to Debts and Liens. Upon acceptance and review of said Affidavit, title will be subject to such further matters as appear necessary and appropriate following such review.
 - 5. Pursuant to the State of Idaho Insurance Regulations, a cancellation fee is to be charged on all cancelled orders. Unless otherwise advised, orders will be considered cancelled six months after the effective date on the Commitment. The amount of the fee assessed shall be in accordance with our rate filing with the Idaho Department of Insurance.

If you should decide to change lenders within six months, this commitment can be transferred to avoid a cancellation charge.

COMMITMENT FOR TITLE INSURANCE

SCHEDULE B - Section 2
EXCEPTIONS

Commitment No. 6014761tw

The policy or policies to be insured will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency, which may result in taxes or assessments.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or by making inquiry of person in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any facts, which a correct survey and inspection of the premises would disclose, and which are not shown by the public records.
5. Unpatented mining claims, (b) reservations or exceptions in patents, or an act authorizing the issuance thereof; (c) water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by public records.
7. General taxes for the year 2006, a lien not yet due and payable.

Note: General taxes for the year 2005, a lien in the amount of \$ 10,680.52, which are paid in full. (Parcel No. RP02N180263750A)

8. Reservation of a twenty (20) foot wide ditch right of way as reserved in that certain quitclaim Deed, recorded September 16, 1991 as Instrument No. 333716, records of Blaine County, Idaho.
9. Terms and Provisions of exceptions shown in that certain Warranty Deed by and between Candida C. Forstmann, a married woman as her sole and separate property (Grantor) and Jann S. Wenner and Jane Wenner, husband and wife (Grantee) recorded October 4, 1993 as Instrument No. 357561, records of Blaine County, Idaho.
10. Reservations, including the terms and provisions thereof, in that certain Quitclaim Deed by and between Candida C. Forstmann, a married woman as her sole and separate property (Grantor) and Jann S. Wenner and Jane Wenner, husband and wife (Grantee) recorded October 4, 1993 as Instrument No. 357562, records of Blaine County, Idaho.

11. Underground Power Line Easement, including the terms and provisions thereof, in favor of Idaho Power Company, recorded June 22, 1998 as Instrument No. 415732, records of Blaine County, Idaho. *Sent by bet a dk*
12. Any adverse claim based upon the assertion that
 - a) Some portion of the land forms the bed or bank of a navigable river or lake, or lies below the mean high water mark thereof;
 - b) The boundary of the land has been affected by a change in the course or water level of a navigable river or lake;
 - c) The land is subject to water rights, claims or title to water and to any law or governmental regulation pertaining to wetlands.
13. Notices of liens if any, in favor of the State Tax Commission, the Department of Labor and Department of Health and Welfare of the State of Idaho filed in the office of the Secretary of State pursuant to Chapter 19, Title 45, Idaho Code. (The Idaho State Tax Commission electronically files liens with the office of the Secretary of State and not with the Blaine County Recorder. Until final review at closing, title may be subject to such further matters as appear necessary and appropriate following such review.)

Items 1-4 and 6 may be removed upon issuance of any ALTA Extended Coverage Policy.

Copies of all recorded documents outlined in this section are available upon request.

End of Exceptions

BCT
BLAINE COUNTY TITLE

Instrument # 537815
HAILEY, BLAINE, IDAHO
2806-07-26 08:15:06 No. of Pages: 4
Recorded for: BLAINE COUNTY TITLE
MARSHA REBMAN Deputy Fee: 12.00
Es-Office Recorder Deputy
Date to WITHDRAWAL DESK

WARRANTY DEED

FOR VALUE RECEIVED

Jann S. Wenner and Jane Wenner, husband and wife,

GRANTOR(S), hereby grants, bargains, sells, conveys and warrants unto

Big Wood Ranch, LLC, an Idaho limited liability company

GRANTEE(S), whose current address is: 1300 Dexter Ave. N. Ste 140, Seattle, WA 98109

the following described premises, to wit:

See "Exhibit A" attached hereto

Parcel Number: 02N180263750A

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, their heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that it is the owner in fee simple of said premises, that said premises are free from all encumbrances except as set forth on Exhibit "A" and that he will warrant and defend the same from all lawful claims whatsoever except as aforesaid.

Dated the 24th day of July, 2006.

Jann S. Wenner

Jane Wenner

By: *Audrey P. Rubin, attorney-in-fact*

By: *Audrey P. Rubin, attorney-in-fact*

Jann S. Wenner

Jane Wenner

By: Audrey P. Rubin, Attorney-in-Fact

By: Audrey P. Rubin, Attorney-in-Fact

STATE OF New York)
) ss.
COUNTY OF New York)

On this 21st day of July, 2006, before me, the undersigned, a Notary Public, in and for said State, personally appeared Audrey P. Rubin known to me, and/or identified to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument as the Attorney-in-Fact of Jann S. Wenner and Jane Wenner and acknowledged to me that she subscribed the name of Jann S. Wenner and Jane Wenner, thereto as principal(s) and her own name as attorney-in-fact.

WITNESS MY HAND AND OFFICIAL SEAL.

Audrey C. Cella
Notary Public
Residing at: 576 Lamota Ave, Staten Island, NY 10312
My commission expires:

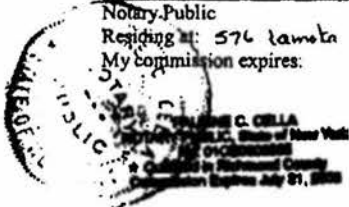


EXHIBIT "A"

A parcel of land located within the N $\frac{1}{2}$ SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 26, Township 2 North, Range 18 East, Boise Meridian, Blaine County, Idaho, more particularly described as follows:

Commencing at an iron pin marking the center one-quarter corner (NE corner of said N $\frac{1}{2}$ SW $\frac{1}{4}$), which point is the REAL POINT OF BEGINNING;
Thence South 0°07'33" East, 1342.16 feet along the East Boundary of said N $\frac{1}{2}$ SW $\frac{1}{4}$ to an iron pin by JUB Engineers, 1972, marking the Southeast corner of said N $\frac{1}{2}$ SW $\frac{1}{4}$;
Thence North 89°29'52" West 1216.35 feet along the South Boundary of said N $\frac{1}{2}$ SW $\frac{1}{4}$ to an old fence line;
Thence South 16°55'55" East, 41.93 feet along said old fence to a fence corner post;
Thence North 89°37'51" West, 118.57 feet along an old fence to the East Boundary of the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 26;
Thence South 0°02'26" East, 256.21 feet along said East Boundary of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ to the intersection of said East Boundary of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ with the intersection of said Northeast Boundary of the Original Broadford Townsite;
Thence North 20°45'09" West, 566.07 feet along said Northeast Boundary of the Original Broadford Townsite to an iron pin and aluminum cap by Jim Koonce, R.L.S. at the Northeast corner of said Townsite;
Thence South 70°15'27" West, 919.11 feet along the Northerly boundary of said Broadford Townsite to an iron pin by Galena Engineering, Inc. on the East Boundary of the present Broadford Road;
Thence North 13°03'45" West, 375.72 feet, more or less, along said East Boundary of the present Broadford Road to an iron pin by JUB Engineers in 1972;
Thence North 18°47'24" West, 512.55 feet, more or less, along said East Boundary of the present Broadford Road to an iron pin by JUB Engineers in 1972;
Thence North 0°21'01" East, 568.96 feet, more or less, along said East Boundary of Broadford Road to an iron pin by JUB Engineers in 1972;
Thence North 0°14'09" East, 1331.07 feet, more or less, along said East Boundary of Broadford Road to an iron pin by JUB Engineers in 1972;
Thence South 89°37'40" East, 1303.93 feet along the North Boundary of said SW $\frac{1}{4}$ NW $\frac{1}{4}$ to an iron pin by Clyde Porter, R.L.S. marking the Northeast corner of said SW $\frac{1}{4}$ NW $\frac{1}{4}$;
Thence South 0°02'32" West, 1328.77 feet along the East Boundary of said SW $\frac{1}{4}$ NW $\frac{1}{4}$ to an iron pin by Clyde Porter, R.L.S. marking the Southeast corner of said SW $\frac{1}{4}$ NW $\frac{1}{4}$;
Thence South 89°44'50" East 1321.38 feet along the North Boundary of said N $\frac{1}{2}$ SW $\frac{1}{4}$, Section 26 to the point of beginning. (TL 6949)

SUBJECT TO items 1-12 of Commitment for Title Insurance, Order No. 6014761, which items are listed on Schedule 1 attached hereto.

SCHEDULE 1

COMMITMENT FOR TITLE INSURANCE

**SCHEDULE B - Section 2
EXCEPTIONS**

Commitment No. 6014761tw

The policy or policies to be insured will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency, which may result in taxes or assessments.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or by making inquiry of person in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any facts, which a correct survey and inspection of the premises would disclose, and which are not shown by the public records.
5. Unpatented mining claims, (b) reservations or exceptions in patents, or an act authorizing the issuance thereof; (c) water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by public records.
7. General taxes for the year 2006, a lien not yet due and payable.

Note: General taxes for the year 2005, a lien in the amount of \$ 10,680.52, which are paid in full. (Parcel No. RP02N180263750A)

8. Reservation of a twenty (20) foot wide ditch right of way as reserved in that certain quitclaim Deed, recorded September 16, 1991 as Instrument No. 333716, records of Blaine County, Idaho.
9. Terms and Provisions of exceptions shown in that certain Warranty Deed by and between Candida C. Forstmann, a married woman as her sole and separate property (Grantor) and Jann S. Wenner and Jane Wenner, husband and wife (Grantee) recorded October 4, 1993 as Instrument No. 357561, records of Blaine County, Idaho.
10. Reservations, including the terms and provisions thereof, in that certain Quitclaim Deed by and between Candida C. Forstmann, a married woman as her sole and separate property (Grantor) and Jann S. Wenner and Jane Wenner, husband and wife (Grantee) recorded October 4, 1993 as Instrument No. 357562, records of Blaine County, Idaho.

11. Underground Power Line Easement, including the terms and provisions thereof, in favor of Idaho Power Company, recorded June 22, 1998 as Instrument No. 415732, records of Blaine County, Idaho.
12. Any adverse claim based upon the assertion that
 - a) Some portion of the land forms the bed or bank of a navigable river or lake, or lies below the mean high water mark thereof;
 - b) The boundary of the land has been affected by a change in the course or water level of a navigable river or lake;
 - c) The land is subject to water rights, claims or title to water and to any law or governmental regulation pertaining to wetlands.
13. Notices of liens if any, in favor of the State Tax Commission, the Department of Labor and Department of Health and Welfare of the State of Idaho filed in the office of the Secretary of State pursuant to Chapter 19, Title 45, Idaho Code. (The Idaho State Tax Commission electronically files liens with the office of the Secretary of State and not with the Blaine County Recorder. Until final review at closing, title may be subject to such further matters as appear necessary and appropriate following such review.)

Items 1-4 and 6 may be removed upon issuance of any ALTA Extended Coverage Policy.

Copies of all recorded documents outlined in this section are available upon request.

End of Exceptions

37-B-1
Cred 4-9-80

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

IRVIN E. ROCKWELL
Plaintiff
vs
MANS H. COFFIN, Watermaster
Defendant

RE: 37-00833

D E C R E E

This cause came on regularly for trial before the court without a jury on the 29th day of July, 1949, in open court, at the County Court House at Hailey, in the County of Blaine, state of Idaho, the plaintiff appearing in person and by his attorney Eugene H. Anderson, and the defendant appearing in person, and no other person appearing, either in person or by attorney, in the cause. Whereupon, the case was heard and submitted and by the court taken under advisement and duly considered, and the court having made and filed its decision that is to say its findings of fact and conclusions of law,

NOW, THEREFORE, on motion of the plaintiff, IT IS ORDERED, ADJUDGED and DECREED, as follows:

I

37-00833 That the plaintiff is the owner of and entitled to the use for irrigation, stock water, and domestic use, of 4.65 cubic feet per second of time or 232.50 miners inches, of the waters of Big Wood River, being waters saved, conserved, and developed by said plaintiff during the irrigation season of each year when the Rockwell By-Pass is operated and used for the conveyance of the waters of Big Wood River formerly flowing through what is commonly known as Broadford Slough Swamp Sink, and that the waters decreed hereunder to the plaintiff are the sole and exclusive property of the said plaintiff as saved, conserved and developed waters regardless of the date of the appropriation thereof, and that the plaintiff is entitled to the use of said developed waters irrespective of priority whenever the waters of Big Wood River formerly flowing through the Broadford Slough Swamp Sink are being conveyed and diverted through

what is known as the Rockwell By-Pass canal; that the date of the appropriation and priority in and to said water is the 12th day of November, 1936.

II

IT IS FURTHERED, ORDERED, ADJUDGED AND DECREED, that the plaintiff be and he is hereby required to maintain the said Rockwell By-Pass from the entrance thereof at the entrance crib therefor to its discharge into the Broadford Slough stream sufficient to provide ample free way for not less than 17.36 cubic feet per second of time of water, during the irrigation season each year.

III

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant be perpetually and forever enjoined and restrained from interfering with plaintiff's use of said 4.65 cubic feet per second of time, or 232.5 miners inches, of the waters of Big Wood River developed and saved by said plaintiff by the Rockwell By-Pass.

Dated this 25 day of August, 1949

L. E. GLENNON
District Judge

STATE OF IDAHO)
) ss
County of Blaine)

I, GEORGE F. McCOY, Ex-Officio Recorder in and for said County and State do hereby certify that the foregoing is a full, true and correct copy of that certain instrument of record in my office, in Book 12 of Judgments, Page 115, Records of Blaine County, State of Idaho.

Witness my hand and official seal this 13 day of September, 1949

GEORGE F. McCOY

Ex-Officio Recorder

37-8-1

(2)

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE.

IRVIN E. ROCKWELL,

Plaintiff,

-vs-

MANS H. COFFIN, Watermaster,
Defendant.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

The above entitled cause came on regularly for trial in open court at Hailey, in the County of Blaine, State of Idaho, on the 29th day of July, 1949, at the hour of 2:00 o'clock P. M., before the Honorable L. E. Glennon, District Judge, presiding. The plaintiff appeared in person and by his attorney Eugene H. Anderson. The defendant appeared in person. No other person appeared, in person or by attorney, in the above entitled cause. The cause was tried to the court without a jury. Proof of service of process and of publication as required by statute was made. Oral and documentary evidence was introduced by the plaintiff, and the plaintiff rested and the defendant did not introduce any evidence or testimony, and the cause having been submitted to the court for decision, the court being now fully advised in the premises makes its findings of fact and conclusions of law as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I

That the defendant, Mans H. Coffin, is the duly elected, qualified and acting Watermaster of Big Wood River, having charge of the distribution of the waters of said Big Wood River.

II

That the plaintiff is the owner of the following water right, to wit: 4.65 cubic feet per second, or 232.50 miners inches, of the waters of Big Wood River, being waters of Big Wood River conserved and developed by what is known as the Rockwell By-Pass, which said water was conserved and developed from and in the flow of Big Wood River by the construction of a by-pass diverting the waters from what is commonly known as Broadford Slough Swamp Sink through said by-pass, together with necessary headworks, and by so doing conserving and saving not less than 4.65 cubic feet per second, or 232.50 miners inches of water, of the waters of Big Wood River, which 4.65 cubic feet per second of water would otherwise have been unavailable for irrigation.

That the plaintiff conserved and developed by the construction of said by-pass canal diverting the waters of Big Wood River from what is known as Broadford Slough Swamp Sink through said by-pass canal which is commonly known as Rockwell By-Pass and constructed the necessary headworks to control and cause said waters to be diverted through said by-pass and by so doing conserved and saved

not less than said 4.65 cubic feet per second, or 232.50 miners inches of water of Big Wood River which water would otherwise have been unavailable for irrigation, and that by reason of so diverting said waters of Big Wood River through said Rockwell By-Pass instead of permitting the same to flow through said Broadford Slough Swamp Sink plaintiff saved and developed a continuous flow of not less than 4.65 cubic feet per second, or 232.50 miners inches of water of Big Wood River, being the waters which formerly sank, disappeared and were wasted in and through Broadford Slough Swamp Sink and which waters would have otherwise been unavailable for irrigation.

That the said 4.65 cubic feet per second, or 232.50 miners inches, of the waters of Big Wood River developed and put to beneficial use by the plaintiff as herein set forth will be saved and developed during each irrigation season so long as the waters of Big Wood River flow through the Rockwell By-Pass and do not flow through the Broadford Slough Swamp Sink.

That in order for said by-pass to continue to fully conserve the waters of Big Wood River to the extent of said 4.65 cubic feet per second such by-pass must be kept open sufficiently to provide flow therein of not less than 17.36 cubic feet of water per second of time during the irrigation season each year.

III

That on the 23rd day of January, 1937, the plaintiff, Irvin E. Rockwell, made application for permit to appropriate the public waters of the State of Idaho, including said 4.65 cubic feet per second, or 232.50 miners inches, of the waters

3-fw

of Big Wood River conserved by the Rockwell By-Pass, being Application No. 25661, to the Commissioner of Reclamation of the State of Idaho, in accordance with the laws of the State of Idaho, and that on the 26th day of January, 1937, the Commissioner of Reclamation of the State of Idaho did issue Permit No. 18401, in accordance with the laws of the State of Idaho, and which Permit is recorded in Book 27, page 18401 in the office of the then Department of Reclamation of the State of Idaho, and that in connection with said Application and Permit there was filed with the Commissioner of Reclamation Permit Map No. 18401, which was approved January 26, 1937, by the Commissioner of Reclamation.

IV

That upon the filing of the Application and the issuance of Permit No. 18401, the plaintiff herein complied with all of the laws of the State of Idaho with respect to the appropriation of waters in connection with said Application No. 18401, and that on the 9th day of December, 1943, and after proof of completion of works had been made and beneficial use of the waters so appropriated, including said 4.65 cubic feet per second, or 232.50 miners inches, of the waters of Big Wood River conserved by the Rockwell By-Pass, established, the Commissioner of Reclamation of the State of Idaho issued License and Certificate of Water Right to the plaintiff herein under the provisions of Section 41-213, Idaho Code Annotated, for the purpose of irrigation, stock and domestic use, and entered the same of record in Volume 7 of Licenses at page 4182 in the office of the Department of Reclamation

of the State of Idaho, and that said waters had been beneficially used on the following described lands in the County of Blaine, State of Idaho, to wit:

Northeast quarter, northwest quarter of the northwest quarter, southeast quarter of the northwest quarter, and southeast quarter of Section One; northeast quarter of Section Two; north half of the northwest quarter and southeast quarter of the northwest quarter of Section Six; east half of the northeast quarter, and east half of the southeast quarter of Section Twelve; northeast quarter of the northeast quarter of Section Thirteen; northeast quarter of the southeast quarter, and south half of the southeast quarter of Section Twenty-four, all in Township One North, Range Eighteen East;

Northwest quarter of the northwest quarter, south half of the northwest quarter, southwest quarter, northwest quarter of the southeast quarter, and south half of the southeast quarter of Section Seven; southwest quarter of the northwest quarter, northwest quarter of the southwest quarter, and south half of the southwest quarter of Section Seventeen; northeast quarter, northwest quarter of the southwest quarter, and southeast quarter of Section Eighteen; all of Section Nineteen; west half of the northeast quarter, northwest quarter, southwest quarter, and southeast quarter of Section Twenty; west half of the northwest quarter, and southwest quarter of Section Twenty-eight; all of Section Twenty-nine; northeast quarter of the northeast quarter and north half of the northwest quarter of Section Thirty; northeast quarter, northwest quarter, north half of the southwest quarter of Section Thirty-two; northwest quarter of the northeast quarter, south half of the northeast quarter, northwest quarter of the southwest quarter, and southeast quarter of Section Thirty-three, all in Township One North, Range Nineteen East;

Southwest quarter of the northeast quarter, south half of the northwest quarter, north half of the southwest quarter, north half of the southeast quarter, and southeast quarter of the southeast quarter of Section Three; south half of the northeast quarter, north half of the northwest quarter, north half of the southeast quarter, and southwest quarter of the southeast quarter of Section Four;

west half of the northeast quarter, and northeast quarter of the southeast quarter of Section Ten; west half of the northwest quarter, and southwest quarter of Section Eleven; southwest quarter of the northwest quarter, and southwest quarter of Section Thirteen; all of Section Fourteen, all in Township One South, Range Nineteen East of the Boise Meridian;

South half of the northeast quarter of Section Two; north half of the northeast quarter, southeast quarter of the northeast quarter, and south half of the southeast quarter of Section Twenty-two; northeast quarter of the northwest quarter, southwest quarter of the northwest quarter, north half of the southwest quarter, southeast quarter of the southwest quarter, and southwest quarter of the southeast quarter of Section Twenty-six; north half of the northeast quarter, southeast quarter of the northeast quarter, and northeast quarter of the southeast quarter of Section Twenty-seven; west half of the northeast quarter, southeast quarter of the northwest quarter, northeast quarter of the southwest quarter, and northwest quarter of the southeast quarter of Section Thirty-one; northeast quarter, northeast quarter of the southeast quarter of Section Thirty-five; southwest quarter of the southeast quarter of Section Thirty-six, all in Township Two North, Range Eighteen East of the Boise Meridian, 7,043 acres.

V

That from November 12, 1936, to and until the commencement of the irrigation season of 1944, the said 4.65 cubic feet per second, or 232.50 miners inches, of the waters of Big Wood River, as developed in the manner set forth in Paragraph II hereof, were used in the irrigation of the lands described in the preceding paragraph hereof, and that commencing with the irrigation season of 1944, and including the irrigation seasons of 1944, 1945, 1946 and 1947, ^{1948 and 1949,} said waters were beneficially used in the irrigation of the following described lands situated in Blaine County, State of Idaho, to wit:

Tax Lot 1555 being Fr. Northeast Quarter of the Northeast quarter, and Tax Lot 669, being Fr. southeast quarter of the northeast quarter, Section Thirty-two, Township Three North, Range Eighteen East, Boise Meridian;

The southeast quarter of the northwest quarter, the southwest quarter of the northeast quarter, the northwest quarter of the southeast quarter, the northeast quarter of the southwest quarter, the southeast quarter of the northeast quarter, of Section Thirty-two, Township Three North, Range Eighteen East of the Boise Meridian,

Excepting therefrom: Beginning at a point 25.0 feet north of the southeast corner of the southeast quarter of the northeast quarter of Section Thirty-two, Township Three North, Range Eighteen East of the Boise Meridian, thence north $48^{\circ}42'$ west 72.0 feet, thence north $26^{\circ}18'$ west 85.6 feet, thence north $6^{\circ}04'$ west 135.2 feet, thence north 26° west 632.2 feet, thence north $39^{\circ}38'$ west 544.8 feet, thence north $1^{\circ}00'$ east 50 feet, more or less to the north line of the southeast quarter of the northeast quarter of Section Thirty-two, thence east 718.0 feet, more or less, to the intersection of the east line of said section, thence south along said line 1290 feet, to the point of beginning. Said tract being a part of the southeast quarter of the northeast quarter of Section Thirty-two, Township Three North, Range Eighteen East of the Boise Meridian.

The northeast quarter of the southeast quarter of Section Thirty-two, Township Three North, Range Eighteen East of the Boise Meridian, excepting therefrom a strip of land $1\frac{1}{2}$ rods wide and 1320 feet long on the south end of the northeast quarter of the southeast quarter of Section Thirty-two, Township Three North, Range Eighteen East of the Boise Meridian.

All of the northwest quarter of the southwest quarter of Section Thirty-three, Township Three North, Range Eighteen East of the Boise Meridian, lying west of the O.S.L.R. Right of Way, excepting therefrom, Beginning at the southwest corner of the northwest quarter of the southwest quarter of Section Thirty-Three, Township Three North, Range Eighteen, East of the Boise Meridian, running thence north 189.75 feet, thence east 990.0 feet, thence south 189.75 feet, thence west 990.0 feet to the point of beginning.

All of the south half of the southwest quarter of Section Thirty-Three, Township Three North, Range Eighteen East of the Boise Meridian, lying west of the O.S.L.R. Right of Way.

Excepting therefrom a tract of land as described in Book 137 of Deeds, at page 497, records of Blaine County, Idaho.

VI

That the plaintiff has been the owner of said 4.65 cubic feet per second, or 232.50 miners inches, of the waters of Big Wood River, being what is known as developed water, and developed in the manner set forth in Paragraph II hereof, and which is a part of the waters covered by Permit No. 18401 and the License and Certificate of Water Right issued by the Department of Reclamation thereon on the 9th day of December, 1943, diverting water from Big Wood River, Blaine County, Idaho, for a period in excess of five (5) years, to wit, continuously since the commencement of the irrigation season of 1937, and has been in open, notorious and continuous possession, occupation, use and control of all thereof during said period of time, and for a period of five (5) years continuously last past said plaintiff has paid all taxes, both State and County, levied and assessed against the same; that the plaintiff in interest entered into possession and occupation under and founds his claim to possession, occupation, use and control and to his title to said waters upon said proceedings in accordance with the laws of the State of Idaho in the Department of Reclamation thereof, and by reason of putting to beneficial use the said waters conserved and developed by plaintiff in the manner set forth in Paragraph II hereof.

VII

That the defendant named in the title of the complaint claims or asserts some right, estate, title, interest or claim in or to said 4.65 cubic feet per second or 232.50 miners inches of the waters of Big Wood River now owned by plaintiff and being the waters covered by Permit No. 18401 issued by the Department of Reclamation of the State of Idaho, and the License and Certificate of Water Right issued by said Department on the 9th day of December, 1943, and by beneficial use thereof upon the lands described and set forth in Paragraphs IV and V hereof, on his own behalf or on behalf of the appropriators of the waters of Big Wood River, and that the said estate, right, title and interest asserted and claimed as aforesaid by said defendant on his own behalf or on behalf of the appropriators of the waters of said Big Wood River, is and are adverse to the title and right of possession of and belonging to the plaintiff herein, as hereinabove set forth, and in and to each and every portion thereof; that the said estate, right, title, interest and claim asserted and claimed as aforesaid by said defendant on his own behalf or on behalf of the appropriators of the waters of Big Wood River is and are without any right whatsoever, and that said defendant, either on his own behalf or on behalf of the appropriators of the waters of Big Wood River, has no estate, right, title, or interest therein, or in or to any portion or portions thereof.

VIII

That from the time said waters were first put to beneficial use by the plaintiff herein, the same have been diverted from

g. f. w.

Big Wood River through canals and ditches leading from said Big Wood River to the lands described in paragraphs IV and V hereof, and were diverted from said river by and through the defendant Watermaster and at the special request of the plaintiff herein, and that the defendant, on his own behalf and the appropriators of the waters of Big Wood River have recognized plaintiff's right in and to the waters hereinbefore set forth, and the right of plaintiff's use thereof, and have consented and acquiesced therein.

IX

That the waters of Big Wood River were duly decreed in that certain case entitled "S. C. Frost, et al., vs. Alturas Water Company, et al.," in the District Court of the Fourth Judicial District of the State of Idaho in and for Lincoln County, Idaho, and that the plaintiff herein accepts as binding upon him said Decree and the Findings of Fact and Conclusions of Law upon which it is based, and that the plaintiff has set forth such acceptance of said decree and the findings of fact and conclusions of law upon which it is based, as binding upon him in his complaint herein.

X

That the defendant has repeatedly threatened to refuse to deliver to plaintiff the said 4.65 cubic feet per second, or 232.50 miners inches of the waters of Big Wood River covered by said Permit No. 13401 and the License and Certificate of Water Right issued by the Commissioner of Reclamation on the 9th day

of December, 1943, thereon, and that unless defendant is enjoined and restrained by this Court that he will interfere with and refuse to deliver to plaintiff said waters, and that his refusal so to do will cause plaintiff substantial and irreparable damage and injury.

XI

That the plaintiff has no plain, speedy or adequate remedy at law.

XII

That the plaintiff in the above entitled action caused to be published once a week for not less than three weeks a notice of the pendency and purpose of the above entitled action in The Hailey Times, a weekly newspaper published at Hailey, Idaho, and in general circulation within the County of Blaine, State of Idaho, and the newspaper designated and ordered by the judge of the above entitled court for such publication. That such notice contained the title of the above entitled court and cause, the name of the stream and the waters of which said plaintiff claims the interest set forth in these findings of fact, and the date of priority claimed by him and the date and title of the decree heretofore entered fixing the permanent rights in said Big Wood River.

CONCLUSIONS OF LAW

I

That the plaintiff, Irvin E. Rockwell, is the owner of and is entitled to the possession and use of said 4.65 cubic feet per

second, or 232.50 miners inches of the waters of Big Wood River, being what is known as developed water and the water covered by Permit No. 18401 issued by the Department of Reclamation of the State of Idaho and the License and Certificate of Water Right issued thereon under date December 9, 1943, and of record in Volume 7 of Licenses at page 4182 in the office of the Department of Reclamation of the State of Idaho for the purpose of irrigation, stock water, and domestic use.

II

That the defendant Mans Coffin, Watermaster, on his own behalf and on behalf of the appropriators of the waters of Big Wood River has no interest whatever in or to said 4.65 cubic feet per second, or 232.50 miners inches, of the waters of Big Wood River or in or to any portion or portions thereof, except the obligation of delivering the same as provided by law from the waters of such river.

III

That the defendant should be forever barred and enjoined from asserting any claim whatsoever in or to said 4.65 cubic feet per second, or 232.50 miners inches, of the waters of Big Wood River, or in or to any portion or portions thereof adverse to the plaintiff.

IV

That the plaintiff is entitled to use said 4.65 cubic feet per second, or 232.50 miners inches, of the waters of Big Wood

River for irrigation and that the defendant should be enjoined and restrained from interfering with plaintiff's use thereof.

V

That the plaintiff should be required to maintain the said Rockwell By-Pass from the entrance thereof at the entrance crib therefor to its discharge into the Broadford Slough Stream sufficient to provide ample freeway for not less than 17.36 cubic feet per second of time of water during the irrigation season each year.

Dated this 25 day of August, 1949.

L. E. Glennon
District Judge

STATE OF IDAHO, }
COUNTY OF BLAINE, } ss.
GEORGE F. MCCOY

I, ~~RAP. TIGHE~~, Ex-Officio Recorder in and for said County and State, do hereby certify that the foregoing is a full, true and correct copy of that certain instrument of record in my office, in Book 12 of Judgments, Page 111, Records of Blaine County, State of Idaho.

Witness my hand and official seal this 13 day of September, 1949.

B. George F. McCoy
Deputy. Ex-Officio Recorder.

13-fw

Spring Update

1) Continuous Ditch Maintenance

We thought the Ditch and Rockwell Bypass Ditch Users Association would appreciate an update on maintenance that has been performed on our water delivery system this spring. Those that attended our meeting this spring will recall the talk about the Rockwell Bypass Saved Water Users. These members hold water rights that originated and then were moved out of the Rockwell Bypass Ditch. In order to keep their water rights valid these members must maintain the Rockwell Bypass Ditch so it is able to flow water up to 17.32 cubic feet per second (cfs). The ditch requires periodic maintenance to remove sediment, plant material and other debris. Under the supervision of Brian Brochette, our ditch rider and deputy water master, we brought in Meyers Excavation's track hoe and had the ditch cleaned out for about ¼ mile of its length. One of our members, Archie Bouttier then graciously donated his time and backhoe to clean out some additional portions of the ditch. The completed work has been inspected by our water master, Kevin Larkey, who acknowledged that the Rockwell Bypass is now capable of flowing the 17.32 cfs mandated by the decree that created the water rights back in 1949, and that we are in compliance with that decree.

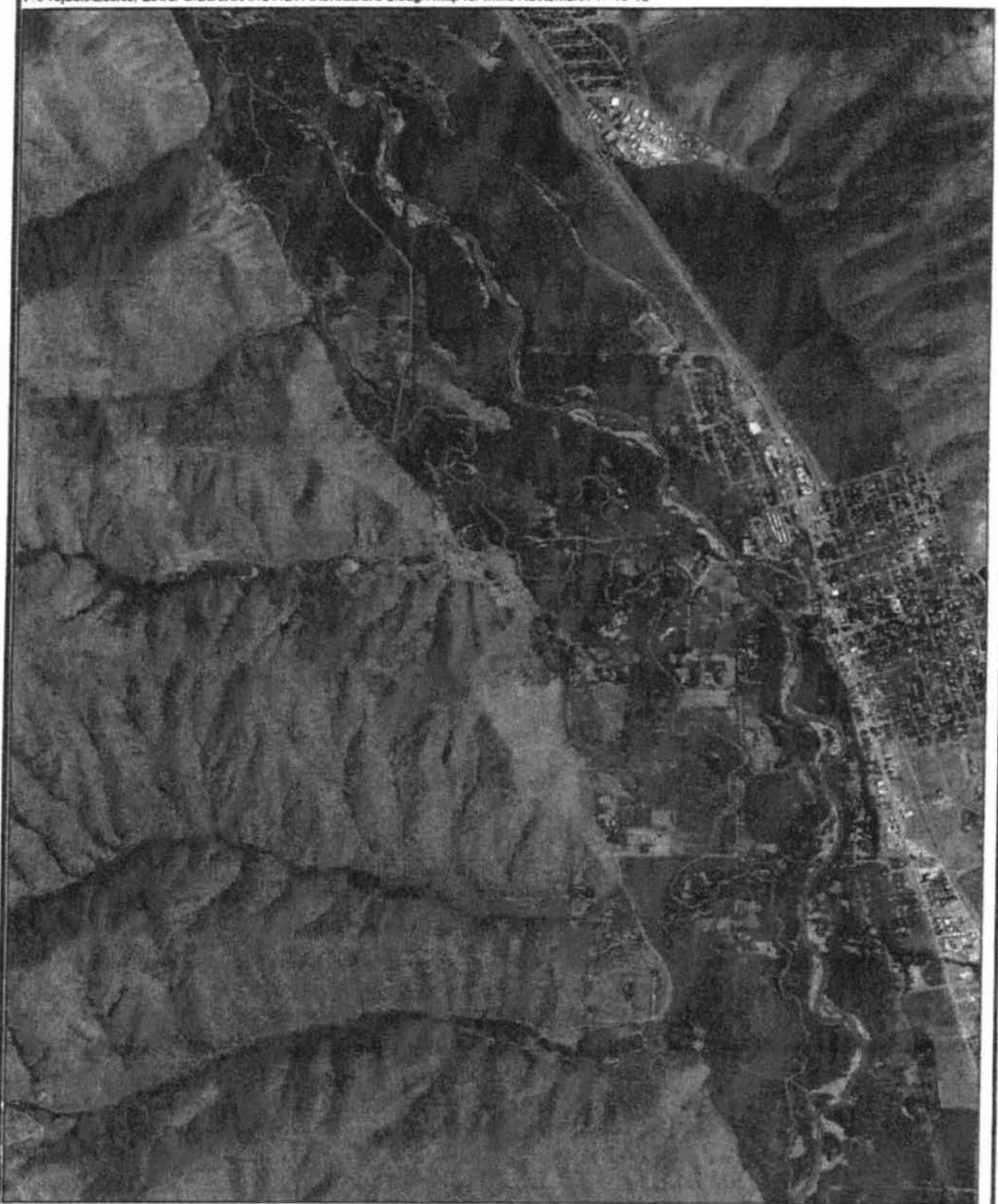
2) Weir Replacement

Our weir which measures our input into our ditch system was in badly need of repair. We replaced the weir which is located about 25 yards downstream from our head gate, and used metal plates to protect the concrete weir structure which was deteriorating over time.

3) Delinquent Member Dues

The above described maintenance work cost the Association \$1,643.49 (\$1,235.00 for ditch clean; \$408.49 for weir replacement). We also continue to have ongoing large expenses in our attempt to get one of our larger water rights holders to pay his share of the dues. The Idaho Attorney General's office has been examining our Articles of Incorporation & Bylaws and our registrations with the Secretary of State and found these items to be in compliance. The delinquent member's attorney has requested that we try to settle our dispute through a mediator; we have informed them that we would like to proceed with that idea and are waiting to hear back from them on the selection of a suitable mediator. For both parties this would seem preferable to the considerate time, effort and expense of a lawsuit. Our legal consultant Evan Robertson is looking into the matter for us.

The above listed maintenance items and the attorney's fees are not regular budget items; so you can see why the prompt payment of your dues to the Association is important for the well being of our water delivery systems. Our water ways take constant monitoring and maintenance to insure the delivery of everyone's very valuable water rights.



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7

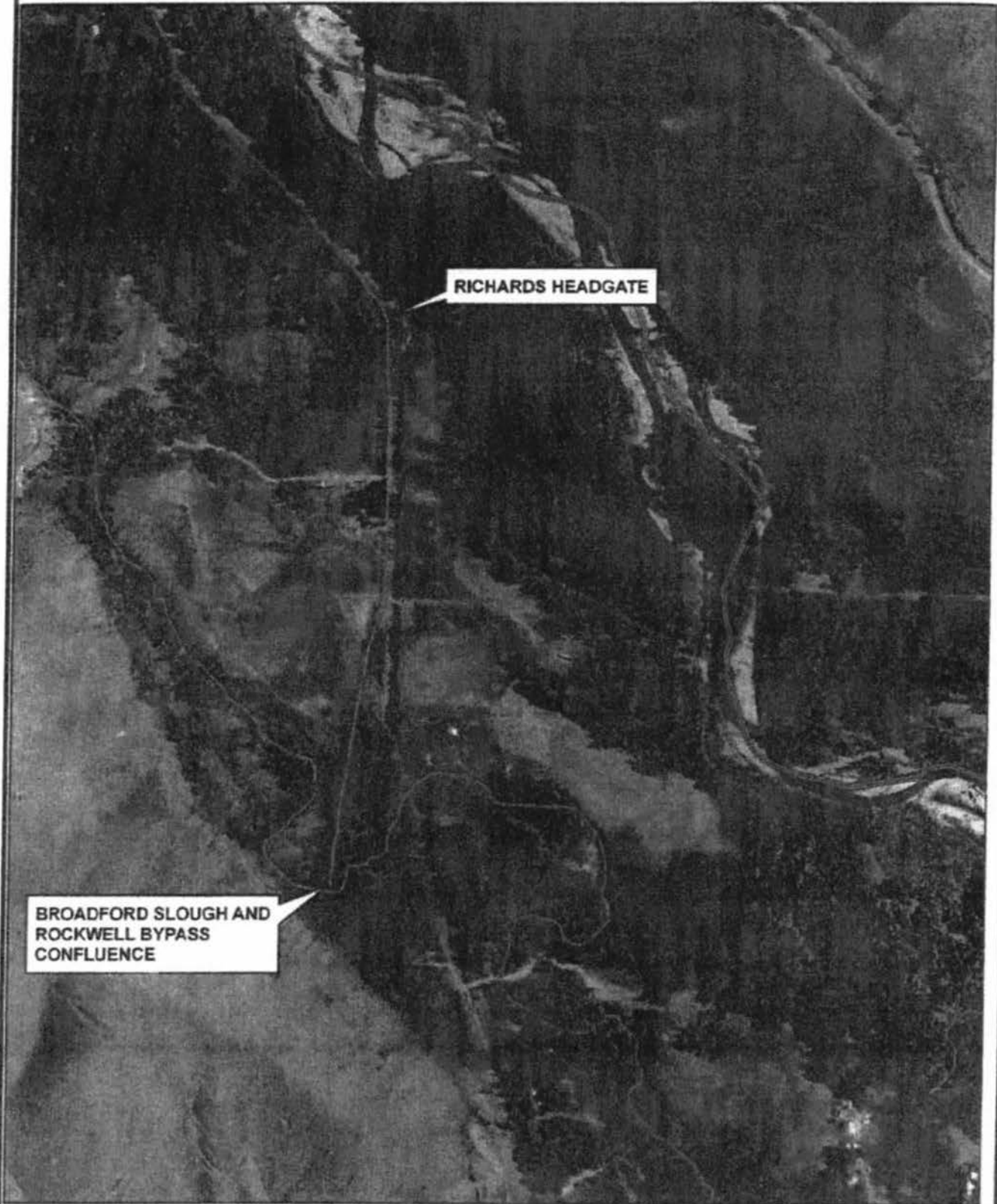
1 inch equals 2,000.0 feet

BROCKWAY ENGINEERING, PLLC.
ZL - 11/12/10

**BROADFORD SLOUGH AND
ROCKWELL BYPASS
2009 NAIP AERIAL PHOTOGRAPH**

Legend

- Rockwell Bypass 11-12-10
- Bradford Slough 11-12-10
- Big_Wood_River



**BROADFORD SLOUGH AND
ROCKWELL BYPASS
CONFLUENCE**

RICHARDS HEADGATE






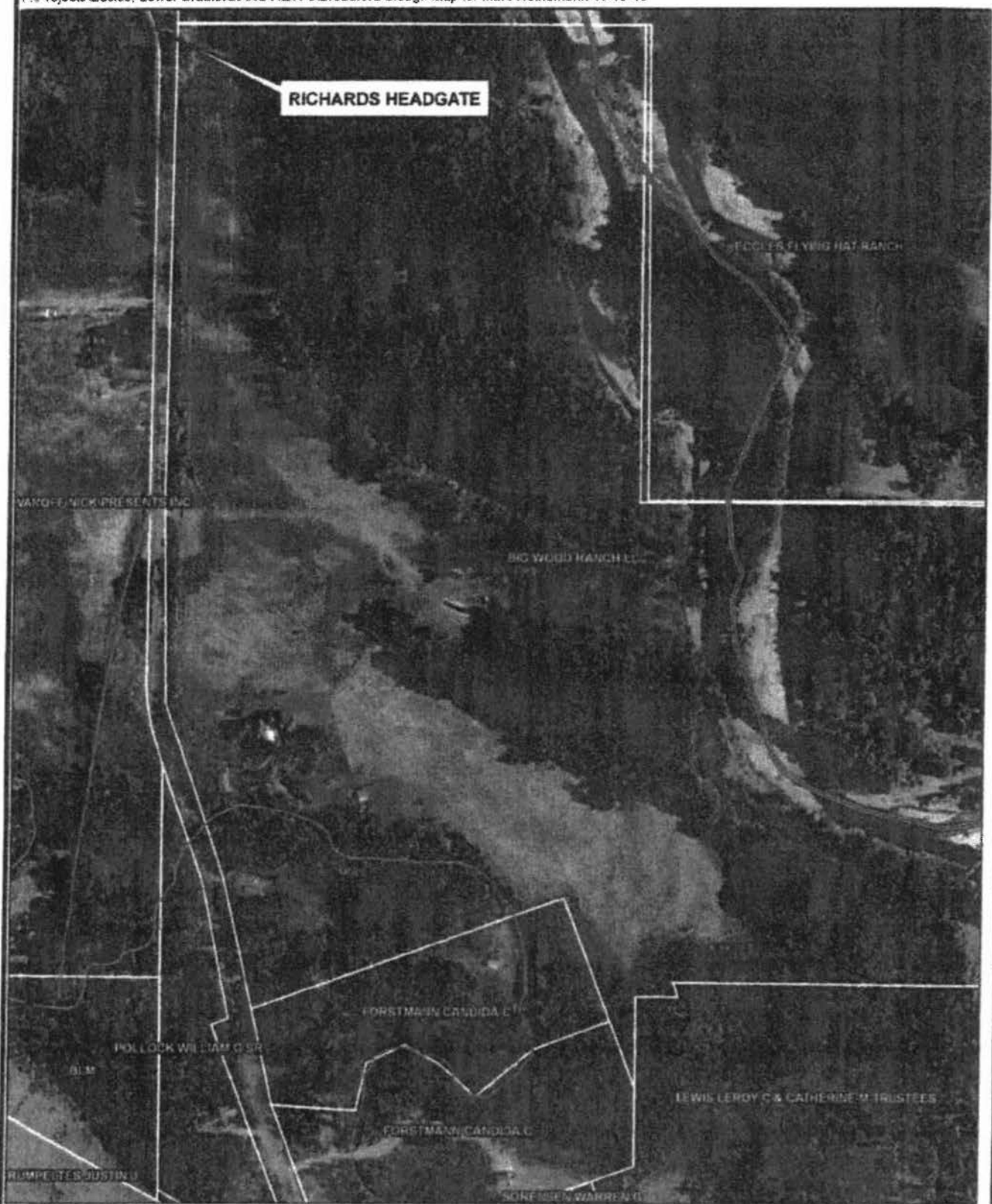
1 inch equals 600 feet

BROCKWAY ENGINEERING, PLLC.
ZL - 12/8/10

**BROADFORD SLOUGH AND
ROCKWELL BYPASS
2009 NAIP AERIAL PHOTOGRAPH**

Legend

-  Rockwell Bypass 11-12-10
-  Broadford Slough 11-12-10
-  Big_Wood_River







1 inch equals 350 feet

BROCKWAY ENGINEERING, PLLC.
ZL - 12/8/10

**BROADFORD SLOUGH AND
ROCKWELL BYPASS
2009 NAIP AERIAL PHOTOGRAPH**

Legend

-  Rockwell Bypass 11-12-10
-  Broadford Slough 11-12-10
-  Big_Wood_River
-  Blaine County Parcels 8-2-10



Evan Robertson

From: Kevin Lakey [watermanager@cableone.net]
Sent: Wednesday, March 23, 2011 4:18 PM
To: Marc Reineman
Cc: Evan Robertson; Brian Brochette
Subject: FW: Broadford Slough

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

From: Kevin Lakey [mailto:watermanager@cableone.net]
Sent: Wednesday, March 23, 2011 3:33 PM
To: Homan, John
Subject: RE: Broadford Slough

John,

Thanks for the reply. By what I'm reading here, you would recognize the Broadford Slough Association as a legally formed association according to Title 42 Chapter 13 by what you have seen of their bylaws and Articles of Incorporation? Thanks again for all the help.

Kevin Lakey

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

From: Homan, John [mailto:John.Homan@idwr.idaho.gov]
Sent: Wednesday, March 23, 2011 9:48 AM
To: Merritt, Allen
Cc: watermanager@cableone.net
Subject: RE: Broadford Slough

Kevin,

I reviewed the bylaws of the Association and visited with Allen about the history on the slough and it appears this a matter between the Association and the delinquent water user. The Association's bylaws and Idaho Code Sections 42-1304 and 42-1305 address the penalties for delinquencies and provide that the delinquent water user is not entitled to water. If the routine collection of assessments is unsuccessful, Idaho Code 42-1307 provides that the Association may sue, in the name of the secretary-treasurer to recover the unpaid assessments. Finally, it's not appropriate for the watermaster to try to collect assessments for the lateral district or curtail the water on behalf of the lateral district. The water district assessments for Water District 37 have been paid and delivery is appropriate from the Big Wood River.

John

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

From: Merritt, Allen
Sent: Monday, March 21, 2011 9:37 AM
To: Homan, John
Subject: FW: Broadford Slough

John,

One issue you might need to be aware of in this situation is that the Broadford Slough is an arm of the Big Wood River and the rights recommended in the SRBA there are from the Big Wood River with diversions on the slough. It is not a lateral ditch. Years ago the COE built a dike at the head of the slough to prevent the river from re-directing down the slough. At that time they placed a culvert in the dike to maintain water down the slough to the waterusers. There has been an effort by some users to call it a ditch so they could be exempt from SCA program but in reality it is a natural waterway and IDWR has not bought into that idea in either the SRBA or the SCA programs. The Rockwell Bypass is a man-made ditch or canal that diverts water out of the slough.

Allen

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

From: Merritt, Allen
Sent: Monday, March 21, 2011 8:44 AM
To: Homan, John
Subject: FW: Broadford Slough

John,

Could you look this over and give an opinion? Thanks Allen

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

From: Kevin Lakey [mailto:watermanager@cableone.net]
Sent: Monday, March 21, 2011 8:34 AM
To: Merritt, Allen
Subject: Broadford Slough

Allen,

I was approached by the Broadford Slough User's Association about solving an issue of a user on their system that is refusing to pay their assessment. I told them that a situation much like theirs had also risen on the District 45, but I would check with you to see if there was anything I could do.

They are basically trying to find whether the state would recognize them as a legal association and are they in their rights to force collection from a user. I have attached a copy of their articles of incorporation and bylaws.

Thanks for the help.

Kevin Lakey

_____ Information from ESET Smart Security, version of virus signature database 5970
(20110321) _____

The message was checked by ESET Smart Security.

<http://www.eset.com>

_____ Information from ESET Smart Security, version of virus signature database 5978
(20110323) _____

The message was checked by ESET Smart Security.

<http://www.eset.com>

**The Broadford Slough Ditch Users Association
Annual Meeting**

Monday, April 14, 2008
Window Rock Ranch, Guest House
Bellevue, Idaho

Attendees:

Pete Bloomfield for Nick Vanoff	Wade Bradley for Mr. Barker
Ralph Girton	Marc Reinemann for Spence Eccles
Leroy Lewis	Carrie Shaw
Judd McMahan (Rhythm Ranch Homeowners Assoc)	Blaine Porter & Liz Smith (Idaho Ranch)
Juan for Ernie Townsend	Archie Bouttier
Brian Brockette, Ditch Master	Kevin Lakey, District 37 Water Master

The Board Meeting was called to order by President Ralph Girton at 6:25 pm.
A quorum was established.
The financials and minutes from the last meeting were distributed.

The President turned the meeting over to Marc Reinemann, representative for Spence Eccles.
Marc welcomed all the attendees and introduced Kevin Lakey, District 37 Water Master.

Kevin gave a short update on the proceedings of the Snake River adjudication and answered questions from the association members.

1. Approval of Minutes

The minutes of the March 2007 meeting were unanimously approved.

2. Assessments

Invoices for the assessments 2004 – 2007 were sent out in January 2008.
It was agreed on that the assessments for 2008 will be sent in August of 2008, based on a total budget need of \$7,500.00.

3. Ditch Master

Brian started to work on cleaning beaver dams etc.

4. Officer Election

Ralph Girton was confirmed as President
Leroy Lewis was confirmed as Vice-President
Marc Reinemann was confirmed Secretary/Treasurer

Meeting adjourned by President Ralph Girton at 7:20 pm.

Respectfully submitted,

Andrea Van Every
office.ext, llc

**Minutes of the Broadford Slough Ditch
Users Association**

The Broadford Slough Ditch Users Association had their annual meeting on October 17, 2005.

The Meeting was called to order by President Ralph Girton at 6:15pm.

Ralph turned the meeting over to Marc Reinemann, who is the Representative and Proxy Holder for Spence Eccles, one of the members of the Association. Mr. Reinemann gave a brief history of the Association and its current status. The Idaho Department of Water Resources (IDWR) recognizes the Association, as it has turned the management of the ditch and the measuring and delivery of the various members water rights over to the Association. Yet since the IDWR still avoids the determination of Broadford Slough as to its status as either a water delivery ditch or a stream, our Association may not satisfy one of the basic requirements to be a Ditch Association. It was agreed that we are much better continuing on as an Association, albeit some what in limbo. This will insure the delivery of the members very valuable water rights through the continued organized maintenance of the ditch.

It was also explained that the IDWR will be continuing their inspection of the Wood River Valley next spring, as they begin to focus on adjudicating the water rights of our basin. All members were again reminded to be sure that they are properly using all of their water rights, so that they will be able to retain their rights.

There was then a period of questions from the members, which Mr. Reinemann and Brian Brockette, the Ditch Association's ditch rider attempted to answer. It was established, after all of the lot owners arrived, that there was a quorum present, and the following actions were considered.

- 1) There weren't any minutes to approve from the last meeting, as they were lost by a former employee of a secretarial service.
- 2) Even though the Association had approved the assessment for the year 2004, invoices for those dues were never sent out. A motion was made and passed to assess the members those dues for 2004, and a new assessment for 2005. This will enable us to continue our maintenance program and pay back some of the members who have advanced some of the initial expenses.
- 3) A motion was made and passed to continue with the current officers:

Ralph Girton as President
Chris Haugh as Secretary/Treasurer
Leroy Lewis as Vice President
- 4) A motion was made and Ralph Girton adjourned the meeting.

**The Broadford Slough Ditch Users Association
Annual Meeting**

Monday, April 13, 2009
Window Rock Ranch, Guest House
Bellevue, Idaho

Attendees:

Pete Bloomfield for Nick Vanoff

Wade Bradley for Mr. Barker

Maurice Hornocker

Marc Reinemann for Spence Eccles

Leroy and Sherry Lewis

Blaine Porter
(Idaho Ranch)

Judd McMahan
(Rhythm Ranch Homeowners Assoc)

Brian Brockette, Ditch Master

Kevin Lakey, District 37 Water Master

The Board Meeting was called to order by Vice President Leroy Lewis at 6:15 pm.
A quorum was established.
The financials and minutes from the last meeting were distributed.

The President turned the meeting over to Marc Reinemann, representative for Spence Eccles.
Marc welcomed all the attendees and introduced Kevin Lakey, District 37 Water Master.

Kevin gave a short update on the proceedings of the Snake River adjudication and answered questions from the association members. The District hired Ryan Fuchs as the local deputy water master. Kevin also explained the "legacy project" to bank / donate water rights.

1. Approval of Minutes

The minutes of the April 2008 meeting were unanimously approved.

2. Officer Election

Ralph Girton was confirmed as President
Leroy Lewis was confirmed as Vice-President
Marc Reinemann was confirmed Secretary/Treasurer

3. Assessments

It was agreed on that the assessment remains the same as in 2008. Invoices for 2009 will be sent in June, based on a total budget need of \$7,500.00.

4. Ditch Master

Brian reported on the damage to the head gate through vandalism. We have put up warning signs informing the vandals that the head gate is controlled by the water master and anybody tampering with the head gate will be prosecuted. If you notice any sudden drop in the flow of the Slough please inform Brian, 720-5604.

5. Concerned Water Rights Users

Water District 37 and 37 M passed resolution 16 to start the monitoring of irrigation wells as a step towards conjunctive management. This will not concern domestic

BYLAWS
OF
WATER USERS' ASSOCIATION OF THE BROADFORD
SLOUGH AND ROCKWELL BYPASS LATERAL DITCHES, INC.

ARTICLE I

Offices

Section 1. Principal Office. The principal office of Water Users' Association of the Broadford Slough and Rockwell Bypass Lateral Ditches, Inc., an Idaho non-profit corporation (the "Corporation") shall be located at 125 Lower Broadford Road, Bellevue, Idaho, 83313, or at such other location as may, from time to time, be designated by the board of directors of the Corporation.

Section 2. Registered Office. The registered office of the Corporation to be maintained in the State of Idaho shall be located at 125 Lower Broadford Road, Bellevue, Idaho, 83313, and may be changed from time to time by the board of directors.

ARTICLE II

Members

Section 1. Admission to Membership. Membership in the Corporation shall be governed by the terms and conditions of its Articles of Incorporation. As used herein, the terms "Member", shall mean and refer to those persons or entities qualifying for membership pursuant to the Articles of Incorporation.

Section 2. Classes of Membership. The Corporation shall have only one class of membership.

ARTICLE III

Meetings

Section 1. Annual Meetings. The annual meeting of the members shall be held between January 1st and the last Monday in March of each year, the specific date to be determined by the Board of Directors; provided, however, that should the Board of Directors fail to specify the date for the annual meeting, the same shall be held on the last Monday in March.

Section 2. Special Meetings. Special meetings of the members may be called by the Board of Directors or upon the request of members entitled to vote more than 50% of the total votes entitled to be voted by all members of the Corporation.

Section 3. Place of Meetings. All meetings shall be held in Blaine County, Idaho, at such time and place as may be determined by the Board of Directors; provided, however, that if no other designation of place is made, the place of the meeting shall be the principal office of the Corporation in the State of Idaho.

Section 4. Notice of Meeting. The Secretary of the Corporation shall give ten (10) days prior written notice of all annual and special meetings to the members, mailed to the last known address for each, which notice shall clearly set forth all matters to be considered at said meeting, and shall comply with Section 30-3-50 of the Idaho Code.

Section 5. Waiver of Notice. Whenever any notice is required to be given to any member under the provisions of the Idaho Non-Profit Corporation Act as set forth in Title 30, Chapter 3, Idaho Code (the "Act") or under the provisions of the Articles of Incorporation for the Corporation (the "Articles") or these Bylaws, or by the Declaration, a waiver thereof in writing signed by the person or persons or entity entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

Section 6. Conduct of Meetings. The presiding officer at all meetings of the membership shall be the president of the Corporation or, in the absence of the president, the vice president or, in the absence of both the president and the vice president, a chairman pro tem elected by the members present at the meeting. The secretary-treasurer of the Corporation or, in the absence of the secretary-treasurer, any person appointed to do so by the presiding officer of the meeting, shall act as secretary for the meeting.

Section 7. Quorum and Voting Requirements. The presence, in person or by proxy, of members entitled to vote more than 50% of the total votes entitled to be cast by all members of the Corporation shall constitute a quorum at any meeting of the members. The members present at a duly constituted meeting where a quorum is present can continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum present after the meeting has started. If a quorum is present, the affirmative vote of a majority of the votes cast by

the memberships represented at the meeting and entitled to vote on the subject matter shall be deemed the act of the membership, unless a greater number of votes is required by the Corporations' Articles or Bylaws, or the Idaho Non-Profit Corporation Act.

Section 8. Proxies. A member may vote either in person or by proxy executed in writing by a member, consistent with the provisions of the Articles of Incorporation.

Section 9. Action by Members Without a Meeting. Any action required or permitted to be taken at a meeting of the members of the Corporation may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof. Such consent shall have the same effect as a unanimous vote of the membership.

Section 10. Power of the Members. Consistent with the provision of these Bylaws, and the Articles of Incorporation, the members shall be entitled to exercise all powers and prerogatives of membership afforded by the provision of the Idaho Non-Profit Corporation Act.

ARTICLE IV

Directors

Section 1. General Powers and Standard of Care. The normal business activities and affairs of the Corporation shall be managed by the Board of Directors consisting of three (3) directors. A director shall perform his or her duties in good faith, in a manner which such director reasonably believes to be in the best interest of the Corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. In performing such duties, a director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

(a) One or more officers or employees of the Corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants, or other persons as to matters which the director reasonably believes to be within such persons professional area of competence.

Section 2. Assessments. Without limiting the foregoing, the Board of Directors shall be authorized and empowered to establish and levy against the memberships, assessments as set forth in the Articles of Incorporation and Section 42-1303 of the Idaho Code.

Section 3. Tenure and Qualifications. The number of directors shall be three (3), and each director shall be elected as set forth in the Articles of Incorporation, and hold office until the end of the term for which he or she has been elected, or until a successor has been duly elected and qualified. Dated terms for shall be one (1) year.

Section 4. Vacancies. Any vacancy occurring on the Board of Directors shall be filled by a person appointed by the remainder of the Board of Directors. Directors so appointed to fill a vacancy shall stand for election at the next annual meeting of the membership.

Section 5. Removal of Directors. Any director may be removed from office, with or without cause, upon the affirmative vote of two-thirds (2/3) of the votes entitled to be cast by all members of the Association.

Section 6. Meetings. The Board of Directors may hold regular meetings at such times and places as it may establish, provided that in no event shall a regular meeting be held less frequently than once a year. Special meetings of the Board of Directors may be called by or at the request of the president of the Corporation, or by any two directors.

Section 7. Notices. Unless waived in writing by the persons entitled thereto, notice of any regular or special meeting of the Board of Directors shall be given at least three (3) days previous thereto if delivered personally or seven (7) days previous thereto if sent by mail to each director at his address as shown by the records of the Corporation. The purpose of any special meeting of the Board of Directors shall be specified in the notice or waiver of notice of such meeting. Waiver of the notice requirement herein set forth must be in writing and must be signed by the director waiving notice.

Section 8. Quorum. A majority of the Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board, but if fewer than a majority of the directors are present at said meeting, a majority of the directors present may adjourn the meeting without further notice. Once a quorum is established, it shall remain for the duration of the meeting, despite subsequent withdrawals from the meeting by one or more directors. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless otherwise provided by the Corporation's Articles of Incorporation or Bylaws or by the Idaho Non-Profit Corporation Act.

Section 9. Informal Action. Any action required to be taken at a meeting of the Board of Directors may be taken without a meeting if a consent, in writing, setting forth the action as taken shall be signed by a majority of the directors.

Section 10. Compensation. Directors shall serve without compensation, but reasonable expenses incurred may be reimbursed when reasonably expended for and in the interests of the Corporation, and approved by the Board of Directors.

ARTICLE IV

Officers

Section 1. Number and Title. The officers of the Corporation shall be members of the Board of Directors, and shall include a president, vice president and a secretary-treasurer. (For purposes of this Corporation, said offices of president and vice president shall be synonymous with chairman and vice chairman, respectively as required by Section 42-1301 of the Idaho Code.)

Section 2. Term of Office. The officers of the Corporation shall be appointed by, and serve at the pleasure of, the Board of Directors.

Section 3. Chairman/President. The chairman/president shall preside at all meetings of the Board of Directors and the meetings of the general membership. The chairman/president may sign, with the secretary-treasurer, or any other proper officer, any instrument which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated to some other officer or agent of the Corporation. The chairman/president shall perform such other specific duties as shall be prescribed from time to time by the Board of Directors.

Section 4. Vice Chairman/Vice President. In the absence of the chairman/president, or in the event of the chairman/president's inability or refusal to act, the vice chairman/vice president shall perform the duties of the chairman/president, and when so acting, shall have all the powers and be subject to all of the restrictions of the chairman/president. Any vice chairman/vice president shall perform such other duties as may from time to time be assigned by the Board of Directors.

Section 5. Secretary-Treasurer. The secretary-treasurer shall keep the permanent minutes of the meetings of the Board of Directors and of the meetings of the general membership, see that all notices are duly given in accordance with the provisions of the Articles of Incorporation and

Bylaws, or as required by law, be the custodian of the corporate records and corporate seal, keep a register of the name and post office address of each member of the corporation. The secretary-treasurer shall also have charge and custody, and be responsible for all funds and securities of the Corporation, and deposit all monies in the name of the Corporation in such bank or other financial institution as shall be selected by the Board of Directors, and perform such other duties as may from time to time be assigned to the Board of Directors.

ARTICLE VI

Miscellaneous

Section 1. Indemnification. Subject to approval of the members, as provided for in Section 30-3-88 of the Idaho code, the Corporation may indemnify any director, officer, or former director or officer, of the Corporation against expenses actually and reasonably incurred in connection with the defense of any action, suit, or proceeding, civil or criminal, in which such officer or director is made a party by reason of having been a director or officer, except in relation to matters as to which said director or officer is adjudged in such action, suit, or proceeding to be liable for negligence or misconduct in the performance of any duty owed to the Corporation.

Section 2. Depositories. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, savings and loan associations, trust companies, or other institutional depositories as the Board of Directors may elect.

Section 3. Contracts. The Board of Directors may authorize any officer of the Corporation to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 4. Checks and Drafts. All checks, drafts or orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Corporation shall be signed by such persons and in such manner as shall from time to time be determined by resolution of the Board of Directors. In the absence of such determination by the Board of Directors, such instruments shall be signed by the chairman.

Section 5. Financial Statements. Statements of the financial condition of the Corporation shall be provided to the members not less frequently than once a year, and at the request of any member, or at the discretion of the Board of Directors, said financial statements shall be prepared and reviewed by a certified public accountant to be selected by the Board of Directors.

Section 6. Books and Records. The Corporation shall keep correct and complete books and records of all accounts, and shall also keep minutes of the proceedings of all meetings of its members and Board of Directors, and shall keep record of the names and addresses of all members. All books and records of the Corporation may be inspected by any member or his agent or attorney at any reasonable time upon request.

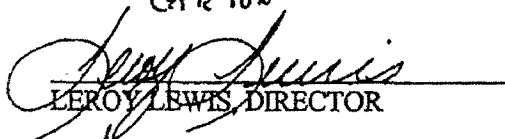
Section 7. Amendments. These Bylaws may be altered, amended, or repealed, and a new set of Bylaws adopted, by an affirmative vote of a majority of the votes entitled to be cast by all of the members of the Corporation, at a meeting duly noticed and convened for that purpose.

DATED this 16th day of April, 2002.



RALPH GURTON, DIRECTOR

Gurton



LEROY LEWIS, DIRECTOR



KATE ROSENKRANS, DIRECTOR

SECRETARY'S CERTIFICATION

The foregoing Bylaws have been duly adopted by the members at its organizational meeting held on the 16th day of April, 2002.

Acting Secretary: Kate Rosenkrans

Dated: April 16, 2002

**The Broadford Slough Ditch Users Association
Annual Meeting**

Monday, April 12, 2010
Window Rock Ranch, Guest House
Bellevue, Idaho

Attendees:

Pete Bloomfield for Nick Vanoff	Wade Bradley for Mr. Barker
Ralph Girton	Marc Reinemann for Spence Eccles
Leroy Lewis	Juan for Ernest Townsend
Judd McMahan (Rhythm Ranch Homeowners Assoc)	Mary and Brad Wirth
Robert Bouttier	Robert Del Signore
Brian Brockette, Ditch Master	Kevin Lakey, District 37 Water Master
Guest Speaker Dr. Dave Tuthill	

The Board Meeting was called to order by President Ralph Girton at 6:10 pm.
A quorum was established.
The financials and minutes from the last meeting were distributed.

Guests Dr. Dave Tuthill and Ernie Carlson were introduced.

The President turned the meeting over to Marc Reinemann.
Marc welcomed all the attendees and introduced Kevin Lakey, District 37 Water Master.

Kevin gave a short update on the proceedings of the Snake River adjudication and answered questions from the association members. Kevin also explained the "legacy project" to bank / donate water rights.

1. Approval of Minutes

The minutes of the April 2009 meeting were unanimously approved.

2. Financials

The Association got a bid for a replacement head gate, and a grate (cow catcher) to protect it from floating logs and wood debris and from vandalism which we have had now on two separate occasions.

Marc will approach the Rockwell Bypass Saved Water Right holders to get them to share in the cost of the maintenance of the Broadford Slough and the Rockwell Bypass. These water rights may have been moved out of the Rockwell Bypass, but they are only valid and able to be used as long as there is water in the Rockwell Bypass. Under the Decree which created this water right in 1949, it required the water right holders to maintain the Rockwell Bypass during the irrigation season each year. It is therefore in their best interest to make sure that there continues to be water in the Bypass, and that the system which gets its water from the Broadford Slough is maintained. For these reasons we feel it is fair to have the Saved Water rights users pay their appropriate share of the assessed dues, as they are approved by the association each year.

It was decided to write off the bad debt still on the books from past members who are

The Broadford Slough Ditch Users Association Annual Meeting

no longer water right holders on the Slough.

3. Delinquent Due Payments

After a lengthy discussion it was decided that Kevin Lakey will write a letter to the delinquent member regarding the consequences of not paying his association dues. If the Association does not get a reaction and a satisfactory resolution from his letter to the delinquent member, the Association will file a claim in small claims court for the overdue association dues. This small claims action was at the suggestion of our Attorney.

Motion approved.

4. Assessments

It was agreed on that the assessment remains the same as in 2009. Invoices for 2010 will be sent in June, based on a total budget need of \$7,500.00.

5. Officer Election

Ralph Girton stepped down as President
Leroy Lewis was elected President
Robert Bouttier was elected Vice-President
Marc Reinemann was confirmed Secretary/Treasurer

6. Brian Brockette, the Association's ditch master, wanted to remind people that in order to keep their very valuable water rights in good standing with the Idaho Department of Water resources it is *NOT* enough to simply be paying your dues to the water master and to the Broadford Slough Ditch Users Association - you must also *USE* your water rights. Please to be sure to call for your water delivery and then have in place a water delivery system to be able to get the water to your property. It is important that you show usage of your water rights. If you have any questions call Brian at 720-5604.

7. A presentation by Dr. Dave Tuthill and Ernie Carlson, Idaho Water Engineering, followed.

Meeting adjourned by President Leroy Lewis at 7:45 pm.

Respectfully submitted,

Andrea Van Every
office.ext, llc

The Broadford Slough Ditch Users Association Annual Meeting

Monday, March 19, 2007
Window Rock Ranch, Guest House
Bellevue, Idaho

Attendees:

Pete Bloomfield for Nick Vanoff	Robert Bouttier
Ralph Girton	Chris Haugh
Leroy Lewis	L & M Hornocker
Lynn Lucere (?) & Judd McMahan (Rhythm Ranch Homeowners Assoc)	Brad Worth (?)
Pete Schwartz for Big Wood Ranch LLC	Marc Reinemann for Spence Eccles
Juan for Ernie Townsend	
Brian Brockette, Ditch Master	Kevin Lakey, District 37 Water Master

The Board Meeting was called to order by President Ralph Girton at 6:25 pm.
A quorum was established.

The President turned the meeting over to Marc Reinemann, representative for
Spence Eccles.
Marc welcomed all the attendees and introduced Kevin Lakey, District 37 Water Master.

Kevin gave a short update on the proceedings of the Snake River adjudication and
answered questions from the association members. Session ended at 7:15 pm.

1. Approval of Minutes

The minutes of the October 2005 meeting were unanimously approved.

2. Assessments

Previous years assessments were approved, but never invoiced. The Association
needs a minimum of \$6,000 / year in order to pay the most basic expenses. The
current account balance is 0.

Marc Reinemann suggested, in order to build up a little reserve, to increase the total
assessment to \$7,500 / year. Chris Haugh moved to raise the assessment to the
suggested amount, Leroy Lewis second. The motion was unanimously approved.
Invoices for the current year assessment as well as the past 2 years will be sent out
within the next month.

3. Officer Election

Ralph Girton was confirmed as President
Leroy Lewis was confirmed as Vice-President
Marc Reinemann was elected Secretary/Treasurer

The Broadford Slough Ditch Users Association Annual Meeting

4. By-Laws

A short discussion took place regarding the possibility of enforcement of the payments. The opinion is that all new property owners are volunteer members of the Association. Marc Reinemann will check the By-Laws and, if necessary, consult with Evan Robertson, attorney for the Association.

Meeting adjourned by President Ralph Girton at 7:30 pm.

Respectfully submitted,

Andrea Van Every
office.ext, llc

**OWNERS OF THE WATER RIGHTS OF
BROADFORD SLOUGH OR ROCKWELL BYPASS**

January 29, 2003

President, Ralph Girton, called the meeting to order at 6:15 p.m. at the Log Cabin on Spencer Eccles' Window Rock Ranch. ~~WATER RIGHTS~~ Owners or their representatives were in attendance. The number of inches represented constituted a quorum. Also present was Evan Robertson, Attorney, and Lee Peterson, District 37 Watermaster.

Mr. Girton discussed a problem, which Kate Rosekrans had recently experienced with the Blaine County Commissioners. Mr. Girton said that the Commissioners had started telling Ms. Rosekrans what she could and could not do. He said that water rights are private property, and that if Ms. Rosekrans wants to sell hers she can. Mr. Girton went to an attorney because Commissioner Dennis Wright had claimed that there was a deal with the State. The Attorney felt that the County was blackmailing Ms. Rosekrans. He said that there has to be a certain amount of water rights with each piece of property, and they can be sold. The county had told Ms. Rosekrans that she had to build a road because no one could cross the slough with a bridge, or a culvert. Mr. Girton said that where the water enters the slough and goes out the other end there is nothing but culverts and people crossing it. He owns the road in that location and the water rights owners own the slough. The county also told Ms. Rosekrans that she could not water animals, which has been happening for the twenty years he has been here, and that she could not build a pond. Mr. Girton said that his point was that the Blaine County Commissioners were trying to move in on the Broadford Slough and Rockwell Bypass Water Rights. The water rights are controlled by the State of Idaho and not by the Blaine County Commissioners. He felt that the homeowners should attack the commissioners legally because they are overstepping their bounds. Mr. Girton's contention was that the owners own 1880 State water rights, which are worth \$20,000 to \$25,000 per inch on private property. He felt that the homeowners should retain an attorney and go up there and kick their butt! He felt that if the county was not stopped now, slowly but surely the water rights would be eroded.

Attorney, Evan Robertson, said that the county is presently refusing to allow ponds anywhere in the county unless they are related to agricultural uses, even though aesthetics are a beneficial and recommended use according to the State. The county is trying to override a use that is allowed statutorily by the state. Mr. Robertson said that he has dealt with a number of subdivisions where the homeowners have filed for aesthetic water rights, and this is allowed as long as the water is not being diminished or consumed.

Lee Peterson, District 37 Watermaster, said that in 1909 a Judge ruled that this water could be used for "other purposes" which includes stock. The owners of water on the District and Baseline Canals are being allowed to use their water rights for stock purposes, whereas the Broadford Slough and Rockwell Bypass owners are being prevented from doing so.

Evan Robertson said that the problem when dealing with the county is not what an individual wants to do with their water; it is what they want to do with their property. The county has stated publicly in a meeting that "subdividing property in Blaine County is a privilege not a right" and it uses its power of approval to get people to do what it wants them to, even though otherwise the individuals would have the legal right to do something else. In Ms. Rosekrans case there is the water rights issue, which is superimposed by the land use issue. Basically the county has suggested that if Ms. Rosekrans wants to get her subdivision, she will agree with their requirements and not challenge them on whether or not she has the right to use her water for aesthetic purposes. If Ms. Rosekrans simply wanted to add a pond for aesthetic purposes and the county said "no" and the state said, "yes" the owners should be extremely concerned about stopping it. However, in this case the homeowners would be litigating the county's right to condition subdivision approval based upon a whole host of things one of which is the water rights issue. Mr. Robertson was not familiar with the issue of stock water as opposed to aesthetic.

Mr. Robertson said that the slough owners have taken the position that the slough is a ditch for the purpose of distributing water rights out of the Big Wood system. It was a natural stream channel and not a ditch before the Corps of Engineers put in a dike at the head and regulated it from that standpoint. No one is willing to stand up and give a guarantee that the slough is a ditch and not a natural waterway. Dr. Brockway is of the opinion that the slough is a ditch and not a channel, and the courts have agreed. Under legislation the courts can create a ditch company. The slough has more characteristics of a channel or a ditch than a natural stream. The slough is new as an organized ditch company, and has received tacit approval from the state. If the slough is a ditch the owners can cross it any place they want. The ditch company has a right-of-way as long as it does not interfere with its use as a ditch. If the owners challenge it now, the county will say "this is not a ditch" and it will likely escalate to some sort of court action for a decision to be made. There are risks since the court does have jurisdiction over natural streamships. If the court decides that the slough is a natural stream channel there will be lots more problems, and the county may take the position then that they do have jurisdiction. There might also be a position that the slough is a means of transporting irrigation water and not a canal system.

Mr. Robertson suggested talking to the county attorney on Mrs. Rosekrans behalf and asking on what basis the crossing is being restricted. Ms. Rosekrans may have the right to a crossing, but if the county is saying that it does not like the access to one of the lots it does not bring into play the water rights canal/ditch issue. He said that the fact that the Corps of Engineers built the crossing is evidence that everyone recognizes the slough as a natural stream. If the slough were a canal the Corps of Engineers would have no jurisdiction. The fact that the Corps has asserted jurisdiction to give the owners a crossing would argue against the treatment of the slough as a ditch.

Mr. Peterson said that he has asked the department in Twin Falls and Boise for a written explanation of this particular creek, and whether or not it is a creek or a delivery channel. In his opinion it is a delivery irrigation system, but there is no proof one way or the other.

Broadford Slough Water Rights Owners Meeting
January 29, 2003 - Page 2

Mr. Robertson said that the county, state and federal government are all frightened of each other in one way or another. The state doesn't want to stand up and say the slough is a canal. The Corps will try and kick it back to the State. Meanwhile the county mucks around in it gratuitously. Beurocratically, it is a very complicated mess. It is possible for wetlands to be off a canal, and in a federal government jurisdiction. If the county is saying they don't want to disturb the wetlands and there is another way to come in - that is not really saying anything about the slough.

Mr. Robertson said that there are two ways to handle the situation. One is to try and get a declaratory judgment. That way is liable to bring in the Federal Government who has an unlimited budget and won't care what it costs, the State and perhaps the county. The other way is to lay low and try to keep operating. The owners have incorporated into a mutual ditch company, and Mr. Robertson said that they should continue to assume that the slough is a ditch and go ahead and proceed to do all the things that they have already been doing. Mr. Robertson said that first of all the group wants answers to the water rights problems, not to the subdivision problems. He said that the county has been taken to court a couple of times by ranchers wanting to subdivide, and anyone owning a large parcel needs to be concerned about how they will be treated during the subdivision process.

One owner was concerned about West Nile Virus. He said that the moss is so thick, it is possible to walk across the slough and not get one's feet wet. He intended to call the State Health Department and get them to come and take the moss out.

Mr. Robertson said that since this country got settled, one of the oldest statutes on the books has been Mosquito Abatement Districts. There is a State statute that says go abate mosquitoes by draining the swamps, and now federal legislation that says that swamps have to be kept as swamps.

Mr. Peterson discussed a situation wherein swampland by Silver Creek was drained, which resulted in a \$127,000 fine from the EPA. Mr. Robertson cautioned the owners to be very careful when taking authority from a state jurisdiction and going up against the feds.

Mr. Girton said that it is important to start billing the owners. Ms. Rosekrans will send out the bills.

Mrs. Floyd questioned the association's liability in the event someone was to drown in the slough. Mr. Robertson said that the association may be liable if it did something to cause the problem, or if the person were working for them. Contractors ought to have their own insurance. Association liability insurance would be advisable.

Marc Reinemann thanked Evan Robertson for coming to the meeting. He said that this is a banner year for water rights within the valley. This year the various authorities have asked that the water rights owners make sure that their rights are in order, being used and

Broadford Slough Water Rights Owners Meeting
January 29, 2003 - Page 3

adequately protected. A lot of people think they have water rights, and have the right to irrigate, but they do not. Water rights are getting scarcer and scarcer, and any that have not been used may be forfeited. He explained the history of the association to the new owners. Evan Robertson is working on the Articles of Incorporation and he did not know if they were done yet.

Mr. Reinemann said that at the last meeting the following officers were elected: Ralph Girton, President; Leroy Lewis, Vice-President; Kate Rosekrans, Secretary-Treasurer. The Articles of Incorporation are not registered because last year it was learned that Warren Sorenson had received 180" of aesthetic water rights, which would make him the biggest holder in the Association. It was felt that this needed to be addressed because Dr. Sorenson has aesthetic water rights which is a junior priority, but he is willing to join the association. He wants limited liability and not to have to come to meetings. So, a way is being figured out to assess him so that he can't vote a full right. Dr. Sorenson has 25" so will be accorded 2% of ownership. Marc explained the forming and structure of the association and last year's expenses all of which have been paid so far by Spence Eccles. Joining the association is voluntary. Mr. Eccles would like to be reimbursed, but understands that he may not be. Max Thompson and Bruce Tidwell, Bellevue Farms, do not belong in this Association because they are in the Rockwell Forty. It had also been ascertained that a mistake had been made eighty years ago and that the Broadford Polo Water should have been in the Broadford Slough. This past summer Maurice Hornocker requested a new point of diversion. Marc talked to Chuck Brockway and Evan Robertson about it. They filed a protest on behalf of the Association because there have been difficulties with Mr. Hornocker in the past. Mr. Hornocker contacted Evan Robertson who invited him to join the Association. Mr. Hornocker will probably be willing to do so. Water rights owners who haven't yet done so are encouraged to join the association. Marc said that it was learned last year that the Department was no longer willing to allow the transfer of surface water rights to ground water rights. The Rockwell 40 is probably 45 feet above the river and there is no way it can get through the headgate.

4-5

Minutes:

Motion: To approve the minutes of April 16, 2002 with the following corrections: Page 2 end of paragraph 5 should be "chance of being declared" and page 4, end of paragraph 5 should be "right to widen."

Motion seconded and carried unanimously.

Marc Reinemann said that Evan Robertson has suggested that the owners may want to let things idle and get more time. He said that Mr. Girton is correct. The county will go in and take whatever the association allows them to do. This does not just apply to Kate Rosekrans' subdivision. Anyone in the future who wants to subdivide or who wants to cross the ditch will run into the same thing. At some time the owners will have to contest their legal status. The Association has been formed and called a ditch, and the intention is to act as if it is a ditch. Kate Rosekrans may want to come to the association and ask permission for a culvert crossing. The Association can then approve it as long as she

Broadford Slough Water Rights Owners Meeting
January 29, 2003 - Page 4

demonstrates that the culvert she is putting in is adequate to handle the maximum flows that can be expected to go through the ditch. She can then go to the county and say that she has permission to do it. Archie wants to clean out the ditch, and Marc thought that the Association should say "yes." Marc said that he had been talked to Ed Lawson and asked him to line a ditch, which was there before he bought his property and which loses water. Mr. Lawson attempted to do it last fall but wasn't able to. He said that if he does not have the water rights he couldn't do it. The Association may demand that he do it, but he may need a stream alteration permit.

Motion: To assess owners \$6,000 for legal fees.

Motion seconded and carried unanimously.

Motion: To adjourn.

Motion seconded and carried unanimously.

There being no further business the meeting adjourned at 7:50 P.M.

Respectfully submitted,

Jean A. Dickenson
Recording Secretary

Broadford Slough Water Rights Owners Meeting
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Broadford Slough Ditch Users Association
c/o Marc Reinemann * PO Box 1840 * Sun Valley, ID 83353

**BROADFORD SLOUGH / ROCKWELL BYPASS
DITCH USERS ASSOCIATION**

NOTICE OF ANNUAL MEETING

Monday, March 7, 2011 at 6:00 pm

The meeting will be held once again at the Eccles' Window Rock Ranch, in the log guest house. The guest house is located at the south end of Lower Broadford Road, and can be found just inside the log gate marking the entrance to the Window Rock Ranch, on the right side of the ranch driveway.

Your continued attendance is important and appreciated, so please plan on joining your friends and neighbors and fellow water rights owners.

If you have sold your property, please pass this announcement on to the new owner, so that they may attend.

The Water Master for District 37 and 37M, Kevin Lakey, has once again kindly agreed to be in attendance so that he may update us on current water rights issues and hopefully answer any questions that you may have.

One of the main issues we will be discussing and deciding how we will proceed, is the continued issue of members who are not current in their dues. It is discouraging that some members are content to let others in the Association pay for the delivery and maintenance of their water rights. At last years meeting it was decided by the members of the Association that we would file a Small Claims Court action against one of our members who had become very delinquent in dues payment. The current status of the suit will be discussed, and we will again seek the guidance of the Association and how they would like to proceed.

We are again encouraging water right holders of saved water on the Rockwell Bypass to become more active in the association. These water right holders have participated in the costs of the recent improvement to the head gate system. Invitations of this announcement are being sent to them also, and we encourage them to attend this meeting.

Agenda:

1. Approval of meeting minutes from 4/12/2010
2. Financials and updates on Broadford Slough operations
3. Kevin Lakey
4. New Business
5. Election of officers

Thank You!

If you have any questions call either

Brian Brockette @ 720-5604 or Marc Reinemann @ 720-0131

**OWNERS OF THE WATER RIGHTS OF
BROADFORD SLOUGH OR ROCKWELL BYPASS**
Tuesday, April 16, 2002

Marc Reinemann called the meeting to order at 6:20 p.m. at the Log Cabin on Spencer Eccles' Window Rock Ranch. Six owners or their representatives were in attendance. The number of inches represented constituted a quorum. Also present was Lee Peterson, District 37 Watermaster, and Chuck Brockway, hydrologist.

Mr. Reinemann said that since the last meeting on April 25, 2001, Attorney, Evan Robertson, had been talking to Chuck Brockway. Unfortunately, at the last minute, Evan Robertson had to attend a Sun Valley City Council meeting, so was unlikely to be able to make this meeting. He has, however, drawn up some Articles of Incorporation and By-Laws, which he hopes can be signed at this meeting.

Mr. Reinemann said that The Barrie family, the Tidwell's, and the successor to Max Thompson's water rights had not been invited to this meeting. It had been realized that they really do not belong in this organization, as they are not users of the Broadford Slough or Rockwell Bypass. The water delivery for these property owners comes off the Rockwell 40. There is a headgate behind the Barrie property, which is where these people get their water. The Rockwell 40 is not the same as the Rockwell Bypass. The Rockwell 40 cannot get any water because it is too high above the river. Some of these property owners may want to transfer their water rights to the Broadford Slough. The Water Department may refuse to allow those who have not used their water rights for 10 - 12 years to transfer their rights because they may have lost them due to non-use.

(A subsequent investigation by the Watermaster and Chuck Brockway has found that the Max Thompson water rights may already be in the Broadford Slough and that the Watermaster's books have been in error for decades.)

Mr. Reinemann described the map prepared by Chuck Brockway, which had been handed out. Both the Broadford Slough and the Rockwell Bypass come off the same headgate.

Mr. Peterson said that if someone wants to transfer into the system, and the owners determine that it can't handle the transfer the Association would have some control over it. Without being part of an Association, they do not. However, theoretically if more people are putting water into the ditch, everyone may gain from the transfers. Once the owners are organized, Tinker will distribute the water to the owners.

Chuck Brockway said that if the Articles and By-Laws, as proposed, are adopted; there are three things the Association will not be. It will not be a canal company whereby the company is created under statute and shareholders hold the water rights. The association will also not be an irrigation ditch company, which is a quasi-political entity with taxation powers. Mr. Brockway said that there is another entity called a mutual company, which also owns the rights in common. This will not be the case either. The

association, which is being formed, will transfer the water and maintain the ditch only. The owners maintain their own water rights. At the present time, an effort is being made to establish the total amount of water in the ditch, what each individual owner has and then create a percentage. This will be important as far as assessing fees for the maintenance of the ditch, legal fees, Chuck Brockway's fees, and wages for a ditch rider. People will be assessed based upon their total percentage of the entire ditch. . Mr. Brockway pointed out that if there is ever a 1905 or 1887 cut-off, only those with senior rights would get their water.

Brian Brockette said that it would be increasingly difficult for the association to maintain the ditch because there are people who see it as theirs. They have had a free lunch for a long time, and they are putting more and more impediments in the way to prevent it from being cleaned out. Unless the owners file with the State as a legal entity, they have no right to go in and clean out the ditch and remove beavers that are causing blockages. It will help a great deal to make sure that the owners have the ability to have everything firmed up and recognized by the State.

Lee Peterson said that once the slough owners have established themselves as a legal entity, by law they will have the right to go in and clean the ditch.

Chuck Brockway said that the filing will force the State to say that the slough is a ditch, not a minor channel of the Wood River and, therefore, cannot be controlled. He said that the individual water right owners have the right to receive their water, but there is a mechanism through which it is received. The association will have an access easement and the authority to go and make sure that the water can be delivered.

Lee Peterson said that the slough is not a part of the river because the Corps of Engineers built a dyke, which created a man-made delivery system. In the past nobody has really known how to define it. He encouraged the owners to get organized so the slough can be declared as an irrigation ditch and eliminate any possible chance of it being declared part of the river.

Brian Brockette said that when people don't like what Mr. Peterson is telling them, they go and whine to the Department of Water Resources or the Army Corps of Engineer, and whomever they go to tells them a different story. He encouraged everyone to get organized and force the State to call the slough a ditch.

Mr. Peterson warned that if this action is not taken, the Corps of Engineers is likely to come in and declare the slough as a wetland area, and then nobody will be able to get anything.

Mr. Reinemann pointed out that if someone creates a pond from the canal, after a certain amount of time they could adversely possess the water. Once a lateral ditch is formed, no one can adversely possess the water. He said that there is no reason not to form a lateral ditch association, other than the fact that they will have to assume some of the responsibilities presently held by Mr. Peterson. He estimated that it will cost

approximately \$1,500 annually to hire someone to go out every other day and make sure that no one has opened up the gate too much, and that everyone is getting the amount of water that they are supposed to be getting.

Ralph Girton was in favor of forming the association, and showing no mercy to anyone who violated its covenants.

Mr. Reinemann asked everyone to look at the minutes of the last meeting held on April 25, 2001. He reminded them that at that meeting it was agreed to assess the owners whatever it cost to incorporate, legal fees, Chuck Brockway's fees, and clean-up fees which were heavy last year due to the necessity of using a backhoe. Evan Robertson has talked to the top echelons at the Army Corps and the IDWR, and no one is willing to give him an answer. So, the association needs to be formed and these organizations told that they are a lateral ditch association. He thought that it would work, and neither of the above organizations would give them any trouble about it.

Mr. Girton questioned costs. Mr. Reinemann said that to date approximately \$7,140 had been spent. Assessments will be based on inches. Brian Brockette is happy to oversee the ditch rider, but does not want to be the rider himself because he does not have the time. It will take an hour or two every other day. At times the headgates may have to be adjusted, and beavers removed. A record will need to be kept of each owner's usage. Estimated cost for the ditch rider is \$1,500 annually.

Brian Brockette suggested that rotating the responsibility between the owners would save the \$1,500.

Chuck Brockway pointed out that when the ditch rider is seen every day, he becomes a part of the community. It is better to be consistent because if a different person does it every month, there may be no respect shown for his authority, and no follow-up on problems.

Brian Brockette said that last year a lot of expense was incurred due to the necessity to use a backhoe. It was close to \$3,500 to build a wing dam out in the river. There was an additional \$2,800 in track hoe time at various points along the slough. There was \$1,500 to Tim Kemery to clean out beavers. These fees should go down, but the maintenance needs to be done. Approximately \$300 has been spent in secretarial fees, and \$1,500 in legal fees. More legal fees are anticipated.

Mr. Brockette anticipated \$3,000 to \$4,000 on an annual basis.

Chuck Brockway pointed out that the papers could be challenged after they are filed. People who are vehemently opposed will make various attempts to derail the association.

Minutes of April 25, 2001.

Motion: To approve the minutes of the meeting held on April 25, 2001.

Motion seconded and carried unanimously.

Articles of Incorporation and Bylaws:

Mr. Reinemann said that he had only received the Articles and Bylaws minutes before everyone else. Chuck Brockway has reviewed them. Mr. Brockway said that Evan Robertson took a State statute, which allows the formation of a lateral ditch company. He then took a statute, which allows the formation of a non-profit corporation and blended the two to make these Articles of Incorporation and Bylaws. Mr. Brockway thought that Mr. Robertson had done a good job. However, he pointed out that the Articles of Incorporation define what a member is. A member can only be a person with a valid water right in the ditch. In the case of a husband and wife, only one person gets to vote. A person with 100 inches would get a percentage of the total or 100 inches divided by 1223 (the anticipated total number of inches in the ditch) to give a percentage of the total vote, which in this example would be 8%. There will be three officers: a president or chairman; a vice-president or vice-chairman; and a secretary-treasurer.

Mr. Reinemann said that Evan Robertson wanted the owners to approve the Articles of Incorporation, approve the Bylaws and then hold an election. Six hundred fourteen inches are needed to constitute a voting quorum.

Discussion followed about Warren Sorenson's recent acquisition of additional water rights for aesthetic purposes. These non-consumptive water rights make Dr. Sorenson one of the largest voting members of the group. He will be using the Broadford Slough owners' water and paying an assessment for it. Had the owners been a legal ditch company, this acquisition might have been prevented. Concern was expressed about non-consumptive owners being able to back up the water and prevent it coming downstream.

Mr. Brockway said that the owners needed to be aware that they are to be assessed the costs of running the system on the basis of a percentage of their water right to the total water right. This is the same as the voting right. The aesthetic, or non-consumptive, rights get assessed at the same rate as the irrigation water. Discussion followed on voting privileges for non-consumptive owners.

Lee Peterson suggested looking at the application that was made for non-consumptive water rights. If the application indicated that the ditch would be widened so that water could run through, and it was granted that way, the owner would have to right to widen the ditch.

Mr. Brockway pointed out that the Bylaws could be amended so that the consumptive users have more vote than the non-consumptive users. This is not the case as they are presently written.

Motion: To approve the Articles of Incorporation.

Motion seconded and carried unanimously.

Motion: To approve the Bylaws subject to non-consumptive aesthetic water rights users paying the full amount of their percentage of ownership to be consistent with the Watermaster's policy, but to receive no voting privileges subject to the attorney's approval.

Motion seconded and carried unanimously.

Election of Officers:

Nominations were received as follows: Ralph Girton, President; Leroy Lewis, Vice-President; and Kate Rosekrans, Secretary-Treasurer.

Motion: To close nominations and accept the slate of officers.

Motion seconded and carried unanimously.

Percentage of Assessments:

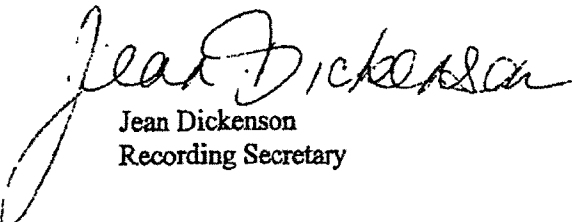
Motion: Assessments are to be based upon percentage of ownership.

Motion seconded and carried unanimously.

Adjournment:

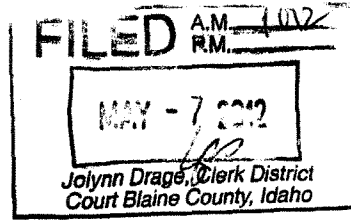
There being no further business, the meeting adjourned at 8:15 p.m.

Respectfully submitted,


Jean Dickenson
Recording Secretary

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Gary D. Slette ISB # 3198
ROBERTSON & SLETTE, PLLC
P.O. Box 1906
Twin Falls, Idaho 83303-1906
Telephone: (208) 933-0700
Facsimile: (208) 933-0701
r:\m\UER\broadford\aff.Bouttier



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

BIG WOOD RANCH, LLC,)
)
Plaintiff/Counterdefendant,)
)
v.)
)
WATER USERS' ASSOCIATION OF)
THE BROADFORD SLOUGH AND)
ROCKWELL BYPASS LATERAL)
DITCHES, INC.,)
)
Defendant/Counterclaimant.)
_____)

Case No. CV-10-842
AFFIDAVIT OF
ROBERT "ARCHIE" BOUTTIER

STATE OF IDAHO)
ss:)
County of Blaine)

ROBERT "ARCHIE" BOUTTIER, first being duly sworn, deposes and states under oath as follows:

1. I am over the age of 18 years and not a party to this action.
2. I make this Affidavit based upon my own personal knowledge and am competent to testify to the matters stated herein.

1
2 3. I purchased the property I own on Lower Broadford Road in 1974, and moved there
3 in 1979.

4 4. I am familiar with the property owned by Big Wood Ranch, LLC ("BWR") which is
5 located on Broadford Road because I have regularly farmed and operated that property for
6 approximately the past 15 years. Prior to it being purchased by BWR in 2006, it was previously
7 owned by Jann S. Wenner. At the request of Mr. Wenner, I annually irrigated and maintained his
8 property, including the pasture on the property, and always called for the delivery of the surface
9 water rights that are delivered through the Broadford Slough and the Rockwell Bypass. In return for
10 my taking care of his property, Mr. Wenner allowed me to graze my horses on the irrigated
pastures.

11 5. I met Marc Richards in 2006, after he acquired the property from Mr. Wenner. At
12 that time, Mr. Richards expressly instructed me to keep doing what I had been doing on the
13 property during the previous years when Mr. Wenner owned the property.

14 6. Subsequent to my meeting with Mr. Richards in 2006, I continued to operate his
15 property every year as he instructed in the same manner as I had done in the past. I have called
16 Brian Brockette, the lateral ditch manager of the Association, in order to obtain delivery of the
17 surface irrigation water rights from the Rockwell Bypass. That surface water rights fill the pond on
18 BWR's property, and then that water is pumped out of the pond to the sprinkler system on the
19 property. If surface water is not diverted out of the Rockwell Bypass into the pond, there would be
20 no irrigation water available to pump to irrigate the property because the appurtenant groundwater
21 rights provide a condition that all surface water must first be used before pumping any groundwater.
If the surface water flowed into the pond without being pumped out, the pond would spill out and
flow by gravity into the Slough without the need for any pumping.

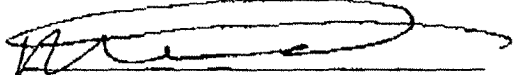
22 7. I have been provided with and have read certain portions of the deposition transcript
23 of Mr. Richards in this case in which he has now stated that I have no authority to call for the
24 surface irrigation water on the property, despite his having instructed me in 2006 to continue
25 operating his property just as I had done in the past. Since Mr. Richards is now uncertain if I would
26 be trespassing on BWR's property by continuing to operate and irrigate it, I do not intend to operate,
irrigate or take care of any portion of BWR's property as I have done in the past, and I will not call

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upon the Association for the delivery of BWR's surface water rights.


8. On many occasions during the previous 15 years, I have assisted Brian Brochette in the maintenance of the Broadford Slough and the Rockwell Bypass, I have taken my own backhoe and loader to the headgate on the Big Wood River and have cleaned the ditch leading to the headgate on the Broadford Slough. I have performed ditch cleaning and other maintenance functions on both the Broadford Slough ditch and the Rockwell Bypass ditch. I am aware that the headgate on the Broadford Slough ditch controls the amount of water that can be diverted out of the Big Wood River into the Slough ditch. The Association has assumed those functions, and the cost and expense is now borne by those whose water right delivery is dependent upon the maintenance of the flows in the Broadford Slough and the Rockwell Bypass.

Further, sayeth your affiant naught.


ROBERT "ARCHIE" BOUTTIER

SUBSCRIBED AND SWORN to before me this 5 day of May, 2012.

MARC E. REINEMANN
NOTARY PUBLIC
STATE OF IDAHO

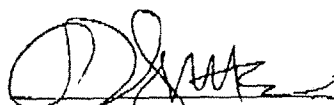

NOTARY PUBLIC FOR IDAHO
Residing at: SUN VALLEY ID
Commission Expires: 10-15-2016

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CERTIFICATE OF SERVICE

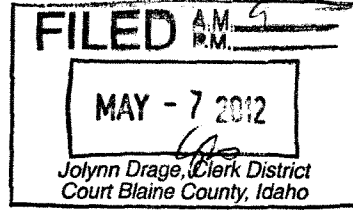
The undersigned certifies that on the 7th day of May, 2012, he caused a true and correct copy of the foregoing instrument to be served upon the following persons in the following manner:

Erika E. Malmen	<input type="checkbox"/> Hand Deliver
Cynthia L. Yee-Wallace	<input type="checkbox"/> U.S. Mail
PERKINS COIE LLP	<input type="checkbox"/> Overnight Courier
1111 W. Jefferson St., Ste. 500	<input checked="" type="checkbox"/> Facsimile Transmission 208-343-3232
Boise, ID 83702-5391	<input type="checkbox"/> Email EMalmen@perkinscoie.com
	CYeeWallace@perkinscoie.com



Gary D. Slette

Gary D. Slette ISB # 3198
ROBERTSON & SLETTE, PLLC
 P.O. Box 1906
 Twin Falls, Idaho 83303-1906
 Telephone: (208) 933-0700
 Facsimile: (208) 933-0701
 I:\m\JER\broadford\aff.Reinemann_2



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

BIG WOOD RANCH, LLC,)
)
 Plaintiff/Counterdefendant,)
)
 v.)
)
 WATER USERS' ASSOCIATION OF)
 THE BROADFORD SLOUGH AND)
 ROCKWELL BYPASS LATERAL)
 DITCHES, INC.,)
)
 Defendant/Counterclaimant.)
)

Case No. CV-10-842
 SECOND AFFIDAVIT OF
 MARC REINEMANN

STATE OF IDAHO)
) ss:
 County of Blaine)

MARC REINEMANN, first being duly sworn, deposes and states under oath as follows:

1. I am over the age of 18 years and not a party to this action.
2. I make this Affidavit based upon my own personal knowledge and am competent to testify to the matters stated herein.
3. The Plaintiff's property was previously owned by Jann S. Wenner who voluntarily

1
2 joined the Association when it was formed, and he paid assessments. According to the Articles of
3 Incorporation of the Association, subsequent owners or transferees of water rights receiving water
4 through the Broadford Slough or Rockwell Bypass shall be deemed to consent to membership in
5 the Association.

6 4. Following the Plaintiff's acquisition of its property, I personally contacted Marc
7 Richards by telephone sometime in 2006 or 2007, to introduce myself and to inform him of his
8 membership in the Association.

9 5. I explained to Mr. Richards that he was pumping surface water from his pond that
10 was diverted out of the Rockwell Bypass by the Association. At no time did I advise Mr. Richards
11 that he would have to pump water out of the pond on his property and into the Broadford Slough.
12 There would be absolutely no reason to require someone to pump water out of the pond on the
13 Plaintiff's property if the pond filled to the point where it would naturally overflow and spill into the
14 adjacent Broadford Slough ditch.

15 6. According to the Partial Decrees in the Snake River Basin Adjudication ("SRBA")
16 which are attached hereto as **Exhibits "A" and "B"**, the ground water rights appurtenant to the
17 Plaintiff's property are supplemental rights whose use is permitted only after the owner makes full
18 beneficial use of its surface water rights.

19 7. According to the Partial Decrees and the SF-5 in the SRBA attached hereto as
20 **Exhibits "C" and "D"**, the Decree stated, "Water is delivered through the Rockwell Bypass from
21 the Broadford Slough to the point of diversion described above." The SF-5 which changed that
22 element of the water right was signed by James P. Speck as attorney for Big Wood Ranch, LLC.
23 See Exhibits "C" and "D" attached hereto.

24 8. I am aware that Robert "Archie" Bouttier has regularly contacted Brian Brockette to
25 call for the delivery of surface irrigation water rights delivered by the Association. I am aware that
26 Mr. Bouttier contacted Brian Brockette to call for the delivery of the Plaintiff's water for the years
27 prior to the time in 2010 that Brian Brockette was appointed as a deputy watermaster for Water
28 District 37.

29 9. Brian Brockette was appointed as deputy watermaster for District 37 in order to give
30 him legal authority to pass over private lands for purposes of effecting the delivery of water rights

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for the Association.

10. The Board of Directors of the Association amended its Articles of Incorporation as indicated on Exhibit "E" attached hereto, and by this reference incorporated herein.

Further, sayeth your affiant naught.

Marc Reinemann
MARC REINEMANN

SUBSCRIBED AND SWORN to before me this 2 day of May, 2012.



Marla G. Mink
NOTARY PUBLIC FOR IDAHO
Residing at: Bellevue, ID.
Commission Expires: 3/2/2015

CERTIFICATE OF SERVICE

The undersigned certifies that on the 4th day of May, 2012, he caused a true and correct copy of the foregoing instrument to be served upon the following persons in the following manner:

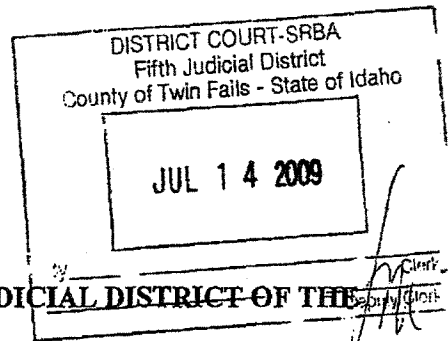
Erika E. Malmen	<input type="checkbox"/> Hand Deliver
Cynthia L. Yee-Wallace	<input type="checkbox"/> U.S. Mail
PERKINS COIE LLP	<input checked="" type="checkbox"/> Overnight Courier
1111 W. Jefferson St., Ste. 500	<input type="checkbox"/> Facsimile Transmission 208-343-3232
Boise, ID 83702-5391	<input type="checkbox"/> Email EMalmen@perkinscoie.com CYeeWallace@perkinscoie.com

Gary D. Slette
Gary D. Slette

RECEIVED

JUL 15 2009

DEPARTMENT OF
WATER RESOURCES



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

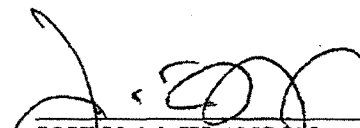
In Re SRBA	)	ORDER OF PARTIAL DECREE
)	
Case No. 39576	)	Subcase No. 37-07312C
	)	(Big Wood Ranch LLC)
)	

On May 28, 2009, a *Special Master's Report and Recommendation* was filed for the above-captioned water right. No Challenges were filed to the *Special Master's Report and Recommendation* and the time for filing Challenges has now expired.

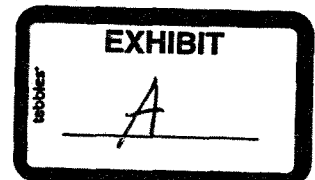
Pursuant to I.R.C.P. 53(e)(2) and *SRBA Administrative Order 1*, Section 13f, this Court has reviewed the Findings of Fact and Conclusions of Law contained in the *Special Master's Report and Recommendation* and wholly adopts them as its own.

Therefore, IT IS ORDERED that the above-captioned water right be decreed as set forth in the attached *Partial Decree Pursuant to I.R.C.P. 54(b)*.

DATED July 14, 2009



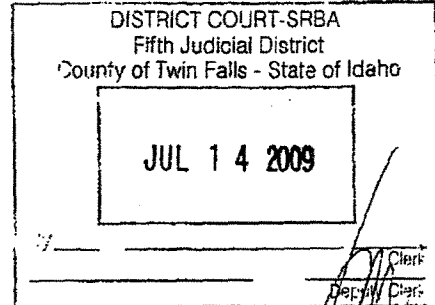
 JOHN M. MELANSON
 Presiding Judge
 Snake River Basin Adjudication



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)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 37-07312C



NAME AND ADDRESS: BIG WOOD RANCH LLC
1300 DEXTER AVE #140
SEATTLE, WA 98109

SOURCE: GROUND WATER

QUANTITY: 0.56 CFS
98.70 APY

The rights listed below are limited to a total combined diversion rate of 3.87 cfs. Combined Right Nos.: 37-537B, 37-538B, and 37-7312C.

This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 3.5 afa per acre for irrigation of the lands above.

PRIORITY DATE: 11/02/1973

POINT OF DIVERSION: T02N R18E S26 NWSW Within Blaine County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-15 TO 10-31	0.56 CFS 98.70 APY

PLACE OF USE:	Irrigation	Within Blaine County
	T02N R18E S26	SWNW 7.9 NESW 3.6 NWSW 16.7
	28.2 Acres Total	

The rights listed below are limited to the irrigation of a combined total of 28.2 acres in a single irrigation season. Combined Right Nos.: 37-537B, 37-538B, and 37-7312C.

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

The right holder shall make full beneficial use of all surface water rights available to the right holder for irrigation of the lands authorized to be irrigated under this right. The right holder shall limit the diversion of ground water under this right to those times when the surface water supply is not available or the surface water supply is not reasonably sufficient to irrigate the place of use authorized under this right.

If the surface water right(s) appurtenant to the place of use is sold, transferred, leased or used on any other place of use, this right to divert ground water shall not be used without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.

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. I.C. SECTION 42-1412(6).

2009 JUL 14 PM 02:00
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

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)

CERTIFICATE OF MAILING

Case No. 39576)
_____)

Water Right(s): 37-07312C

CERTIFICATE OF MAILING

I certify that a true and correct copy of the PARTIAL DECREE
PURSUANT TO I.R.C.P. 54(b) for WATER RIGHT 37-07312C was mailed
on July 14, 2009, with sufficient first-class postage prepaid
to the following:

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

BIG WOOD RANCH LLC
1300 DEXTER AVE #140
SEATTLE, WA 98109
Phone: 206-972-1044

JULIE MURPHY
Chief Deputy Clerk

CERTIFICATE OF MAILING

PAGE 1
07/14/09

RECEIVED

SEP 28 2010

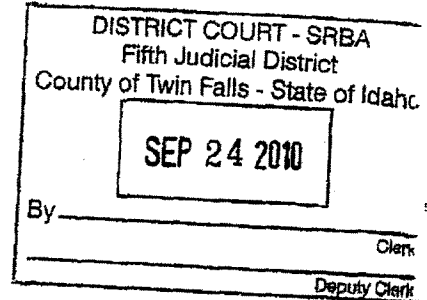
DEPARTMENT OF WATER RESOURCES

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)
_____)

PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b) FOR

Water Right 37-07312D



NAME AND ADDRESS: BIG WOOD RANCH LLC
1300 DEXTER AVE #140
SEATTLE, WA 98109

SOURCE: GROUND WATER

QUANTITY: 0.06 CFS
10.50 AFY

This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the lands herein.

PRIORITY DATE: 11/02/1973

POINT OF DIVERSION: T02N R18E S26 NWSW Within Blaine County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-15 TO 10-15	0.06 CFS
			10.50 AFY

The use of water for irrigation under this right may continue as late as October 31, provided other elements of the right are not exceeded. The use of water after October 15 under this remark is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than the date a partial decree is entered for this right.

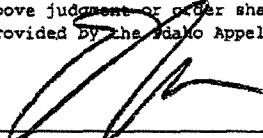
PLACE OF USE: Irrigation Within Blaine County
T02N R18E S26 NWSW 3.0
3.0 Acres Total

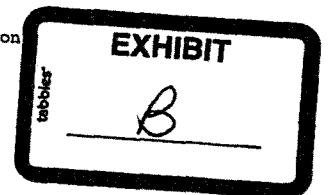
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


Eric J. Wildman
Presiding Judge of the
Snake River Basin Adjudication



RECEIVED

JUL 15 2009

DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

JUL 14 2009

By _____ Clerk
_____ Clerk

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	)	ORDER OF PARTIAL DECREE
)	
Case No. 39576	)	Subcase No. 37-00538B
	)	(Big Wood Ranch LLC)
_____)	

On May 28, 2009, a *Special Master's Report and Recommendation* was filed for the above-captioned water right. No Challenges were filed to the *Special Master's Report and Recommendation* and the time for filing Challenges has now expired.

Pursuant to I.R.C.P. 53(e)(2) and *SRBA Administrative Order I*, Section 13f, this Court has reviewed the Findings of Fact and Conclusions of Law contained in the *Special Master's Report and Recommendation* and wholly adopts them as its own.

Therefore, IT IS ORDERED that the above-captioned water right be decreed as set forth in the attached *Partial Decree Pursuant to I.R.C.P. 54(b)*.

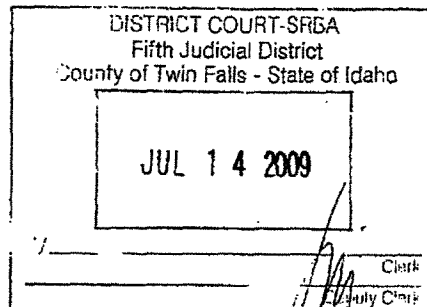
DATED July 14, 2009

John M. Melanson
 JOHN M. MELANSON
 Presiding Judge
 Snake River Basin Adjudication

EXHIBIT
 C

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)
) PARTIAL DECREE PURSUANT TO
Case No. 39576) I.R.C.P. 54(b) FOR
) Water Right 37-00538B



NAME AND ADDRESS: BIG WOOD RANCH LLC
1300 DEXTER AVE #140
SEATTLE, WA 98109

SOURCE: BIG WOOD RIVER TRIBUTARY: MALAD RIVER

QUANTITY: 3.49 CFS

The rights listed below are limited to a total combined diversion rate of 3.87 cfs. Combined Right Nos.: 37-537B, 37-538B, and 37-7312C.

PRIORITY DATE: 05/15/1891

POINT OF DIVERSION: T02N R18E S27 SENEME Within Blaine County

Water is delivered through the Rockwell Bypass from the Broadford Slough to the point of diversion described above.

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-15 TO 10-31	3.49 CFS

PLACE OF USE:	Irrigation	Within Blaine County
	T02N R18E S26	SNNW 7.9 NESW 3.6 NNSW 16.7
	28.2 Acres Total	

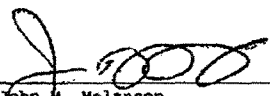
The rights listed below are limited to the irrigation of a combined total of 28.2 acres in a single irrigation season. Combined Right Nos.: 37-537B, 37-538B, and 37-7312C.

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. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


John A. Melanson
Presiding Judge of the
Snake River Basin Adjudication

COPY

RECEIVED

SEP 02 2008

DEPARTMENT OF WATER RESOURCES

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	)	Subcase No.: 37-538B
)	
Case No. 39576	)	STANDARD FORM 5
)	
	)	STIPULATED ELEMENTS OF A
	)	WATER RIGHT

This form is used to report the stipulated elements of one water right acquired under state law and/or one federal reserved water right. Submission of this form will not automatically result in the issuance of a partial decree. The Presiding Judge or Special Master will conduct any hearing necessary to determine whether the facts, data, expert opinions and law support the issuance of a partial decree for the water right.

The parties agree that the Snake River Basin Adjudication Court has jurisdiction of the parties and subject matter to enter a partial decree for this water right; that they have been served with sufficient process, according to the law; and that they have appeared, prosecuted, and defended their positions with regard to this water right dispute.

The parties and IDWR agree and stipulate that the elements of this water right should be described per the attached. The parties and IDWR have further indicated their concurrence by initialing each of the attached pages.

CLAIMANT / OBJECTOR:

Big Wood Ranch LLC

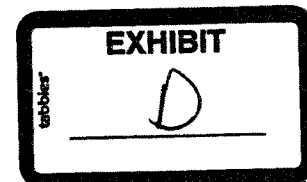
J. P. Speck *8-28-08*
 James P. Speck Date
 Attorney for Big Wood Ranch LLC

IDWR CONCURRENCE:

Kelly Christensen *8-26-08*
 Kelly Christensen Date
 Sr. Water Resource Agent

IDWR CONCURRENCE:

C. M. Bromley *8/26/08*
 Christopher M. Bromley Date
 Deputy Attorney General
 Attorney for IDWR



08/21/2008

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

RIGHT NUMBER: 37-538B

NAME AND ADDRESS: BIG WOOD RANCH LLC
1300 DEXTER AVE #140
SEATTLE WA 98109

SOURCE: BIG WOOD RIVER TRIBUTARY: MALAD RIVER

QUANTITY: 3.490 CFS

The rights listed below are limited to a total combined diversion rate of 3.87 cfs. Combined Right Nos.: 37-537B, 37-538B, and 37-7312C.

PRIORITY DATE: 05/15/1991

POINT OF DIVERSION:

~~TO2N R18E S22 N30W Within BLAINE County~~
TO2N R18E S27 ~~SENEKE Rediversion~~ Within BLAINE County

KKC
CB [Signature]

Water is delivered through the Rockwell Bypass from the Broadford Slough to the point of diversion described above.

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	04/15 10/31	3.490 CFS

PLACE OF USE:

IRRIGATION in BLAINE County					
TO2N R18E S26	S30W	7.90	TO2N R18E S26	N35W	3.60
TO2N R18E S26	N35W	16.70			
28.2 ACRES TOTAL					

The rights listed below are limited to the irrigation of a combined total of 28.2 acres in a single irrigation season. Combined Right Nos.: 37-537B, 37-538B, and 37-7312C.

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(5), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

CERTIFICATE OF SERVICE

I certify that on _____, 2008, I caused to be served true and correct copies of this Standard Form 5, to the following persons, in the manner indicated and addressed as follows:

1. Original to:

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

Overnight Mail
 Regular Mail
 Hand-Delivered
 Facsimile

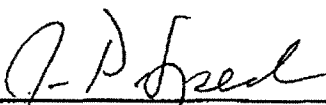
2. Copies to:

IDWR Document Repository
P.O. Box 83720
Boise, ID 83720-0098

Overnight Mail
 Regular Mail
 Hand-Delivered
 Facsimile

James P. Speck
Speck & Aanestad
P.O. Box 987
Ketchum, ID 83340

Overnight Mail
 Regular Mail
 Hand-Delivered
 Facsimile



Signature of person or attorney mailing the form

FILED EFFECTIVE

12 APR 23 PM 1:17

SECRETARY OF STATE
STATE OF IDAHO

ARTICLES OF AMENDMENT

KNOW ALL MEN BY THESE PRESENTS:

THAT all the directors of **WATER USERS' ASSOCIATION OF THE BROADFORD SLOUGH AND ROCKWELL BYPASS LATERAL DITCHES, INC.**, have unanimously voted to amend the Articles of Incorporation filed May 3, 2002, and in support thereof submit the following Articles of Amendment:

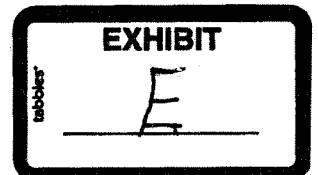
ARTICLE I.

The amendments so adopted are as follows:

Article VI. of the Articles of Incorporation is amended to read as follows:

ARTICLE VI
MEMBERSHIP

Interest in this non-profit corporation shall be memberships, all of single class, evidenced by certificates of membership. Every owner of an Idaho state water right either (a) validly entitled to be conveyed through either the Broadford Slough lateral ditch or the Rockwell Bypass lateral ditch; or (b) that has been transferred out of the Rockwell Bypass as a saved water right, but whose right to use such water is dependent upon maintenance of sufficient flows in the Rockwell Bypass as required in the Rockwell Decree dated August 25, 1949, shall be a member of the corporation, and upon either (a) receiving water through either of said lateral ditches; or (b) being able to divert such transferred water, shall be deemed to consent to membership, and to the provisions of these Articles of Incorporation and the By-laws of this corporation, as the same may now read or are hereafter duly amended to read. Such membership shall at all times be identified with, and be appurtenant to, the ownership of said water rights. Should any of said water rights, or any portion thereof, be transferred by sale or otherwise, all such transferees shall, upon acceptance of the transfer, become members of the corporation. No person or entity who is not the owner of a water right either (a) conveyed through the Broadford Slough lateral ditch or the Rockwell Bypass lateral ditch; or (b) validly transferred from the Rockwell Bypass to another point of diversion, shall become or remain a member of the corporation.



IDAHO SECRETARY OF STATE
04/23/2012 05:00
CK: 62879 CT: 89379 BH: 1321043
1 @ 30.00 = 30.00 NON PROF A # 2
1 @ 20.00 = 20.00 NON EXPEDI # 3

C143766

Article VII. of the Articles of Incorporation is amended to read as follows:

ARTICLE VII
MEMBERSHIP VOTING

At all annual and special meetings of the members of the corporation, duly called and constituted in accordance with the bylaws of the corporation, each member shall be entitled to vote in person or by written proxy, dated and signed by the member; provided, however, that no such proxy shall be valid beyond 11 months after its execution unless a longer period is expressly provided in the written proxy, and it shall expire in any event if the person or entity executing it is no longer a member of the corporation. Each member shall be entitled to one (1) vote for each inch of water, and a fractional vote equal to each fraction of an inch of water, which said member is entitled to (a) receive through the Broadford Slough or Rockwell Bypass lateral ditches; or (b) divert as a water right validly transferred out of the Rockwell Bypass to a new point of diversion. In the event a water right which entitles membership is owned by more than one person or entity, the membership appurtenant to that water right shall be held by said persons or entities in the same fractional interests, provided that all such owners shall collectively designate one (1) person or entity to cast their respective votes.

Article VIII. of the Articles of Incorporation is amended to read as follows:

ARTICLE VIII
DUES AND ASSESSMENTS

Each member shall be deemed to covenant and agree with every other member, and with the corporation, to pay any assessments duly levied by the corporation for the purposes provided in these Articles of Incorporation. Said assessments shall be levied against the members, pro rata in proportion to the water which the member is entitled to receive from (a) Broadford Slough lateral ditch or the Rockwell Bypass lateral ditch; or (b) a new point of diversion as a result of a validly approved transfer out of the Rockwell Bypass. The Board of Directors shall fix the amount of said assessments, from time to time, and may make them payable at such times or intervals, and upon such notice and by such methods as the directors may prescribe. Assessments may be enforced by civil action, consistent with the provisions of Section 42-1304 of the Idaho Code, and no member shall be entitled to receive water from said lateral ditches whenever any assessment levied against said member is due and unpaid unless otherwise approved and ordered by the Board of Directors as provided for in Idaho Code § 42-1305.

ARTICLE III.

The amendment of the Articles of Incorporation was adopted by unanimous vote of the directors at a meeting held April 21, 2012.

ARTICLE IV.

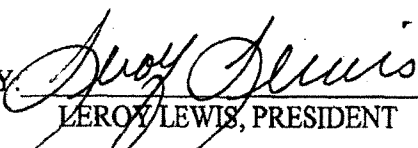
Each amendment consists exclusively of matters which do not require member approval pursuant to section 30-3-90, Idaho Code, and was, therefore, adopted by the board of directors.

ARTICLE V.


The total number of directors entitled to vote was three. At the meeting of directors held April 21, 2012, three (3) directors voted in favor and zero (0) voted against the amendments above set forth.

IN WITNESS WHEREOF, the undersigned officers of WATER USERS' ASSOCIATION OF THE BROADFORD SLOUGH AND ROCKWELL BYPASS LATERAL DITCHES, INC., have executed these Articles of Amendment and certify to the truth of the facts herein stated, this 21 day of April, 2012.

WATER USERS' ASSOCIATION OF THE
BROADFORD SLOUGH AND ROCKWELL
BYPASS LATERAL DITCHES, INC.

BY: 
LEROY LEWIS, PRESIDENT

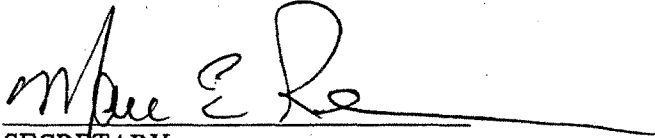
ATTEST:


MARC REINEMANN
SECRETARY

STATE OF IDAHO)
)ss.
County of Blaine)

MARC REINEMANN, being first duly sworn, deposes and says as follows:

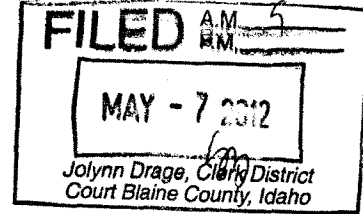
That he is the Secretary of WATER USERS' ASSOCIATION OF THE BROADFORD SLOUGH AND ROCKWELL BYPASS LATERAL DITCHES, INC., and that the foregoing ARTICLES OF AMENDMENT effect the previous Articles of Incorporation of WATER USERS' ASSOCIATION OF THE BROADFORD SLOUGH AND ROCKWELL BYPASS LATERAL DITCHES, INC., which amendment in the Articles of Incorporation was duly adopted at a meeting of the directors of the corporation, by unanimous vote, held on April 21, 2012, and that the statements contained therein are true and correct.



SECRETARY

I:\m\corp\amd arts_water users

Gary D. Slette ISB # 3198
 ROBERTSON & SLETTE, PLLC
 P.O. Box 1906
 Twin Falls, Idaho 83303-1906
 Telephone: (208) 933-0700
 Facsimile: (208) 933-0701
 lrim\VER\broadford\aff.Brockette_2



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

BIG WOOD RANCH, LLC,)
)
 Plaintiff/Counterdefendant,)
)
 v.)
)
 WATER USERS' ASSOCIATION OF)
 THE BROADFORD SLOUGH AND)
 ROCKWELL BYPASS LATERAL)
 DITCHES, INC.,)
)
 Defendant/Counterclaimant.)
 _____)

Case No. CV-10-842
 SECOND AFFIDAVIT OF
 BRIAN BROCKETTE

STATE OF IDAHO)
)
 ss:)
 County of Blaine)

BRIAN BROCKETTE, first being duly sworn, deposes and states under oath as follows:
 1. I am over the age of 18 years and not a party to this action.
 2. I make this Affidavit based upon my own personal knowledge and am competent to
 testify to the matters stated herein.

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3. I became the lateral ditch manager for the Association upon its formation in 2002.

4. I was appointed a deputy watermaster for the State of Idaho in 2010, in order to have legal authorization to pass over private land for purposes of effecting delivery of water rights on the Rockwell Bypass and Broadford Slough.

5. Prior to the Plaintiff's acquisition of its property in 2006, Jann Wenner owned that property, and paid assessments to the Association for the delivery of his water rights. A true copy of his last check for assessments is attached hereto as **Exhibit "A"**, and by this reference incorporated herein.

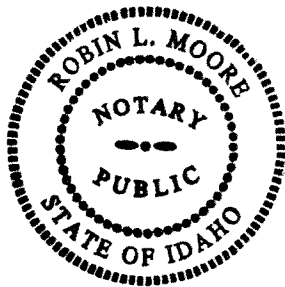
6. Subsequent to the Plaintiff's acquisition of its property, Robert Bouttier has annually called me in my capacity as the lateral ditch manager of the Association to deliver irrigation water to the Plaintiff's property. The Plaintiff's water rights have been delivered each year to its property by the Association, as evidenced by the delivery tickets maintained by the watermaster for Districts 37 and 37M. **See Exhibit "B" attached hereto and made a part hereof by reference.**


7. I am aware that Robert Bouttier has irrigated the Plaintiff's property on an annual basis since its acquisition by the Plaintiff, and that Mr. Bouttier has utilized surface irrigation water delivered by the Association.

Further, sayeth your affiant naught.


BRIAN BROCKETTE

SUBSCRIBED AND SWORN to before me this 1st day of May, 2012.




NOTARY PUBLIC FOR IDAHO
Residing at: Jerome
Commission Expires: 12-29-12

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CERTIFICATE OF SERVICE

The undersigned certifies that on the 4th day of May, 2012, he caused a true and correct copy of the foregoing instrument to be served upon the following persons in the following manner:

Erika E. Malmen	[] Hand Deliver
Cynthia L. Yee-Wallace	[] U.S. Mail
PERKINS COIE LLP	[<input checked="" type="checkbox"/>] Overnight Courier
1111 W. Jefferson St., Ste. 500	[] Facsimile Transmission 208-343-3232
Boise, ID 83702-5391	[] Email EMalmen@perkinscoie.com
	CYeeWallace@perkinscoie.com



Gary D. Slette

MORGAN GUARANTY TRUST COMPANY
OF NEW YORK

3163

JANN S. WENNER

62-23/311

00003164

PAY FOUR THOUSAND ONE HUNDRED SIXTY-ONE AND 66 / 100 Dollars
DATE 03/06/03 AMOUNT *****\$4,161.66

TO THE ORDER OF Broadford Ditch Users Assoc.
c/o Kate Rosekrans
17 Quigley Road
Hailey, ID 83333

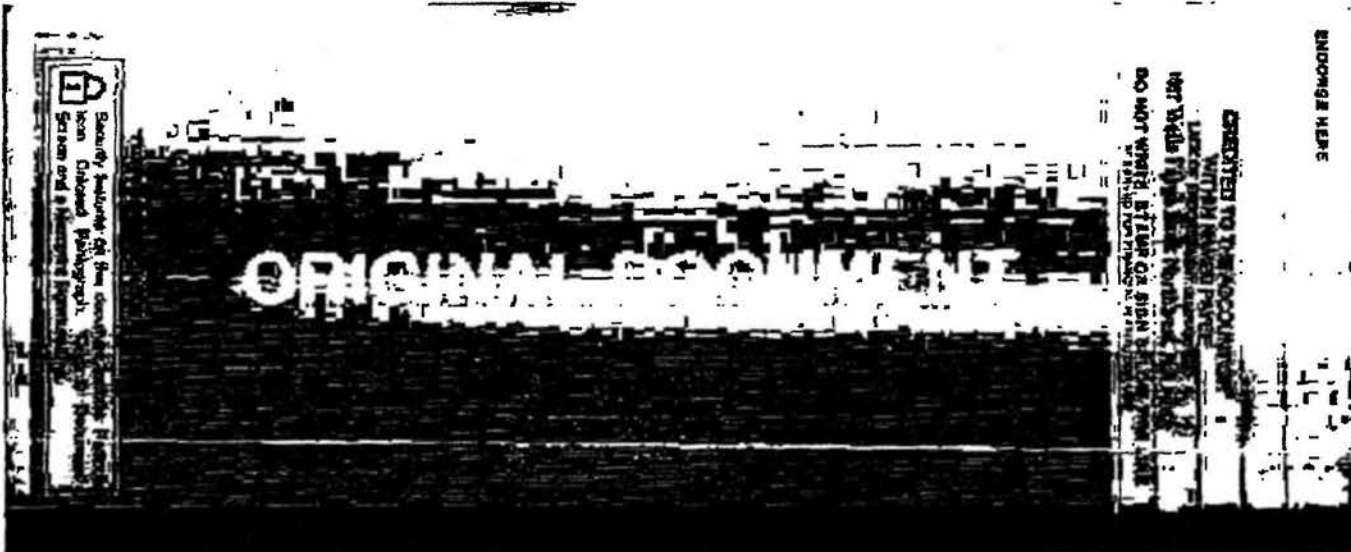
Jann Wenner

[Handwritten Signature]
AUTOMATIC SIGNATURE

⑈003163⑈ ⑆031100238⑆ 400 04 793⑈ ⑆0000416166⑆

Security features. Details on back

SMITH #5500018



06598-31AUG04/P-CL-MG/ASYN/11-SEP-03/310297/002643455499/4,161.66/U/3163/2
31-AUG-04/113/000000003212233344/PS /

Enclosed are the photocopied items you requested. For further assistance,
please call 1-800-869-3557. (1-800-TO-WELLS) You have not been charged a
fee for this service.

Thank you for banking with Wells Fargo - your Anytime Anywhere Bank.

----- INTEROFFICE MAIL -----
MAC: u1808011
TO: penny hogan AU: 01667

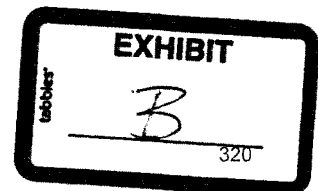
EXHIBIT
tabbies
A

Group: G31AUG04-0523
WUA000240
319

WATER DISTRICT 37 & 37M

CANAL NAME		BROADFORD					CANAL NO. 35		2007
OWNER		BIG WOOD RANCH							
DATE	APRIL	MAY	JUNE	JULY	AUG	SEPT	DATE		
1			3.40	0.38	0.38	0.38	1		
2			3.40	0.38	0.38	0.38	2		
3			3.40	0.38	0.38	0.38	3		
4			3.40	0.38	0.38	0.38	4		
5			3.40	0.38	0.38	0.38	5		
6			3.40	0.38	0.38	0.38	6		
7			3.40	0.38	0.38	0.38	7		
8			3.40	0.38	0.38	0.38	8		
9			0.38	0.38	0.38	0.38	9		
10			0.38	0.38	0.38	0.38	10		
11			0.38	0.38	0.38	0.38	11		
12			0.38	0.38	0.38	0.38	12		
13			0.38	0.38	0.38	0.38	13		
14			0.38	0.38	0.38	0.38	14		
15		3.40	0.38	0.38	0.38	0.38	15		
16		3.40	0.38	0.38	0.38	0.38	16		
17		3.40	0.38	0.38	0.38	0.38	17		
18		3.40	0.38	0.38	0.38	0.38	18		
19		3.40	0.38	0.38	0.38	0.38	19		
20		3.40	0.38	0.38	0.38	0.38	20		
21		3.40	0.38	0.38	0.38	0.38	21		
22		3.40	0.38	0.38	0.38	0.38	22		
23		3.40	0.38	0.38	0.38	0.38	23		
24		3.40	0.38	0.38	0.38	0.38	24		
25		3.40	0.38	0.38	0.38	0.38	25		
26		3.40	0.38	0.38	0.38	0.38	26		
27		3.40	0.38	0.38	0.38	0.38	27		
28		3.40	0.38	0.38	0.38	0.38	28		
29		3.40	0.38	0.38	0.38	0.38	29		
30		3.40	0.38	0.38	0.38	OFF	30		
31		3.40		0.38	0.38		31		
TOTAL	0.00	57.80	35.56	11.78	11.78	11.02			

YEARLY C F S 128
 YEARLY ACRE FEET 253
 TOTAL NO OF DAYS 138
 YEARLY MEAN 1



WATER DISTRICT 37 & 37M

CANAL NAME		BROADFORD		CANAL NO. 35			2008
OWNER		BIG WOOD RANCH					
DATE	APRIL	MAY	JUNE	JULY	AUG	SEPT	DATE
1			3.50	off	0.38	off	1
2			3.50	off	0.38	off	2
3			3.50	off	0.38	off	3
4			3.50	off	0.38	off	4
5			3.50	off	0.38	off	5
6			3.50	off	0.38	0.38	6
7			3.50	off	0.38	0.38	7
8			3.50	off	0.38	0.38	8
9			3.50	0.38	0.38	0.38	9
10			3.50	0.38	0.38	0.38	10
11			3.50	0.38	0.38	0.38	11
12			3.50	0.38	0.38	0.38	12
13			3.50	0.38	0.38	0.38	13
14			3.50	0.38	0.38	0.38	14
15			3.50	0.38	0.38	0.38	15
16			3.50	0.38	0.38	0.38	16
17			3.50	0.38	0.38	0.38	17
18		3.50	3.50	0.38	0.38	0.38	18
19		3.50	3.50	0.38	0.38	0.38	19
20		3.50	3.50	0.38	0.38	0.38	20
21		3.50	3.50	0.38	0.38	0.38	21
22		3.50	3.50	0.38	0.38	0.38	22
23		3.50	3.50	0.38	0.38	0.38	23
24		3.50	3.50	0.38	0.38	0.38	24
25		3.50	3.50	0.38	0.38	0.38	25
26		3.50	off	0.38	off	0.38	26
27		3.50	off	0.38	off	0.38	27
28		3.50	off	0.38	off	0.38	28
29		3.50	off	0.38	off	0.38	29
30		3.50	off	0.38	off	off	30
31		3.50		0.38	off		31
TOTAL	0.00	49.00	87.50	8.74	9.50	9.12	

YEARLY C F S	164
YEARLY ACRE FEET	324
TOTAL NO OF DAYS	111
YEARLY MEAN	1

WATER DISTRICT 37 & 37M

CANAL NAME		BROADFORD				CANAL NO. 35		2009
OWNER		BIG WOOD RANCH						
DATE	APRIL	MAY	JUNE	JULY	AUG	SEPT	DATE	
1			3.40	3.40	3.40	3.40	1	
2			3.40	3.40	3.40	3.40	2	
3			3.40	3.40	3.40	3.40	3	
4			3.40	3.40	3.40	3.40	4	
5			3.40	3.40	3.40	3.40	5	
6			3.40	3.40	3.40	3.40	6	
7			3.40	3.40	3.40	3.40	7	
8			3.40	3.40	3.40	3.40	8	
9			3.40	3.40	3.40	3.40	9	
10			3.40	3.40	3.40	3.40	10	
11			3.40	3.40	3.40	3.40	11	
12			3.40	3.40	3.40	3.40	12	
13			3.40	3.40	3.40	3.40	13	
14			3.40	3.40	3.40	3.40	14	
15			3.40	3.40	3.40	3.40	15	
16			3.40	3.40	3.40	3.40	16	
17			3.40	3.40	3.40	3.40	17	
18			3.40	3.40	3.40	3.40	18	
19			3.40	3.40	3.40	3.40	19	
20			3.40	3.40	3.40	3.40	20	
21			3.40	3.40	3.40	3.40	21	
22		3.40	3.40	3.40	3.40	3.40	22	
23		3.40	3.40	3.40	3.40	3.40	23	
24		3.40	3.40	3.40	3.40	3.40	24	
25		3.40	3.40	3.40	3.40	3.40	25	
26		3.40	3.40	3.40	3.40	3.40	26	
27		3.40	3.40	3.40	3.40	3.40	27	
28		3.40	3.40	3.40	3.40	3.40	28	
29		3.40	3.40	3.40	3.40	3.40	29	
30		3.40	3.40	3.40	3.40	3.40	30	
31		3.40		3.40	3.40		31	
TOTAL	0.00	34.00	102.00	105.40	105.40	102.00		

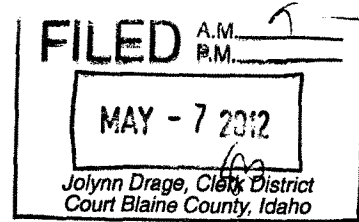
YEARLY C F S 449
 YEARLY ACRE FEET 889
 TOTAL NO OF DAYS 132
 YEARLY MEAN 3

WATER DISTRICT 37 & 37M

CANAL NAME		BROADFORD		CANAL NO. 35		2010	
OWNER		BIG WOOD RANCH					
DATE	APRIL	MAY	JUNE	JULY	AUG	SEPT	DATE
1			3.40	3.40	0.38	0.38	1
2			3.40	3.40	0.38	0.38	2
3			3.40	3.40	0.38	0.38	3
4			3.40	3.40	0.38	0.38	4
5			3.40	3.40	0.38	0.38	5
6			3.40	3.40	0.38	0.38	6
7			3.40	3.40	0.38	0.38	7
8			3.40	3.40	0.38	0.38	8
9			3.40	3.40	0.38	0.38	9
10			3.40	3.40	0.38	0.38	10
11			3.40	3.40	0.38	0.38	11
12			3.40	3.40	0.38	0.38	12
13			3.40	3.40	0.38	0.38	13
14			3.40	3.40	0.38	0.38	14
15			3.40	3.40	0.38	0.38	15
16			3.40	3.40	0.38	0.38	16
17			3.40	3.40	0.38	0.38	17
18			3.40	3.40	0.38	0.38	18
19			3.40	3.40	0.38	0.38	19
20			3.40	3.40	0.38	0.38	20
21			3.40	3.40	0.38	0.38	21
22		3.40	3.40	3.40	0.38	0.38	22
23		3.40	3.40	3.40	0.38	0.38	23
24		3.40	3.40	3.40	0.38	0.38	24
25		3.40	3.40	3.40	0.38	0.38	25
26		3.40	3.40	3.40	0.38	0.38	26
27		3.40	3.40	3.40	0.38	0.38	27
28		3.40	3.40	0.38	0.38	0.38	28
29		3.40	3.40	0.38	0.38	0.38	29
30		3.40	3.40	0.38	0.38	0.38	30
31		3.40		0.38	0.38		31
TOTAL	0.00	34.00	102.00	93.32	11.78	11.40	

YEARLY C F S 253
 YEARLY ACRE FEET 500
 TOTAL NO OF DAYS 132
 YEARLY MEAN 2

1
2 **Gary D. Slette ISB # 3198**
3 **ROBERTSON & SLETTE, PLLC**
4 **P.O. Box 1906**
5 **Twin Falls, Idaho 83303-1906**
6 **Telephone: (208) 933-0700**
7 **Facsimile: (208) 933-0701**
8 **rlm\VER\broadford\aff.Slette_2**



9
10
11 **IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE**
12 **STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

13 *****

14 **BIG WOOD RANCH, LLC,**)
15 **Plaintiff/Counterdefendant,**) **Case No. CV-10-842**
16 **v.**) **SECOND AFFIDAVIT OF**
17 **WATER USERS' ASSOCIATION OF**) **GARY D. SLETTE**
18 **THE BROADFORD SLOUGH AND**)
19 **ROCKWELL BYPASS LATERAL**)
20 **DITCHES, INC.,**)
21 **Defendant/Counterclaimant.**)

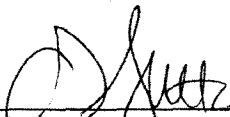
22 **STATE OF IDAHO**)
23 **County of Twin Falls**) **ss:**

24 **GARY D. SLETTE, first being duly sworn, deposes and states as follows:**
25 **1. I am counsel of record for the Plaintiffs named herein.**
26 **2. Exhibit "A" attached hereto, and by this reference incorporated**

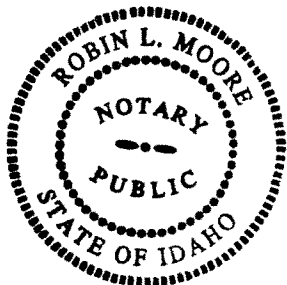
1
2 herein, is a copy of Marc Richards' deposition taken on April 16, 2012.

3 Further, your affiant sayeth not.

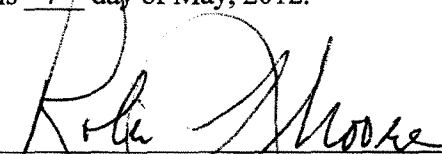
4 DATED this 4th day of May, 2012.

5
6 
7 _____
8 GARY D. SLETTE

9 SUBSCRIBED AND SWORN to before me this 4th day of May, 2012.



15
16
17
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19
20
21
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23
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25
26



NOTARY PUBLIC FOR IDAHO
Residing at: Jerome
Commission Expires: 12-29-12

CERTIFICATE OF SERVICE

The undersigned certifies that on the 4th day of May, 2012, he caused a true and correct copy of the foregoing instrument to be served upon the following persons in the following manner:

- | | |
|---------------------------------|--|
| Erika E. Malmén | [] Hand Deliver |
| Cynthia L. Yee-Wallace | [] U.S. Mail |
| PERKINS COIE LLP | [<input checked="" type="checkbox"/>] Overnight Courier |
| 1111 W. Jefferson St., Ste. 500 | [] Facsimile Transmission 208-343-3232 |
| Boise, ID 83702-5391 | [] Email EMalmen@perkinscoie.com |
| | CYeeWallace@perkinscoie.com |



Gary D. Slette

Page 2

1 THE DEPOSITION OF MARC RICHARDS was taken on
 2 behalf of the Defendant/Counterclaimant at the office of
 3 Speck & Aanestad, 120 East Avenue, Ketchum, Idaho,
 4 commencing at 2:00 p.m. on April 16, 2012, before Diana
 5 Kilpatrick, Certified Shorthand Reporter and Notary
 6 Public within and for the State of Idaho, in the
 7 above-entitled matter.

8 APPEARANCES:
 9 For Plaintiff/Counterdefendant:
 10 Perkins Coie
 11 BY MS. ERIKA E. MALMEN
 12 -and-
 13 BY MR. RICHARD C. BOARDMAN
 14 111 West Jefferson Street, Suite 500
 15 P.O. Box 737
 16 Boise, Idaho 83701-0737
 17 For Defendant/Counterclaimant:
 18 Robertson & Slette
 19 BY MR. GARY D. SLETTE
 20 P.O. Box 1906
 21 Twin Falls, Idaho 83303-1906
 22

23 ALSO PRESENT:
 24 Marc Reinemann
 25

Page 4

1 MARC RICHARDS,
 2 first duly sworn to tell the truth relating to said
 3 cause, testified as follows:
 4 EXAMINATION
 5 QUESTIONS BY MR. SLETTE:
 6 Q. Marc, if you would, please, state your name
 7 and residence address.
 8 A. Marc Richards, and residence here is the
 9 technical -- you want the technical residence?
 10 Q. Yes.
 11 A. It would be 2016 Elkhorn Road, and the --
 12 that would be my technical address here, or Box 3298,
 13 Ketchum.
 14 Q. And did I hear 2016 Elkhorn Road?
 15 A. Yes. They put that as -- you know, you have
 16 an address, that's the address on my -- if I went to the
 17 post office, they'd back it there. Or I have another
 18 residence out Eastfork.
 19 Q. So you have a residence on Elkhorn Road?
 20 A. Yes. A condo up there.
 21 Q. In Elkhorn?
 22 A. Yes.
 23 Q. And which condominium complex is that in?
 24 A. The Village.
 25 Q. And you have a residence in Eastfork.

Page 3

1 INDEX
 2 TESTIMONY OF MARC RICHARDS PAGE
 3 Examination By Mr. Slette 4
 4
 5 EXHIBITS
 6
 7
 8 None
 9
 10
 11
 12
 13
 14
 15
 16
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 18
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EXHIBIT

A

Page 5

1 A. Yes.
 2 Q. Located midway between Ketchum and Hailey?
 3 A. Yes.
 4 Q. Who resides there?
 5 A. I do when I'm here, sometimes.
 6 Q. So you split between Elkhorn and Eastfork?
 7 A. Yes.
 8 Q. Which one -- are you a legal resident of the
 9 State of Idaho?
 10 A. Yes.
 11 Q. So do you have another residence elsewhere?
 12 A. I have a house in Washington.
 13 Q. Which residence do you claim as your
 14 permanent residence in Idaho, the Eastfork residence or
 15 Elkhorn?
 16 A. It's always been Elkhorn, but the P.O.
 17 box, as you know.
 18 Q. Right. I'm trying to understand this.
 19 You live in a Village condominium out in Elkhorn.
 20 A. Let's say I live at 210 Sheep Trail out
 21 Eastfork.
 22 Q. And the P.O. box address is physically
 23 located --
 24 A. In Ketchum, because I'm closer to Ketchum,
 25 and they don't deliver mail in this area to your home.

Page 6

1 You asked for my legal address.
 2 Q. That's correct. I'm just trying to get some
 3 basics out of the way. Are you employed or
 4 self-employed?
 5 A. Self-employed.
 6 Q. What do you do, sir?
 7 A. Real estate, apartment buildings, management
 8 and remodel.
 9 Q. Where do you undertake that activity?
 10 A. A company that is in Seattle.
 11 Q. Do you do it exclusively in the state of
 12 Washington?
 13 A. Pretty much, yes.
 14 Q. Do you carry on any of those business
 15 activities in Idaho?
 16 A. No.
 17 Q. How much of the year would you say that you
 18 reside in Idaho?
 19 A. Half the time.
 20 Q. Are you familiar with Big Wood Ranch, LLC?
 21 A. Yes.
 22 Q. How is it that you are familiar with them?
 23 A. It was a property purchased in 2006.
 24 Q. I'm talking now about the entity, Big Wood
 25 Ranch, LLC. Are you a member of Big Wood Ranch, LLC?

Page 7

1 A. Yes.
 2 Q. Are you the only member?
 3 A. I believe.
 4 Q. Are you the managing member?
 5 A. Yes.
 6 Q. Other than your attorneys, who have you
 7 spoken with about this lawsuit that you filed?
 8 A. No one, really.
 9 Q. So outside of this room, nobody that you've
 10 spoken to regarding any aspect of this litigation?
 11 A. I don't even know what's -- no.
 12 Q. You don't even know what the case is about?
 13 A. No. I don't know what you're asking --
 14 going to ask me today, so I couldn't really tell anyone
 15 what I was going to talk about today, because I don't
 16 know what we're going to talk about except for the
 17 information that was given to me by my attorney.
 18 Q. Prior to the filing of this lawsuit, did you
 19 speak with anyone about your claims that are asserted?
 20 In the Complaint?
 21 A. No.
 22 Q. So before calling any of these individuals
 23 or anyone at their firm, you decided on your own that
 24 you needed to contact a lawyer to see about filing a
 25 lawsuit?

Page 8

1 A. Well, they filed the lawsuit. We answered
 2 the lawsuit, so of course I called my attorneys to
 3 answer the lawsuit.
 4 Q. Do you know Archie Bouttier, or Bob
 5 Bouttier?
 6 A. Yes.
 7 Q. How do you know Mr. Bouttier?
 8 A. He has some horses on the property. I met
 9 him in 2006.
 10 Q. What were the circumstances under which you
 11 met Mr. Bouttier?
 12 A. He was out in the field running some
 13 equipment, and one of the neighbors down there
 14 introduced me to him.
 15 Q. Who was that neighbor?
 16 A. Stoney Burke.
 17 Q. What did Stoney tell you about Mr. Bouttier?
 18 A. Just said that he had had horses that were
 19 on the property, and that's the first time I met him.
 20 Q. And have you worked out an arrangement with
 21 Mr. Bouttier to operate your property, or Big Wood's
 22 property on Broadford Road?
 23 A. Worked out -- I don't understand the
 24 question.
 25 MR. BOARDMAN: Then ask him to clarify.

Page 9

1 THE WITNESS: Clarify.
 2 BY MR. SLETTE:
 3 Q. Do you have any arrangement with
 4 Mr. Bouttier regarding your property on Broadford Road?
 5 A. No. Not really.
 6 Q. How is it, then -- does he farm your
 7 property?
 8 A. I have not seen him farm the property, no.
 9 Q. Who irrigates your property?
 10 A. A -- my understanding is that he runs the
 11 pumps to irrigate the field.
 12 Q. Does someone harvest the crop from the
 13 field?
 14 A. I don't know. I'm not down there.
 15 Q. Okay. So let's go back. First, you're the
 16 managing member of Big Wood Ranch, LLC?
 17 A. Yes.
 18 Q. Big Wood Ranch, LLC purchased the property
 19 on Broadford Road in 2006?
 20 A. Yes.
 21 Q. And when is the last time you set foot on
 22 the property?
 23 A. February.
 24 Q. Of this year?
 25 A. Yes.

Page 10

1 Q. What's the purpose of your purchase of that
 2 property in 2006?
 3 A. A home.
 4 Q. A home for you to reside in?
 5 A. Yes.
 6 Q. Who resides in that residence located on
 7 that property now?
 8 A. No one. It's uninhabitable.
 9 Q. And why is that?
 10 A. Because I was going to have it built, and
 11 the estimate to have it built was one price, and they --
 12 when they started tearing it apart, they tripled the
 13 price of the bid.
 14 Q. Who was this?
 15 A. Poster Construction.
 16 Q. I'm sorry.
 17 A. Poster Construction.
 18 Q. Brian Poster?
 19 A. (Inaudible Response.)
 20 Q. Yes?
 21 A. Yes.
 22 Q. Is this the property that was previously
 23 owned by Jan Wenner?
 24 A. Yes.
 25 Q. And prior to him, I think maybe Candy

Page 11

1 Forceman owned it. Is that correct?
 2 A. That's what I was told.
 3 Q. So it's the old log house on the property?
 4 Is that the one you own?
 5 A. That's part of it, yes.
 6 Q. And isn't there a guest house on that
 7 property as well?
 8 A. No. Jan Wenner took both of them with him.
 9 Q. Did you ever speak with Jan Wenner prior to
 10 your purchase of the property?
 11 A. No.
 12 Q. How about after the purchase of your
 13 property?
 14 A. No.
 15 Q. Did you ever speak with anyone affiliated
 16 with Mr. Wenner regarding the purchase of that property?
 17 A. Regarding the purchase of it?
 18 Q. Regarding any aspect of it.
 19 A. You.
 20 Q. You spoke with me?
 21 A. Yes.
 22 Q. What did I tell you?
 23 MR. BOARDMAN: I trust it wasn't an
 24 attorney-client relationship.
 25 ///

Page 12

1 BY MR. SLETTE:
 2 Q. Did I bill you?
 3 A. Yes.
 4 MR. BOARDMAN: We'll waive. Go ahead and
 5 ask the questions.
 6 BY MR. SLETTE:
 7 Q. When would that have been?
 8 A. '07.
 9 Q. Did I send you any correspondence?
 10 A. Yes.
 11 Q. Do you have it with you?
 12 A. Yes.
 13 Q. Do you wish to invoke the attorney-client
 14 privilege for any reason?
 15 MR. BOARDMAN: Your current counsel says no.
 16 THE WITNESS: Okay. No.
 17 MR. SLETTE: I'd like to go off the record
 18 for a moment.
 19 (A Break Was Taken.)
 20 BY MR. SLETTE:
 21 Q. So the communications that you and I had
 22 related to a loan that you had with Jan Wenner. Is that
 23 correct?
 24 A. Yeah. The cash-out of the loan.
 25 Q. And you owed Jan Wenner purchase money from

Page 13

1 when you acquired the property?
 2 A. Right.
 3 Q. And at the time the loan was due, was there
 4 an inability on your part to pay?
 5 A. Yes.
 6 Q. And then as a consequence, I did the work
 7 for you, and you wound up paying my fee to him. Is that
 8 correct?
 9 A. No.
 10 Q. Did you pay it directly to me?
 11 A. Yes. You sent me an invoice.
 12 Q. Okay. That was your agreement with Jan
 13 Wenner, that you would pay the fees?
 14 A. Didn't make any agreement with Jan Wenner.
 15 Never talked to Jan Wenner. Only talked to you.
 16 Q. Very good. Back to Archie Bouttier, does
 17 Archie operate your property on Lower Broadford Road
 18 now?
 19 A. No.
 20 Q. Who does?
 21 MR. BOARDMAN: Object to the form of the
 22 question in terms of the definition of operate.
 23 BY MR. SLETTE:
 24 Q. Who runs or manages your property on Lower
 25 Broadford Road?

Page 14

1 A. I don't have anyone running the property on
 2 Lower Broadford Road.
 3 Q. Is the property irrigated annually?
 4 A. I think so.
 5 Q. How would you know?
 6 A. I see water in the field that the horses are
 7 drinking.
 8 Q. Do you know who's allowing or applying water
 9 rights to be applied to the field?
 10 A. No.
 11 Q. So you don't know that Archie Bouttier
 12 applies irrigation water on your property?
 13 A. That would only be an assumption.
 14 Q. Do you know that Archie Bouttier calls for
 15 the delivery of your water to your property?
 16 A. No.
 17 Q. Prior to February of this year, when was the
 18 last time you set foot on the property on Broadford
 19 Road?
 20 A. October.
 21 Q. Prior to your purchase of that property in
 22 2006, did you personally inspect the property?
 23 A. No.
 24 Q. Did you have someone inspect it for you?
 25 A. The structures, yes.

Page 15

1 Q. Who?
 2 A. I don't recall. Local house inspection
 3 company.
 4 Q. Did you have anyone do any background work
 5 on the water rights affiliated with the property?
 6 A. No.
 7 Q. Do you know Dennis Hanggi?
 8 A. Yes.
 9 Q. How do you know Dennis Hanggi?
 10 A. He was the real estate broker that sold me
 11 the property.
 12 Q. Did you speak with Dennis Hanggi about the
 13 property?
 14 A. I don't understand exactly. Did I speak?
 15 Yes, I guess I had to or I couldn't have bought it.
 16 Q. What was the substance of those
 17 conversations?
 18 A. The purchase of the property.
 19 Q. Did you talk about any aspect of the
 20 property such as water rights?
 21 A. No.
 22 Q. What work did you or someone on your behalf
 23 do with regard to analyzing the water rights on that
 24 property prior to your purchase?
 25 A. No one that I -- no one that I know of.

Page 16

1 Q. So nothing?
 2 A. Yes.
 3 Q. And you said you spoke with Stoney Burke.
 4 How many times did you speak with Stoney Burke prior to
 5 your purchase of the property?
 6 A. Never.
 7 Q. How many times did you speak with Stoney
 8 Burke after your purchase of the property?
 9 A. I don't recall.
 10 Q. More than once?
 11 A. Yes.
 12 Q. So Stoney Burke would be somebody that would
 13 have some knowledge of your acquisition of the property
 14 or use of the property after you acquired it?
 15 A. No.
 16 Q. What did you talk about with Stoney Burke?
 17 A. I don't really recall. Once was a phone
 18 call. Some trees fell down on their fence.
 19 Q. And then another time parentally was to
 20 introduce you to Archie Bouttier?
 21 A. No. They were both there out in the field.
 22 Q. Together?
 23 A. Yes. Or close by.
 24 Q. And it was on that occasion that you met
 25 Archie?

Page 17

1 A. That's correct.
 2 Q. When was the last time you spoke with Archie
 3 Bouttier?
 4 A. That day.
 5 Q. How many years ago was that?
 6 A. 2006.
 7 Q. And ever since that time, you have never
 8 spoken with him again?
 9 A. Never.
 10 Q. So do you know how that property is
 11 irrigated?
 12 MR. BOARDMAN: Irrigated by surface water?
 13 BY MR. SLETTE:
 14 Q. Just how the property is irrigated in any
 15 respect.
 16 A. Well, we had it built for the pump house,
 17 for the wells. Must be pumping water, or the electrical
 18 meter wouldn't be working.
 19 Q. Who sends you that bill?
 20 A. Idaho Power.
 21 Q. And have you also received invoices from the
 22 Defendant Association in this case?
 23 A. Yes.
 24 Q. And do you pay those?
 25 A. No.

Page 18

1 Q. Tell me why it is you do not pay those.
 2 A. That would be advice from counsel.
 3 Q. And would that be the two attorneys sitting
 4 here at the table today?
 5 A. No.
 6 MR. BOARDMAN: I instruct you not to answer.
 7 Strike that, about what advice we have given you. If
 8 there's other counsel involved, we can talk about that.
 9 BY MR. SLETTE:
 10 Q. With whom did you speak?
 11 A. Jim Speck.
 12 Q. And he advised you not to pay the bill?
 13 A. Um-hum.
 14 Q. That's a yes?
 15 A. Yes.
 16 Q. Did he give you a reason you should not pay
 17 that bill?
 18 A. I don't recall the exact verbiage or
 19 e-mails, but --
 20 Q. But?
 21 A. I don't recall exactly what was said.
 22 Q. Okay. Was that advice given to you before
 23 or after you acquired the property?
 24 A. After.
 25 Q. Do you recall when that would have been?

Page 19

1 How many years after?
 2 A. In 2008, when I got an invoice.
 3 Q. Do you continue to receive notices and
 4 assessments from the Association?
 5 A. Yes. I believe so.
 6 Q. What is the business address of the
 7 Plaintiff, Big Wood Ranch, LLC?
 8 A. It's -- I believe it's P.O. Box 9180,
 9 Seattle, 98109.
 10 Q. Have you read the Complaint on file in this
 11 matter that your attorneys filed on your behalf?
 12 A. Yes.
 13 Q. With whom have you spoken regarding your
 14 allegation that the property includes a
 15 naturally-occurring branch of the Big Wood River?
 16 A. Could you say that again?
 17 Q. With whom have you spoken regarding your
 18 allegation in the Complaint that your property includes
 19 a naturally-occurring branch of the Big Wood River?
 20 MR. BOARDMAN: Other than counsel.
 21 THE WITNESS: Since this has started, or
 22 prior?
 23 BY MR. SLETTE:
 24 Q. At any time.
 25 A. Probably when I bought the property.

Page 20

1 Q. And the question was who.
 2 A. The realtors.
 3 Q. So Dennis Hanggi.
 4 A. Yes.
 5 Q. Anyone else?
 6 A. Tom Drougas.
 7 Q. D-r-o-u-g-a-s, and H-a-n-g-g-i. What did
 8 they tell you?
 9 A. About?
 10 Q. Your allegation that there was a
 11 naturally-occurring branch of the Big Wood River on your
 12 property.
 13 A. Well, they called it Broadford Stream, and
 14 told me it was.
 15 Q. So Mr. Hanggi and Mr. Drougas both told you
 16 this was a natural stream. Prior to your purchase of
 17 the property they told you that?
 18 MR. BOARDMAN: Just if you recall.
 19 THE WITNESS: I don't recall exactly when.
 20 BY MR. SLETTE:
 21 Q. I could have guessed that answer was coming.
 22 So is the stream to which you're referring, then, the
 23 Broadford Slough stream?
 24 A. That's what I've been told, yes.
 25 Q. Have you been told that by anyone other than

Page 21

1 Mr. Hanggi and Mr. Drougas?
 2 A. The documents from your client refer to it
 3 as the Broadford Stream.
 4 Q. I'm just asking, have you been told that by
 5 anyone other than Mr. Drougas or Mr. Hanggi personally?
 6 A. I believe so.
 7 Q. Who would that have been?
 8 A. To be honest with you, I couldn't recall. I
 9 looked at another piece of property in that area, and
 10 they told me the same thing from another real estate
 11 company.
 12 Q. What other piece of property was it that you
 13 were looking at?
 14 A. It was a 20-acre site off the road, and back
 15 towards the hillside.
 16 Q. Towards Townsend Gulch?
 17 A. Townsend Gulch is south, isn't it?
 18 Q. Yes.
 19 A. No. This is across the street.
 20 Q. So a little bit to the north and to the
 21 west?
 22 A. (Inaudible Response.)
 23 MR. BOARDMAN: Yes.
 24 THE WITNESS: Yes. I'm sorry.
 25 ///

Page 22

1 BY MR. SLETTE:
 2 Q. Do you know who owns that property?
 3 A. No.
 4 Q. Who was it who was affiliated with that
 5 piece of property that advised you that Broadford Slough
 6 was a natural stream?
 7 A. Whoever the listing agent was.
 8 Q. How far away is that 20-acre parcel that you
 9 didn't acquire from your property on Broadford Road?
 10 A. Few thousand yards, maybe.
 11 Q. Are you familiar with the Rockwell Bypass?
 12 A. No.
 13 Q. You've alleged in your Complaint at
 14 paragraph 8 that someone from the Association threatened
 15 your surface water delivery if you refused to pay
 16 Association dues. Who that was someone?
 17 A. That would be Marc.
 18 Q. Do you recall what Mr. Reinemann said to
 19 you?
 20 A. Not totally.
 21 Q. Well, let's talk about your discussion with
 22 Mr. Reinemann. Was it in-person or by phone?
 23 A. By phone.
 24 Q. How many times have you spoken with
 25 Mr. Reinemann?

Page 23

1 A. I don't recall.
 2 Q. Do you think it's more than once?
 3 A. Yes.
 4 Q. How did the topic -- how did the first
 5 contact occur between you and Mr. Reinemann?
 6 A. I don't recall.
 7 Q. Did he, in fact, phone you?
 8 A. That would be very possible.
 9 Q. Do you recall if he phoned you to introduce
 10 himself on behalf of the Association?
 11 A. That's possible.
 12 Q. Is it more likely a yes?
 13 A. I'm not sure.
 14 Q. Did you ask Mr. Reinemann what would happen
 15 if you did not pay your association dues, or
 16 assessments?
 17 A. I don't recall asking that question.
 18 Q. Do you recall anything you said to him?
 19 A. Yes.
 20 Q. What do you recall?
 21 A. Verbatim, I can't actually tell you verbatim
 22 what I said.
 23 Q. Paraphrasing is fine.
 24 THE WITNESS: Okay?
 25 MR. BOARDMAN: Yes.

Page 24

1 THE WITNESS: There is a pond near the house
 2 that runs by Broadford Stream, adjacent to it, and the
 3 water in our pumps that pumps into the yard for the
 4 sprinkler system and the -- to irrigate the yard, run
 5 into a pond. The pond, if there's any excess water, if
 6 the water is left on, then it will overflow into the
 7 stream, and he told me that if I would -- we couldn't
 8 turn off our pumps to do that. We had to continue to do
 9 that, and I had said no, I wouldn't have to do that.
 10 And the conversation became slightly negative at that
 11 point.
 12 BY MR. SLETTE:
 13 Q. What happened? How did it become slightly
 14 negative?
 15 A. Usually when someone tells me that I would
 16 have to spend money to pump water into a stream --
 17 Q. So is the pond from which you pump --
 18 A. I don't pump anything out of the pond.
 19 Q. Where did you pump from?
 20 A. A pump house.
 21 Q. And what is the source of the water for the
 22 pump house?
 23 A. A well.
 24 Q. Do you have surface water rights appurtenant
 25 to your property on Lower Broadford Road?

Page 25

1 A. I believe so.
 2 Q. How is that water delivered to your
 3 property?
 4 A. Don't know.
 5 Q. So you've never inquired as to the
 6 methodology for the delivery of that water?
 7 A. No.
 8 Q. Do you want to sell that water that's
 9 appurtenant to your property that is surface water?
 10 A. I don't know. I don't understand the
 11 question, really.
 12 Q. Well, what I see is you don't know how it's
 13 applied, you don't know who applies it to your property,
 14 and you've really not done any background inspection of
 15 it. I'm just wondering, is that something that you
 16 would be interested in disposing of, if it's of little
 17 value to you?
 18 A. I would have to talk with my counsel.
 19 Q. And it sounds like from your testimony that
 20 you're not familiar with the Rockwell Bypass.
 21 A. No. I've heard of it. I've seen it on
 22 those things, and I was told it was the ditch across the
 23 street.
 24 Q. Who told you that?
 25 A. I don't recall. It's that ditch that's runs

Page 26

1 down there.

2 Q. And as I understand how your diversion

3 works, your surface water is diverted out of the

4 Rockwell Bypass, passes underneath Broadford Road before

5 it gets to your property. Is that a fair statement?

6 A. (Inaudible Response.)

7 Q. You don't know?

8 A. (Inaudible Response.)

9 Q. So you have to answer audibly for this lady.

10 A. I don't know.

11 Q. Is Mr. Bouttier trespassing if he is on your

12 property and irrigating?

13 A. Boy, that's a --

14 MR. BOARDMAN: Compound question.

15 Objection.

16 BY MR. SLETTE:

17 Q. You can still answer the question.

18 MR. BOARDMAN: If you understand it.

19 THE WITNESS: I wouldn't really know how to

20 answer that.

21 BY MR. SLETTE:

22 Q. What's Mr. Bouttier doing on your property?

23 A. I haven't seen him on the property since

24 '06.

25 Q. Are you allowing him to be on your property?

Page 27

1 A. I haven't spoke with him since '06.

2 Q. No letters?

3 A. (Inaudible Response.)

4 Q. Answer audibly, please, sir.

5 A. No.

6 Q. No e-mail communications?

7 A. No.

8 Q. No verbal communications?

9 A. No.

10 Q. Anyone acting by or on your behalf speak

11 with Mr. Bouttier?

12 A. No.

13 Q. Do you know that Mr. Bouttier annually calls

14 for the delivery of your water rights on your property?

15 A. No.

16 Q. Does Mr. Bouttier have authority to call for

17 the water rights on your property?

18 A. He has no authority to call for anything on

19 the property.

20 Q. In your Complaint, you allege that the

21 Association has been invalidly formed and operated.

22 Tell me each and every reason why you contend that to be

23 the case.

24 MR. BOARDMAN: Asks for a legal response.

25 If you understand, go head and answer.

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1 THE WITNESS: Yes?

2 MR. BOARDMAN: Go ahead.

3 THE WITNESS: I would have to ask my

4 attorneys to answer that question. I don't know the

5 legality of that.

6 BY MR. SLETTE:

7 Q. But wait. It's your Complaint that you

8 filed, and you're alleging in your Complaint, and I have

9 to understand this so we can get in front of the judge.

10 I need you to tell me every reason that you've stated in

11 here that this Association is not validly operating.

12 MR. BOARDMAN: It's not a Verified

13 Complaint, Counsel. You're asking for a legal

14 conclusion. You can certainly ask him his

15 understanding, if he has any whatsoever.

16 THE WITNESS: By the attorneys that have

17 advised me, and advised Big Wood Ranch, LLC, what we

18 should do, that it isn't a valid organization.

19 BY MR. SLETTE:

20 Q. So you don't know?

21 A. That would be a legal conclusion. I'm not

22 an attorney. I'm not a judge. I wouldn't know.

23 Q. You don't know. Correct?

24 A. I guess so.

25 Q. Yes? Is that a yes?

Page 29

1 A. Yes.

2 Q. Do you contend that the Rockwell Bypass is a

3 natural channel?

4 A. I don't know exactly. I have not walked or

5 had full knowledge of the Rockwell Bypass.

6 Q. All right. So you don't know.

7 A. No, I do not.

8 Q. Do you contend that the Broadford Slough is

9 a natural channel?

10 A. I believe so.

11 Q. And on what do you base that belief?

12 A. Seeing it, walking it for the last 40 years.

13 Q. So you've seen and walked the Broadford

14 Slough over the course of the last how many years?

15 A. Forty years.

16 Q. Forty. What caused you to walk the

17 Broadford Slough over the last 40 years?

18 A. I've walked over it hiking. I've walked

19 over it looking at property.

20 Q. In what capacity were you acting that you

21 had for the last four decades traversed the Broadford

22 Slough?

23 A. I don't understand the question.

24 MR. BOARDMAN: Ask him to clarify. He will.

25 THE WITNESS: What is that?

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1 BY MR. SLETTE:
 2 Q. You've indicated that you have walked the
 3 Broadford Slough for the last 40 years, and hiked it.
 4 A. Yes.
 5 Q. In what capacity were you operating? What
 6 caused you to be hiking on the Broadford Slough over the
 7 course of the last four decades?
 8 A. Hiking with my son.
 9 Q. Who is your son?
 10 A. Which one?
 11 Q. Whichever number of sons you have.
 12 A. I have two. Austin and Ryan.
 13 Q. Rydan?
 14 A. Ryan.
 15 Q. R-y-a-n?
 16 A. Yes.
 17 Q. And do they live in the Broadford area?
 18 A. No.
 19 Q. Were you trespassing on somebody else's
 20 property when you were walking along the Broadford
 21 Slough?
 22 A. I could have been. I don't know.
 23 Q. Did someone give you permission to walk on
 24 their property?
 25 A. A realtor did when I walked that 20-acre

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1 piece down -- up the river, and down on Stoney Burke's
 2 property.
 3 Q. And so that has been going on for 40 years?
 4 A. Yes. I've hiked around the Wood River
 5 Valley for the last 40 years, and fished up and down the
 6 Big Wood River.
 7 Q. Okay. But I want to talk about the
 8 Broadford Slough. So you've been on the Broadford
 9 Slough for the last 40 years?
 10 MR. BOARDMAN: I object. That's not his
 11 testimony.
 12 BY MR. SLETTE:
 13 Q. Is that not your testimony? Did you not
 14 just testify that for 40 years you had observed the
 15 Broadford Slough?
 16 A. Yes. You can't drive up and down Broadford
 17 without observing it, can you?
 18 Q. I'll not answer questions, but I will ask
 19 them. But you've walked the Broadford Slough. Then
 20 have you walked up to the point where the Broadford
 21 Slough takes off from the Big Wood River?
 22 A. I'm sure I've walked by there, yes.
 23 Q. Have you observed the dike that is in front
 24 of or placed on the bank of the Big Wood River at that
 25 point?

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1 A. Not that I can recall.
 2 Q. Do you know what a dike is?
 3 A. Yes.
 4 Q. Do you know why your attorneys in discovery
 5 said you didn't know what a dike was?
 6 A. I think I was taught that when I was in the
 7 first or second grade.
 8 Q. Something to do with a little Dutch boy?
 9 A. I think that's how it was.
 10 Q. Well, I certainly was aware of what a dike
 11 was, but can you explain why your attorneys did not
 12 answer an interrogatory on the basis that they thought
 13 the term was ambiguous?
 14 A. You'd have to ask them. You're asking me to
 15 make a conclusion of what they said to you.
 16 Q. But you know what a dike is?
 17 A. Yes.
 18 Q. When you were there at the Broadford Slough,
 19 did you observe a headgate?
 20 A. No. Not that I can recall.
 21 Q. Do you know today that there is a headgate
 22 in existence there?
 23 A. That's what I'm told.
 24 Q. If there is a headgate located at the head
 25 of the Broadford Slough where it takes off from the Big

Page 33

1 Wood River, do you still contend that the Broadford
 2 Slough is a natural stream?
 3 MR. BOARDMAN: I'll object to the extent
 4 that it includes a legal conclusion. If you understand,
 5 go ahead and respond.
 6 THE WITNESS: Rephrase your question.
 7 BY MR. SLETTE:
 8 Q. I'll ask the court reporter to repeat it.
 9 (Last Question Read Back.)
 10 THE WITNESS: Yes.
 11 BY MR. SLETTE:
 12 Q. And why is that?
 13 A. Because the Army Corps of Engineers put a
 14 big dike on the Big Wood River to keep it from
 15 overflowing and flooding into another area south from
 16 the properties, and if you will, it's been referred to
 17 me as a dike, but it could be a retention wall,
 18 whatever. But they put it in the Big Wood River, and I
 19 believe the Big Wood River is still a natural waterway.
 20 Q. With that, would you not agree -- I'm just
 21 asking, by virtue of the headgate having been placed at
 22 the mouth of the Broadford Slough, do you still contend
 23 that Broadford Slough constitutes a natural stream?
 24 MR. BOARDMAN: Same objection.
 25 THE WITNESS: I don't have a legal

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1 conclusion for you. I just --
 2 BY MR. SLETTE:
 3 Q. It sounds to me like you fish quite a bit.
 4 A. Love fishing.
 5 Q. And fish stretches of the Big Wood River
 6 from below Hailey?
 7 A. Yes. Below Bellevue.
 8 Q. Have you ever seen an irrigation headgate on
 9 the Big Wood River?
 10 A. I probably have. Don't recall.
 11 Q. Don't recall ever having seen any diversion
 12 structures?
 13 A. Usually when I'm fishing, I'm fishing.
 14 Q. Right. My wife's a great fisherman, and she
 15 certainly observes structures that are on the river.
 16 Have you ever fished at the headgate? For example, at
 17 the Hiawatha ditch?
 18 A. Don't know where that is. I may have.
 19 Q. Have you ever seen any diversion works of
 20 any kind on the Big Wood River in your fishing
 21 expeditions?
 22 A. Probably. Don't recall.
 23 Q. And back to your Complaint again, you're
 24 unaware of why your attorneys have alleged that the
 25 Association is invalidly operating. Is that a correct

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1 statement?
 2 A. Their legal conclusions and advice.
 3 Q. I'm asking you, though. So you're
 4 personally unaware of the basis for that allegation?
 5 A. Primarily, yes.
 6 Q. Primarily, yes. I need kind of an
 7 unqualified answer.
 8 A. You're asking me to make a legal conclusion
 9 on things I know nothing about.
 10 Q. I'm not asking for a legal conclusion. I'm
 11 asking you simply that, are you aware of any of the
 12 allegations yourself as to the invalidity of the
 13 Association, and I appreciate what your attorneys have
 14 done for you. I just need to know, does Marc Richards
 15 personally know any reason for that allegation?
 16 A. And you're talking about the Broadford
 17 Slough or the Rockwell Bypass, or which entity now?
 18 Q. The Association is the entity.
 19 A. I see.
 20 Q. And I'm just asking, with regard to your
 21 Complaint, that admittedly your attorneys drafted, do
 22 you know any of the bases for the alleged invalidity of
 23 the Association, and if you don't, it's fine.
 24 A. I really don't.
 25 Q. That's a fair answer. Fair answer. So it's

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1 my understanding that you contend, or that you say that
 2 Marc Reinemann threatened you in that phone
 3 conversation. Is that correct?
 4 A. Yes.
 5 Q. How did he threaten you?
 6 A. That they were going to take me to court,
 7 which they did.
 8 Q. What your Complaint says is that, "Members
 9 of the Association or its officers have threatened to
 10 interfere with surface water delivery to the property if
 11 Plaintiff refused to pay association dues." Are you
 12 familiar with that allegation?
 13 A. Yes.
 14 Q. Did Marc threaten you by turning -- threaten
 15 to turn off your water?
 16 A. What he said that originally was that I had
 17 to pump water into that -- out of our property into that
 18 -- into Broadford Stream, and if I wouldn't, they would
 19 move the stream down, they would re-divert it someplace
 20 else, and I didn't believe you could move a stream.
 21 Q. How is that pond on your property filled?
 22 A. When the pump house -- we have sprinklers in
 23 the area, and there's a little ditch there, and when it
 24 overflows it goes into that little ditch, and it's dry
 25 most of the time. Then the pond goes down.

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1 Q. And the source of that water is ground
 2 water?
 3 A. I believe so.
 4 Q. Does anyone besides you manage the property
 5 on Broadford Road?
 6 A. No.
 7 Q. Is anyone else authorized to set foot on
 8 that property on Broadford Road?
 9 A. Yes. I have a few people that take care of
 10 the sprinklers and that kind of thing.
 11 Q. And who is that?
 12 A. Well, I have Del Angel Landscaping that goes
 13 down there and mows the lawn and takes care of the
 14 sprinkler heads, makes sure some of the stuff works on
 15 there. Del Angel Landscaping.
 16 Q. Is there anyone else that you authorized to
 17 set foot on that property?
 18 A. Yes.
 19 Q. Who would that be?
 20 A. Some guys that play Frisbee down there.
 21 Q. And who are they?
 22 A. I'd have to look in my phone to even look at
 23 all their names.
 24 Q. So any time that you've been down there,
 25 have you observed horses on your property?

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1 A. Yes.
 2 Q. Whose horses --
 3 A. You asked me that in the beginning.
 4 Q. Whose horses are they?
 5 A. I believe they're Archie's.
 6 Q. So he's there with your permission?
 7 A. Yes. He takes horses on and off there to
 8 graze on the property.
 9 Q. And you spoke with him on one occasion in
 10 2006?
 11 A. Yes.
 12 Q. And never since that day have you laid eyes
 13 upon him?
 14 A. No.
 15 Q. Or communicated with him in any way?
 16 A. No.
 17 Q. Does he pay you to keep his horses on your
 18 property?
 19 A. No.
 20 Q. Is he authorized to call for the delivery of
 21 your irrigation water rights?
 22 MR. BOARDMAN: Objection. Asked and
 23 answered.
 24 BY MR. SLETTE:
 25 Q. You can go ahead.

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1 A. You already asked me that question, and I
 2 already answered it.
 3 Q. If you would, just go ahead and give it to
 4 me again.
 5 A. No. No one is authorized to do anything on
 6 the property.
 7 Q. How old are you, sir?
 8 A. I'm 61.
 9 Q. My age as well.
 10 A. When's your birthday?
 11 Q. August 16th. When's yours?
 12 A. July 7th.
 13 Q. You're older.
 14 MR. BOARDMAN: Should we go by that hour
 15 rule, or not?
 16 MR. SLETTE: If you'd like to.
 17 MR. BOARDMAN: Unless you tell me you're
 18 done in five minutes.
 19 MR. SLETTE: It's looking that way, so let's
 20 go off the record and talk.
 21 (A Break Was Taken.)
 22 BY MR. SLETTE:
 23 Q. How large is the property that you purchased
 24 on Broadford Road? How many acres?
 25 A. The total parcel on both sides of the river

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1 is 117 acres.
 2 Q. Of that 117 acres, how much of it is
 3 pasture?
 4 A. I don't know. Thirty acres, maybe. That's
 5 just a guess.
 6 Q. And so you have a small piece of property on
 7 the east side of the Big Wood River, I understand. Is
 8 that correct?
 9 A. Yes.
 10 Q. Do you have access to that?
 11 A. When I walk across the river.
 12 Q. What's the --
 13 A. The moose live there. They have a little
 14 sign up with moose on them. Moose address.
 15 Q. Moose Club?
 16 A. Moose Club, yes.
 17 Q. How much did you pay for that property?
 18 A. Five million.
 19 Q. And if I understand it correctly, you never
 20 saw it before you acquired it.
 21 A. I never walked on it. Saw it plenty of
 22 times.
 23 Q. By virtue of driving down Broadford Road?
 24 A. And fishing up the river. Forty years of
 25 driving up and down the road, fishing, you see

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1 everything down there.
 2 Q. So by my calculations, you were living here
 3 in the early '70s.
 4 A. Yes. Came here, worked construction.
 5 Q. Were you also a ski instructor?
 6 A. Yes.
 7 Q. The Sigi Engl era?
 8 A. Yes. Sigi, it was his last year, and then
 9 it was --
 10 MS. MALMEN: Rainer.
 11 MR. BOARDMAN: Squeeze to the middle.
 12 MR. SLETTE: This should look good on the
 13 transcript.
 14 THE WITNESS: It was Paul Ramble. He was
 15 actually a pretty good guy.
 16 BY MR. SLETTE:
 17 Q. You indicated that you had spoken with
 18 Mr. Speck regarding the advice not to pay the
 19 assessments. Was that after your acquisition of the
 20 property?
 21 A. Yes.
 22 Q. Do you know what he based his advice upon?
 23 A. He's an attorney, you know, that does water
 24 rights.
 25 Q. And you just asked him if you should pay, or

Page 42

1 if you had to pay?
 2 A. Yes.
 3 Q. And he advised you that you did not have to
 4 pay?
 5 A. Yes.
 6 Q. Are you aware that the surface water rights
 7 that you own are transported via gravity flow?
 8 A. I don't really know all about all the water
 9 rights, no. I couldn't give you all the conclusions.
 10 Q. I was trying to understand a little bit more
 11 about what you said about, Marc told you you had to pump
 12 out of the pond.
 13 A. Yes.
 14 Q. Tell me what he told you in that regard.
 15 A. He didn't tell me I had to pump out of the
 16 pond. Our pump house pumps water, which -- and our
 17 irrigation of our yard. Okay? There's a little teeny
 18 ditch that runs through the yard down to a pond. When
 19 the pond gets too full, it overflows and runs down into
 20 Broadford Stream.
 21 Q. And what did Marc tell you with regard to
 22 that situation?
 23 A. That I would have to continue to run my
 24 pumps to do that.
 25 Q. Was it your understanding that he was

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1 advising you that you had to pump water into the
 2 Broadford Stream, as you call it?
 3 A. Between the water -- I couldn't stop the
 4 pond from overflowing into -- if I was to divert that
 5 water and stop it, that I couldn't do that, that I had
 6 to continue doing whatever it was. If the water was
 7 overflowing the banks of the pond, and it was running
 8 down into the stream, that I would have continued to do
 9 that.
 10 Q. That you would have to continue spilling
 11 water out of the pond into the Broadford Slough?
 12 A. Right.
 13 Q. Did Stoney Burke ever tell you anything
 14 about the Broadford Slough being a natural or
 15 non-natural stream?
 16 A. No.
 17 Q. Other than Tom Drougas and Dennis Hanggi,
 18 has anyone ever told you, besides your attorneys, that
 19 the Broadford Slough is or is not a natural stream?
 20 A. That it's not a natural stream? Is that
 21 what you said?
 22 Q. Either/or. Natural or non-natural.
 23 A. I think I answered that earlier when I said
 24 there was other parcels of property that I looked at,
 25 that I was told that that's a natural-occurring stream.

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1 It has fish in it. Has frogs in it. There's otters in
 2 it. I looked at lots of pieces of property, and it's
 3 the same story that everyone always told me. Never
 4 heard different. I didn't know anything different until
 5 this occurred.
 6 Q. And I appreciate that you told me that
 7 earlier. I just want to make sure that I understand.
 8 You don't recall who any of those individuals were who
 9 told you that?
 10 A. No.
 11 Q. Have you ever, in your 40 years hiking
 12 experience in this Valley, walked any irrigation ditches
 13 or canals?
 14 A. Up here? Or in Idaho?
 15 Q. Idaho.
 16 A. I did one down near Shoshone with my son
 17 once.
 18 Q. Which canal was that?
 19 A. I haven't the foggiest idea.
 20 Q. Is it the canal that bisects Highway 75?
 21 A. I believe so.
 22 Q. Is it the canal that forms the boundary line
 23 for Lincoln and Blaine County?
 24 A. I have no idea.
 25 Q. Do you know that people fish out of that

Page 45

1 canal?
 2 A. There were people fishing. That's why my
 3 son and I stopped. It was 13, 14 years ago.
 4 Q. Is Mr. Speck still involved on your behalf
 5 with regard to this issue?
 6 A. I do currently employ Mr. Speck as legal
 7 counsel.
 8 Q. Is he employed with regard to this specific
 9 matter?
 10 A. No.
 11 Q. Have you consulted with him about this
 12 matter?
 13 A. Yes.
 14 Q. When is the last time you consulted with
 15 him?
 16 A. About this specific matter?
 17 Q. Yes.
 18 A. I don't recall exactly. Maybe prior to
 19 contacting --
 20 THE WITNESS: Do you know when I contacted
 21 you guys?
 22 MR. BOARDMAN: If you don't recall, you
 23 don't recall.
 24 THE WITNESS: I don't recall.
 25 ///

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1 BY MR. SLETTE:
 2 Q. So was the last time you spoke with
 3 Mr. Speck about this matter prior to the time that you
 4 employed the Perkins Law Firm to assist you?
 5 A. It's possible. I don't recall exactly now.
 6 Q. Why was it that you didn't have Mr. Speck
 7 bring this lawsuit on your behalf?
 8 A. He said he had a conflict of interest.
 9 Q. Did he say what that conflict was?
 10 A. There was another member or two of the
 11 Association that objected.
 12 Q. Did he say who they were?
 13 A. No.
 14 Q. Are you married?
 15 A. No.
 16 Q. How long has it been since you've been
 17 married?
 18 A. Nineteen years.
 19 Q. So other than Mr. Speck, there are no other
 20 individuals that you've spoken with regarding this
 21 litigation, other than your attorneys?
 22 A. I don't believe so. They're the only ones
 23 I've spoken with.
 24 Q. Did you ever have a subsequent conversation
 25 with Mr. Reinemann that you can recall after his first

Page 47

1 introductory phone call?
 2 A. Yes. The last one we had was the one we
 3 just spoke about.
 4 Q. When did that take place?
 5 THE WITNESS: Guess?
 6 MR. BOARDMAN: If you can ballpark it, but
 7 don't speculate.
 8 THE WITNESS: '09, you know, give or take.
 9 BY MR. SLETTE:
 10 Q. So I understand the first conversation was
 11 shortly after you acquired your property?
 12 A. No. It was two and a half, three years
 13 later.
 14 Q. Do you recall, in this phone conversation,
 15 that he stated he was calling simply to introduce
 16 himself and the Association to you?
 17 A. I don't think he was calling originally to
 18 introduce the Association. He was -- I think his
 19 original call when he called me was to introduce himself
 20 as another real estate broker in the Valley. That's
 21 what I recall.
 22 Q. Was he attempting to sell you something?
 23 A. He suggested it.
 24 Q. Do you recall what property it was?
 25 A. No. Just in general.

Page 48

1 Q. So I'm just trying to understand those
 2 conversations. A phone call two to three years after
 3 you acquired your property was real-estate related, not
 4 water-right associated.
 5 A. I believe so.
 6 Q. Do you recall a conversation with Marc
 7 Reinemann, a statement made by you that said, What will
 8 happen if I don't pay my assessment?
 9 A. I don't know if I made that comment. Don't
 10 believe -- wouldn't remark that way exactly.
 11 Q. You remember it more that he threatened you
 12 that if you don't pay your assessment, we're going to
 13 shut it off?
 14 A. No. They were going to take me to court.
 15 Which happened.
 16 Q. Was there some other conversation with some
 17 other individual in the Association who had threatened
 18 to interfere with your surface water delivery to your
 19 property?
 20 A. The only person I've talked to that is
 21 involved with the Association is Marc.
 22 Q. Marc Reinemann?
 23 A. Right. He's the only person I've ever
 24 talked to, that I recall. If there's somebody else --
 25 I've met other people in the Association. Had dinner

Page 49

1 with other people in the Association, but I don't know
 2 who's all in the Association. I mean, Stoney Burke is a
 3 neighbor.
 4 He's apparently in the Association, because there's --
 5 but I don't know all the people that are involved.
 6 Q. And you know that Stoney Burke pays his
 7 assessments?
 8 A. Don't know.
 9 Q. You've never asked him about that?
 10 A. Never discussed it with him.
 11 Q. Who else have you met within the
 12 Association, whether you've had dinner with them or
 13 spoken to them?
 14 A. I don't know -- recall all the names.
 15 Q. Do you recall any of the names, for example,
 16 who you might have had dinner with?
 17 A. That's a member of the Association?
 18 Q. Yes.
 19 A. Dick Barker.
 20 Q. Dick Barker. Did you talk anything about
 21 water rights or the Association?
 22 A. No.
 23 Q. Anybody else that you've met in the
 24 Association who belongs to the Association?
 25 A. I don't know whether they belong or don't

Page 50

1 belong. Whether or not they live on Broadford Road,
 2 that would be just a conjecture. I don't know exactly
 3 what the path of it is and exactly who's in the
 4 Association and who's not. That would be just a guess.
 5 Q. Okay. I think we're done. Thank you for
 6 your time.
 7 (Deposition Was Concluded at 3:22 p.m.)
 8 (Signature Was Requested.)
 9 * * * * *

Page 52

1 CHANGE SHEET FOR MARC RICHARDS
 2 Page ___ Line ___ Reason for Change
 3 Reads
 4 Should Read
 5 Page ___ Line ___ Reason for Change
 6 Reads
 7 Should Read
 8 Page ___ Line ___ Reason for Change
 9 Reads
 10 Should Read
 11 Page ___ Line ___ Reason for Change
 12 Reads
 13 Should Read
 14 Page ___ Line ___ Reason for Change
 15 Reads
 16 Should Read
 17 Page ___ Line ___ Reason for Change
 18 Reads
 19 Should Read
 20 Page ___ Line ___ Reason for Change
 21 Reads
 22 Should Read
 23
 24 Please use a separate sheet if you need
 25 more room.
 WITNESS SIGNATURE _____

Page 51

1 CERTIFICATE OF WITNESS

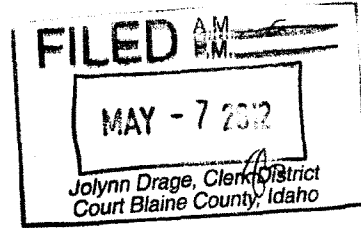
2
 3 I, MARC RICHARDS, being first duly sworn, depose
 4 and say:
 5 That I am the witness named in the foregoing
 6 deposition, consisting of pages 1 through 50; that
 7 I have read said deposition and know the contents
 8 thereof; that the questions contained therein were
 9 propounded to me; and that the answers contained
 10 therein are true and correct, except for any
 11 changes that I may have listed on the Change Sheet
 12 attached hereto.
 13 DATED this ___ day of _____, _____.
 14
 15 _____
 16 MARC RICHARDS
 17 SUBSCRIBED AND SWORN to before me this
 18 ___ day of _____, _____.
 19
 20 _____
 21 NAME OF NOTARY PUBLIC
 22
 23 RESIDING AT _____
 24 MY COMMISSION EXPIRES _____
 25

Page 53

1 REPORTER'S CERTIFICATE

2
 3 I, DIANA KILPATRICK, CSR No. 727, Certified
 4 Shorthand Reporter, certify;
 5 That the foregoing proceedings were taken before
 6 me at the time and place therein set forth, at which
 7 time the witness was put under oath by me;
 8 That the testimony and all objections made were
 9 recorded stenographically by me and were thereafter
 10 transcribed by me, or under my direction;
 11 That the foregoing is a true and correct record
 12 of all testimony given, to the best of my ability;
 13 I further certify that I am not a relative or
 14 employee of any attorney or party, nor am I financially
 15 interested in the action.
 16 IN WITNESS WHEREOF, I set my hand and seal this
 17 18th day of April, 2012.
 18
 19 *Diana Kilpatrick*
 20 _____
 21 DIANA KILPATRICK, CSR, RPR
 22 Notary Public
 23 Hailey, Idaho 83333
 24 My Commission expires January 13, 2017
 25

1
2 **Gary D. Slette ISB # 3198**
3 **ROBERTSON & SLETTE, PLLC**
4 P.O. Box 1906
5 Twin Falls, Idaho 83303-1906
6 Telephone: (208) 933-0700
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11 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
12 STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

13 * * * * *

12	BIG WOOD RANCH, LLC,)	
13		)	Case No. CV-10-842
14	Plaintiff/Counterdefendant,)	
15	v.	)	RESPONSE MEMORANDUM
16		)	IN OPPOSITION TO PLAINTIFF/
17	WATER USERS' ASSOCIATION OF	)	COUNTERDEFENDANT'S MOTION
18	THE BROADFORD SLOUGH AND	)	FOR SUMMARY JUDGMENT
19	ROCKWELL BYPASS LATERAL)	
20	DITCHES, INC.,)	
21)	
22	Defendant/Counterclaimant.)	

21 COMES NOW the Defendant/Counterclaimant ("Association"), Water Users' Association
22 of The Broadford Slough and Rockwell Bypass Lateral Ditches, Inc., and submits this Response
23 Memorandum in Opposition to the Plaintiff/Counterdefendant's (alternatively "Plaintiff" or
24 "BWR") Motion for Summary Judgment as follows.

25 **I. FACTS**

26 Marc Richards is the sole member and managing member of the Plaintiff. (Deposition of
Marc Richards, p. 7, ll. 2-5) attached to the Second Affidavit of Gary D. Slette. The Plaintiff
purchased that property in 2006 for \$5,000,000. *Id.* at p. 40, ll. 17-18. Prior to the purchase of the

1
2 property, Mr. Richards never personally inspected the property. *Id.* at p. 14, ll. 21-23. Mr.
3 Richards first met Robert "Archie" Bouttier in 2006 when he purchased the BWR property. *Id.* at
4 p. 8, ll. 7-19. Mr. Richards is aware that Mr. Bouttier irrigates BWR's property. *Id.* at p. 9, ll. 9-11.
5 He knows that BWR's property is irrigated annually because he has seen water in the field. *Id.* at
6 p. 14, ll. 3-7. The Plaintiff owns both groundwater rights and surface water rights, but the SRBA
7 decree specifically provides that the groundwater rights may only be used when the surface water
8 supply is not available or is reasonably insufficient to irrigate the place of use. (See Exhibit "A" to
9 Second Affidavit of Marc Reinemann regarding Water Right No. 37-07312C). Marc Richards
10 knows that Mr. Bouttier has horses on the Plaintiff's property and that those horses graze on the
11 property. (Deposition of Marc Richards, p. 38, ll. 4-8). Mr. Bouttier is on the Plaintiff's property
12 with Mr. Richards' permission. *Id.* at p. 38, ll. 6-8. Although he first spoke with Mr. Bouttier in
13 2006, he has not seen him on the property since that time. *Id.* at p. 26, ll. 22-24. Additionally, he
14 has had no communications, either oral or written, with Mr. Bouttier since that time. *Id.* at p. 27,
15 ll. 1-12.

16 Mr. Richards acknowledged having received invoices from the Association but he does
17 not pay them. *Id.* at p. 17, ll. 21-25. Mr. Richards indicated in his deposition that Jim Speck, his
18 former attorney, advised him he did not have to pay the bill, but he does not recall any reason for
19 that advice. *Id.* at p. 18, ll. 10-21. Mr. Richards is certain that he has walked by the point where
20 the Broadford Slough takes off from the Big Wood River. *Id.* at p. 31, ll. 19-22. He knows what a
21 dike is. *Id.* at p. 32, ll. 2-3;16-17. He believes the Big Wood River is a natural waterway. *Id.* at p.
22 33, ll. 13-19. Mr. Richards testified that he did not know what this case is about. *Id.* at p. 7, ll. 11-
23 17. When asked why he alleged in his Complaint that the Association had been invalidly formed,
24 he stated that he did not know the answer to that question. *Id.* at p. 35, ll. 3-5. When asked again
25 to explain his allegations for purposes of full and fair discovery, he could not give any reason, and
26 again stated he did not know. *Id.* at p. 28, ll. 7-25. In the Plaintiff's discovery responses, the
Plaintiff's attorneys acknowledged that the Rockwell Bypass was not a natural channel, but Mr.
Richards stated under oath that he was not certain of that. *Id.* at p. 29, ll. 2-7. He "believed" that
the Broadford Slough was a natural channel because he had walked it over the past 40 years. *Id.* at
p. 29, ll. 8-15.

1
2 Jann S. Wenner previously owned the property now owned by the Plaintiff. *Id.* at p. 10, ll.
3 22-24. Jann S. Wenner was an original member of the Association when it was formed, and paid
4 assessments to the Association. See Second Affidavit of Marc Reinemann at ¶ 3. According to the
5 Articles of Incorporation of the Association, a transferee or subsequent owner of a water right
6 delivered either via the Broadford Slough or the Rockwell Bypass is deemed to be a member of
7 the Association. *Id.*

8 II. ARGUMENT

9 The Defendant's arguments regarding the characterization of the Broadford Slough as not
10 being a natural channel have been fully briefed in the Association's Memorandum in Support of
11 Motion for Summary Judgment. The Plaintiff's arguments that the Association is not properly
12 operating because its name implies two distinct waterways is without any legal basis or
13 foundation. The Association members who divert water on the Slough/Bypass system all have
14 their water rights diverted out of the Big Wood River into the Broadford Slough, and then all such
15 rights are again diverted into the Rockwell Bypass. (See Affidavit of Kevin Lakey at ¶ 7; Affidavit
16 of Marc Reinemann at ¶ 12). The Plaintiff's assertion that the Association cannot impose
17 assessments for the maintenance of the Broadford Slough because the IDWR has authority over
18 natural waterways is a mere conclusory statement, and not factually supported. The mere
19 contention by the Plaintiff, *ipse dixit*, that the Broadford Slough is a natural waterway does not
20 make it so. In fact, the Affidavits and arguments of the Association in its Motion for Summary
21 Judgment should allow the court to reach an entirely contrary conclusion.

22 Following the Plaintiff's acquisition of its property, Mr. Richards was personally contacted
23 by Mr. Reinemann to advise Mr. Richards of Plaintiff's membership in the Association. (See
24 Second Affidavit of Marc Reinemann at ¶ 3). Plaintiff now contends that because it never
25 received a membership certificate, the Association has not been properly operating. The
26 Association is unaware of any prior requests for a membership certificate by Mr. Richards, or
anyone else in the Association for that matter, but that issue has been recently addressed by the
Association's issuance of membership certificates. (See Affidavit of Marc Reinemann at ¶ 11).

It cannot be disputed that the Plaintiff's property has been irrigated with surface water
rights delivered by the Association since 2006. (See Second Affidavit of Brian Brockette at ¶ 6

1
2 and Affidavit of Robert Bouttier at ¶ 6). As evidenced by his Affidavit, it is obvious that Robert
3 Bouttier possessed apparent authority to call for the delivery of the Plaintiff's surface water rights.
4 According to the Idaho Supreme Court in *Huyett v. Idaho State University*, 140 Idaho 904, 104
5 P.3d 946 (2004):

6 Apparent authority occurs when a principal by words or actions
7 voluntarily places an agent in such a position that an ordinary person
8 of business prudence would believe the agent is acting pursuant to
9 existing authority. (Citation omitted). A court may make a finding of
10 apparent authority to protect third parties but only where the third
11 party was not on notice of the scope of the agent's actual authority.

12 140 Idaho at 908. Given the Affidavit of Mr. Bouttier, it is clear that he had apparent authority to
13 call upon the Association for the delivery of the Plaintiff's surface water rights in order to irrigate
14 the Plaintiff's property. Mr. Richards had instructed Mr. Bouttier to continue to operate the
15 property just as he had done in the past for Mr. Wenner, the previous owner who sold the property
16 to the Plaintiff. Part of that historical operation of the property included obtaining the delivery of
17 the surface water rights, and actually irrigating what is now BWR's property.

18 Both Mr. Bouttier and the Association have been pivotal in avoiding a statutory forfeiture
19 of the Plaintiff's surface water rights since the Plaintiff's purchase of its property in 2006. See
20 Idaho Code § 42-222(2). This lawsuit may be evidence of the adage that no good deed goes
21 unpunished. Without the application of the surface water rights delivered via the Rockwell
22 Bypass, there was no way for the Plaintiff's property to be legally irrigated. The groundwater
23 rights possessed by the Plaintiff are clearly supplemental, and may not be used until the full
24 quantity of surface water rights has been utilized. (See Second Affidavit of Marc Reinemann at ¶
25 6). Mr. Richards acknowledged in his deposition that he had observed that BWR's property was
26 actually being irrigated. If the Plaintiff wants to now abandon those rights, that is certainly its
prerogative. However, the Plaintiff is obligated to pay the assessments for the period of time
during which surface water has been continuously delivered to its property by the Association.
That obligation arises either (a) as a result of membership in the Association and actual delivery of
the water rights as called for by Mr. Bouttier; or (b) under the theory of either unjust enrichment
or *quantum meruit*. In *Erickson v. Flynn*, 138 Idaho 430, 64 P.3d 959 (App. 2002), the Idaho
Court of Appeals discussed unjust enrichment and *quantum meruit* as follows:

1
2 Unjust enrichment and quantum meruit are related theories
3 of liability, but carry different measures of recovery. (Citation
4 omitted). Unjust enrichment theory allows recovery where the
5 defendant has received a benefit from the plaintiff and it would be
6 inequitable to allow the defendant to retain the benefit without
7 compensating the plaintiff for its value. (Citations omitted). The
8 defendant must make recompense only for that amount of the benefit
9 that would be unjust for the defendant to retain. (Citations omitted).
10 For a quantum meruit claim, on the other hand, the measure of
11 recovery is the reasonable value of the services rendered or of goods
12 received, regardless of whether the defendant was enriched.
13 (Citations omitted).

14 64 P.3d at 963-964.

15 The Plaintiff's reference to the Rockwell Decree does not support the Plaintiff's own
16 contention that the Broadford Slough is a natural stream. Paragraph VIII of the Findings of Fact
17 and Conclusions of Law provides as follows:

18 VIII

19 That from the time said waters were first put to beneficial use
20 by the plaintiff herein, **the same have been diverted from Big
21 Wood River through canals and ditches leading from said Big
22 Wood River** to the lands described in paragraphs IV and V hereof,
23 and were diverted from said river by and through the defendant
24 Watermaster and at the special request of the plaintiff herein, and
25 that the defendant, on his own behalf and the appropriators of the
26 waters of Big Wood River have recognized plaintiff's right in and to
the waters hereinbefore set forth, and the right of plaintiff's use
thereof, and have consented and acquiesced therein.

(Emphasis added). If the court in the Rockwell decree was able to find and determine that the
Plaintiff's land was being irrigated with water diverted from the Big Wood River "through canals
and ditches leading from said Big Wood River," it can hardly now be argued by the Plaintiff that
the Broadford Slough is anything other than a canal or ditch.

There is no dispute that the Association has at times failed to operate in strict conformity
with the applicable statutory provisions regarding meeting dates and the timing of provision of
assessments to the members. (See Affidavit of Marc Reinemann at ¶ 5). That a former Association
secretary sold her property, and thereafter did not attempt to fulfill the obligations imposed on her
as the Association's secretary, does not mean that the baby should be thrown out with the bath

1
2 water regarding the current operation of the Association. Whatever shortcomings existed during
3 her tenure, they have been rectified. The fact that there was no annual meeting of the Association
4 in the spring of 2006 should be of little consequence in this case because the Plaintiff did not
5 acquire its property until sometime late in 2006, and the water was already being delivered and
6 applied to its property by Mr. Bouttier. As noted above, Association membership certificates have
7 now been issued. Additionally, the Association has amended its Articles of Incorporation to
8 provide for membership in the Association for all those individuals or entities who have
9 transferred surface water rights out of the Rockwell Bypass to a new point of diversion, but whose
10 water right delivery is dependent and conditioned upon the maintenance of flows in the Rockwell
11 Bypass pursuant to the Rockwell Decree. (See Second Affidavit of Marc Reinemann at ¶ 8).

12 If the Plaintiff is willing to forego the delivery of its surface water rights in the future, and
13 forfeit them to the state, then that may be a choice for it to make. Until last year, however, the
14 Plaintiff's water rights have been delivered by the Association, and the Plaintiff is obligated to pay
15 its pro rata share of the assessments that were levied in order to maintain the Broadford Slough
16 and the Rockwell Bypass to effectuate the delivery of those water rights.

17 The court should find that the Association has been validly formed and operating, and
18 acknowledge District 37 watermaster Kevin Lakey's position that the Association provides a
19 valuable service to effect the delivery of irrigation water to the Association members. Further, the
20 court should determine that the Plaintiff is obligated to pay for the past due assessments with
21 regard to irrigation water that has been delivered and applied to the Plaintiff's property. The
22 Plaintiff's Motion for Summary Judgment should be denied.

23 DATED this 4th day of May, 2012.

24 ROBERTSON & SLETTE, PLLC

25 By: 

26 Gary D. Slette


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CERTIFICATE OF SERVICE

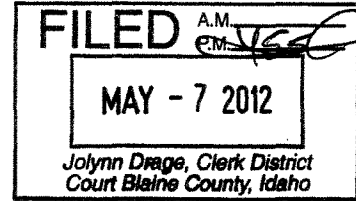
The undersigned certifies that on the 4th day of May, 2012, he caused a true and correct copy of the foregoing instrument to be served upon the following persons in the following manner:

Erika E. Malmen
Cynthia L. Yee-Wallace
PERKINS COIE LLP
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*Attorneys for Plaintiff/Counterdefendant
 Big Wood Ranch, LLC*

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

BIG WOOD RANCH, LLC,
 Plaintiff,

v.

WATER USERS' ASSOCIATION OF
 THE BROADFORD SLOUGH AND
 ROCKWELL BYPASS LATERAL
 DITCHES, INC.,
 Defendant.

WATER USERS' ASSOCIATION OF
 THE BROADFORD SLOUGH AND
 ROCKWELL BYPASS LATERAL
 DITCHES, INC.,
 Counterclaimant,

v.

BIG WOOD RANCH, LLC,
 Counterdefendant.

Case No. CV 2010-842

**PLAINTIFF/COUNTERDEFENDANT'S
 MEMORANDUM IN OPPOSITION TO
 DEFENDANT / COUNTERCLAIMANT'S
 MOTION FOR SUMMARY JUDGMENT**

Big Wood Ranch, LLC ("Big Wood Ranch"), by and through its counsel of record, Perkins Coie LLP, hereby submits the following Memorandum in Opposition to Defendant's Motion for Summary Judgment ("Motion"). Big Wood Ranch respectfully asks this Court to

deny Defendant Water Users' Association of the Broadford Slough and Rockwell Bypass Lateral Ditches, Inc.'s ("Association") Motion and grant Plaintiff's Motion for Summary Judgment.

I. INTRODUCTION

The Association does not comply with applicable statutes, either in its formation or in its operation. The Broadford Slough ("Slough") is a natural watercourse as a matter of law as it clearly meets the legal definition articulated by the Idaho Supreme Court. The Association's formation cannot be premised on the management of a natural watercourse. The owners of the Rockwell Bypass ("Bypass"), an artificial watercourse, are required by the Rockwell v. Coffin decree to maintain the Bypass. Big Wood Ranch is not responsible for any activities voluntarily assumed by the invalid Association.

II. ARGUMENT

A. The Association Has Failed to Make a Prima Facie Case that it Complies with I.C. §§ 42-1301 et seq.

The Association baldly asserts but never explains how the Association complies with the statutory requirements for proper formation of a lateral ditch water users' association set forth in I.C. §§ 42-1301 *et seq.*¹ I.C. § 42-1301, the statute that supposedly authorizes formation of the Association, contemplates, in the first instance, formation based on the use of the "same canal." The Association does not identify the watercourse it claims is the "canal" and which watercourse(s) it claims is the "lateral ditch(es)." The Association further does not explain how it satisfies the criteria for the "same" canal, given that some alleged members take from the Bypass and others take from the Slough. Id.

¹ The Association similarly fails to explain how it meets criteria for formation pursuant to Title 42, Chapter 9, Idaho Code. The Association does not qualify under the criteria set forth in Title 42, Chapter 9, which concerns *water companies* and the distribution of water to *consumers*.

The Association acknowledges, and no party disputes, that water from the Big Wood River enters the Broadford Slough and then is allowed to continue down the Slough and/or might be directed into the Bypass *during the irrigation season*. Ass'n. Br., p. 3 (emphasis added). According to documents prepared by the Association's expert, there are only two (2) alleged water rights that take water directly from the Bypass. Malmen Aff., Exh. G. The vast majority of alleged Association members take water from the Slough downstream of its confluence with the Bypass. *Id.* Since the Big Wood River and/or the Slough are the common sources of the water delivered to alleged Association members, the Slough (and/or the River) should be identified as a "canal" if the Association is to conform to statutory requirements.² Instead, the Association refers to the Slough only as a "Ditch" in its Counterclaim, Answer, Motion, discovery and otherwise.

Finally, there is no question that the Association has failed to operate in conformance with Idaho statutes and its own Articles of Incorporation ("AOI") in a number of respects: 1) no certificates of membership were issued at formation, 2) invoices were not sent to alleged members for *several consecutive years*, and 3) there are alleged members that do not qualify for membership under the statutes or the AOI.³ For instance, the Rockwell saved water rights owners cannot be members of the Association per the AOI because they do not take water from the Slough or the Bypass. Malmen Aff., Exhs. A, C. In sum, the Association's formation and subsequent activities do not comply with applicable laws and the Association's AOI.

² The Association admits that the Big Wood River is not a canal and therefore the River cannot be the "canal" that is required for formation of a lateral ditch water users' association. Malmen Aff., Exh. B (Response to Admission No. 4). The Association's position regarding the nature and role of the Slough is confusing. The Association appears to assert that the Slough is a "slough" as opposed to a "stream," and then asserts that the Slough is not a natural channel. Ass'n. Br., p. 1-2.

³ The Association has purportedly recently mailed a certificate of membership to Big Wood Ranch.

B. The Broadford Slough Clearly Meets the Idaho Supreme Court's Definition of a Natural Watercourse.

The Idaho Supreme Court has defined a natural watercourse or drain as:

[A] stream of water flowing in a definite channel, having a bed and sides or banks, and discharging itself into some other stream or body of water. The flow of water need not be constant, but must be more than mere surface drainage occasioned by extraordinary causes; there must be substantial indications of the existence of a stream, which is ordinarily a moving body of water.

Burgess v. Salmon River Canal Co., 119 Idaho 299, 305, 805 P.2d 1223, 1229 (1991) (citing Loosli v. Heseman, 66 Idaho 469, 481, 162 P.2d 393, 398 (1945)).⁴

Application of the criteria set forth in Loosli and Burgess supports the conclusion that the Slough is a natural watercourse. See also King Aff. The Slough, even in the limited area that the Association alleges dries up during the irrigation season, has a definite channel, a bed and sides/banks, and discharges into the Big Wood River. There is a moving body of water in the Slough at least part of the year, and in addition to Big Wood River surface water, mountain streams and groundwater sources also feed the Slough. Malmén Aff., Exh. B (Response to Admission No. 4); Malmén Aff., Exh. G. Mountain stream water and groundwater are not “extraordinary causes” of water in the Slough, they are consistent, natural and regular causes of water in the Slough.

The presence of a dam, assuming *arguendo* that one or more dams are present, does not negate or trump the criteria set forth in Loosli and Burgess. In Burgess, the Court held that Salmon Falls Creek was a natural channel, even though a *permanent* dam had been constructed across the Creek to impound all water and had altered the normal stream flow. 119 Idaho at 305,

⁴ The watercourse at issue in Loosli had “no semblance of a definite channel” and, like other cases cited by the Association, dealt with prescriptive easements. Id. at 481, 399. Accordingly, Loosli has no precedential value to the instant facts beyond support for the definition of “natural watercourse.”

805 P.2d at 1229. It should also be noted that none of the cases cited by the Association involve legal entities similar to a lateral ditch water users' association.

The Association's reliance on Dayley v. City of Burley, 96 Idaho 101, 524 P.2d 1073 (1974) is similarly misplaced. Dayley involved the ability of the City to discharge wastewater into Goose Creek by prescriptive easement or equitable servitude. Dayley does not touch upon the issue of whether, by virtue of its use for irrigation, Goose Creek was properly considered a canal or a ditch. Second, the facts in Dayley are easily distinguishable from the instant facts-- houses had been built on top of Goose Creek, and Goose Creek had been completely obliterated in some stretches. Such is not the case here.

Independent Irr. Co., Ltd. v. Baldwin, 43 Idaho 371, 252 P. 489 (1926) is another case that is not instructive here. That case deals with the disputed *acquisition* of water rights in the Scott Slough (that allegedly had their origin in natural springs). Although the Court stated that Scott Slough ceased to be a tributary of the Snake River from the date of dam construction, there is no analysis beyond that statement in the opinion or any factual support for that conclusion as aptly noted in Justice Taylor's concurring opinion. Id. at 492. Independent Irr. Co. does not address the Idaho Supreme Court's definition of "natural watercourse" or any of the relevant factors critical to analysis under that definition. More recent Idaho Supreme Court case law (e.g., Burgess) has held that the presence of a dam is not determinative of whether a watercourse is natural.

The affidavits submitted by the Association do not address the criteria set forth by the Idaho Supreme Court for determining whether a watercourse is natural. The affidavits do not contain information that support a conclusion that the Broadford Slough is man-made, and the affidavits all contain significant caveats, including Brockway's affidavit. The Association acknowledges that the former Deputy Director of IDWR considered the Slough a natural

channel, then asserts that there is no evidence to support the Deputy Director's opinion, presumably based on the affidavits. Ass'n. Br., p. 3. Even if the affidavits did contain information that is relevant to the determination at hand, none of the Affiants' opinions individually or cumulatively outweigh the opinion of the former IDWR Deputy Director. A review of the affidavits confirms that the Slough does *not* meet the definition of "natural watercourse" established by the Idaho Supreme Court.

C. **The Lay Affidavits Only Support the Assertion that the Broadford Slough is Used for Delivery of Irrigation Water which is Not Disputed; They Do Not Support the Assertion that the Broadford Slough is a "Canal" as a Matter of Law.**

Kevin Lakey simply isn't qualified or authorized to speculate about the "posture" of IDWR in regard to the legal status of the Slough. Ass'n. Br., p. 4. Lakey's affidavit may support the assertion that there are headgates on the Slough and the Bypass and that boards are placed in a check structure located adjacent to the Bypass headgate during the irrigation season. Although a limited section of the Slough might dry up *during the irrigation season* as a consequence of the boards placed in a structure adjacent to the Rockwell Bypass headgate, the south section of the Slough is not dried up, even during the irrigation season. Whether and to what extent the Association has lessened IDWR's administration of water rights has no bearing on the legal issues in this case. Ass'n. Br., p. 5.

Lee Peterson is similarly not qualified or authorized to posit on IDWR's legal position. Peterson's affidavit indicates that work has been done in the Slough and Bypass to keep water flowing. Maintenance activities to keep water flowing to fulfill irrigation water rights are performed on both natural and man-made waterways. King Aff., ¶ 5. The fact that maintenance

has been performed on the Slough and Bypass does not differentiate it from any other waterway, natural or unnatural, in this State.⁵

Terry Blau is also not qualified or authorized to speak to IDWR's position regarding the nature of the Broadford Slough. Even if Blau were qualified to speak to IDWR's position, Blau only states that the Slough was not considered a natural stream for "purposes of regulation under the Stream Channel Alteration statutes." Blau Aff., ¶ 5; Ass'n. Br., p. 5. Blau, therefore, significantly qualifies his statement and does *not* purport to assert that the Slough is not a natural watercourse. The fact that no Stream Channel Alteration permit was issued might mean that the Association never applied for one, that one is not required in this case even though the stream is a natural watercourse (there are exceptions to application of the Act), and in any event does not reflect IDWR's position about the legal nature of the Slough itself. The only official IDWR correspondence of which Big Wood Ranch is aware is a letter from the IDWR Deputy Director that states without hesitation or qualification that the Slough is a natural channel. Ass'n. Br., p. 3. Water is administered the same or substantially similar today as it was in 1979 when that letter was signed.

Ed Cameron's affidavit simply confirms that there is a headgate on the Slough after the Slough departs from the Big Wood River; not that there is a "dam." In any event, as indicated in Burgess, the presence of a dam does not render a watercourse artificial. The fact that Cameron's affidavit asserts construction of the headgate on the Big Wood River by the U.S. Army Corps of Engineers is telling in and of itself, and supports Big Wood Ranch's position that the Big Wood

⁵ Idaho statutes clearly contemplate the use of a natural watercourse for irrigation as well as other beneficial uses of water. *See, e.g.*, I.C. § 42-101. The Association (and to some extent, Chuck Brockway) appear to be making the argument that if a watercourse is used for irrigation, then it is a canal. Big Wood Ranch is unable to locate any legal support for that argument.

River and the Slough are both natural waterways. The Army Corps does not have jurisdiction over artificial waterways.

Leroy Lewis attests that the Slough was dried up to prevent flooding. That alleged fact, even if true, does not convert the Slough into a canal.

Brian Brockette's affidavit should not carry any weight whatsoever in this proceeding because Brockette has a clear conflict of interest as he is employed and compensated by the Association. Brockette's affidavit fails to mention key facts, such as that Big Wood River water naturally enters the Slough and then is later either allowed to proceed or directed into the Bypass. Finally, the fact that a 1986 USGS map does not identify the Slough but does identify the Bypass has no relevance to this matter. There is no evidence that the USGS map is or was meant to be comprehensive of all watercourses, and, in any event, depicts what all parties agree is an artificial waterway; therefore there is no reason to believe that since the Slough does not appear on the map, it is not a natural watercourse.

D. The Association's Expert Affiant Does Not Address the Legal Definition of Natural Watercourse or Any of its Components.

Chuck Brockway has no authority to posit on the position of the State as to the legal status of the Slough. Further, the Association blatantly mischaracterized Brockway's affidavit in its Memorandum at p. 6. Brockway does not assert that the State of Idaho considers the Slough or the Bypass to be a canal; Brockway simply indicates that channels with controllable and lockable headgates are considered to be canals. Tellingly, Brockway's Affidavit does not indicate *who* or *what entity* considers channels with lockable and controllable headgates to be canals. There is absolutely no legal support for the assertion that the presence of a headgate transforms what would otherwise be a natural watercourse into a canal. This is particularly

significant in this case because the Big Wood River is not the only source of water for the Slough. Mountain streams and groundwater also feed the defined channel of the Slough.

E. **The Rockwell Decree Does Not Address the Question of Whether the Slough is a Natural Watercourse.**

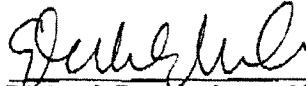
The Association hedges on its assertion that the Rockwell Decree determined the legal nature of the Slough in the first sentence where it alleges that the character of the Slough “*appears* to have been decided....” in the Rockwell Decree. Ass’n. Br., p. 3 (emphasis added). The Rockwell Decree only decided the rights to the use of developed surface water at issue in that case. The only section of the decree that the Association cites in support of its assertion is vague and ambiguous, and several other sections of the decree refer to the Slough as a “stream” or “swamp” or “sink”—terms associated with natural watercourses. The Rockwell Decree does not address the issue of whether the Slough is a natural watercourse. The Rockwell Decree is clear, however, that the owners of the Rockwell saved water rights are responsible for maintenance of the Bypass.

III. **CONCLUSION**

The Association has failed to make a prima facie showing that it complies with Idaho statute governing the proper formation and operation of lateral ditch water users’ associations. The alleged Association members do not take from the same canal; therefore, the Association is not a lateral ditch water users’ association under Idaho law and cannot enforce membership and dues upon water rights users. Big Wood Ranch is a bona fide purchaser of the surface water rights burdened by the Association’s claims. This Court should grant Big Wood Ranch’s Motion for Summary Judgment and dismiss the Defendant’s Counterclaim with prejudice.

DATED: May 7, 2012.

PERKINS COIE LLP

By: 
Richard C. Boardman, ISB No. 2922
Erika E. Malmen, ISB No. 6185

*Attorneys for Plaintiff/Counterdefendant
Big Wood Ranch, LLC*

CERTIFICATE OF SERVICE

I, the undersigned, certify that on May 7, 2012, I caused a true and correct copy of the foregoing to be forwarded with all required charges prepaid, by the method(s) indicated below, in accordance with the Idaho Rules of Procedure, to the following person(s):

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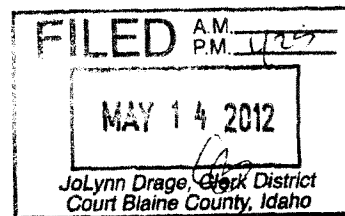
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*Attorneys for Plaintiff/Counterdefendant
 Big Wood Ranch, LLC*

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

BIG WOOD RANCH, LLC,
 Plaintiff,

v.

WATER USERS' ASSOCIATION OF
 THE BROADFORD SLOUGH AND
 ROCKWELL BYPASS LATERAL
 DITCHES, INC.,

Defendant.

WATER USERS' ASSOCIATION OF
 THE BROADFORD SLOUGH AND
 ROCKWELL BYPASS LATERAL
 DITCHES, INC.,

Counterclaimant,

v.

BIG WOOD RANCH, LLC,

Counterdefendant.

Case No. CV 2010-842

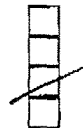
**SUPPLEMENTAL AFFIDAVIT OF ERIKA
 E. MALMEN IN SUPPORT OF
 PLAINTIFF/COUNTERDEFENDANT'S
 MOTION FOR SUMMARY JUDGMENT**

CERTIFICATE OF SERVICE

I, the undersigned, certify that on May 14, 2012, I caused a true and correct copy of the foregoing to be forwarded with all required charges prepaid, by the method(s) indicated below, in accordance with the Idaho Rules of Procedure, to the following person(s):

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Attorneys for Defendant/Counterclaimant



Erika E. Malmen



State of Idaho
DEPARTMENT OF WATER RESOURCES

STATE OFFICE, 372 W. Front Street, Boise, Idaho
450 W. State Street

JOHN V. EVANS
Governor

C. STEPHEN ALLRED
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 384-2215

November 16, 1979

Reid Newby
Watermaster
State Water District 37
Box T
Shoshone, ID 83352

RECEIVED

JUN 26 1980

Department of Water Resources
Southern District Office

Dear Reid,

The following letter is confirmation of our earlier discussions concerning the Rockwell Bypass and the Extension Bypass Canal.

Rockwell Bypass Decree:

Rights to saved water as a result of construction of the Rockwell are identified in the IRVIN E. ROCKWELL vs MANS H. COPPIN Decree issued on 29 July, 1949. The court determined that by reason of diverting the Big Wood River through the Rockwell Bypass instead of permitting it to flow through the Broadford Slough Swamp Sink, "a continuous flow of not less than 4.65 cubic feet per second or 232.50 miners inches of water of Big Wood River" was saved and developed. The court also indicated that said Bypass must be sufficiently kept "to provide flow therein of not less than 17.36 cubic feet of water per second of time during the irrigation season each year."

The Department interprets this last statement to mean that the owners of the Rockwell Bypass must maintain said Bypass in such a manner that it is capable of carrying 17.36 cubic feet of water needed to fill downstream water rights. However, the actual delivery of 17.36 cfs of water is dependant upon available Big Wood River flows to fill the priorities of the water rights constituting the 17.36 cfs. The watermaster is required only to deliver sufficient water to water rights with priorities entitled to receive available Big Wood River flow. Further, if Big Wood River flow at the head of the Broadford slough is insufficient to fill the oldest rights, including channel loss, diverting from the Rockwell Bypass or from the Broadford Slough down stream of where the Bypass rejoins the slough, you must cut off the diversions of 4.65 cfs constituting the water saved. At no time should the saved water be allowed to divert when water is not running in the Rockwell Bypass.

EXHIBIT

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PAGE 2

In regards to a second question as to when water shall be diverted into the Bypass, the department takes the following position.

The Rockwell Bypass was constructed by private individuals for the purpose of reducing water loss occurring when Big Wood water was flowing through the Broadford Slough. The before mentioned decree identified those rights which were established as a result of this water savings. There is nothing contained in the decree which requires that water be diverted into the Bypass instead of the Broadford Slough when there is no need for the saved water. If the owners of the Rockwell Bypass do not want water running through the Bypass then the Broadford Slough (as it is the natural channel), must be used to deliver water to the downstream rights.

Extension Bypass Canal:

The court Decree in the case of TOM HUGHES et al. vs MANS H. COFFIN identifies the amount of water saved through construction of the Extension Bypass canal.

This decree further identifies that water shall be diverted in the Extension Bypass when the flows of Big Wood River above and into the Dry Beds "so diminishes in amount that it is by reason of losses in the Dry Beds unavailable to prior appropriation." The court recognized that it was difficult to "accurately fix the time when the flow of the river became an independent source of supply not tributary to the stream below the Dry Beds," therefore it stated that the right shall become "effective when water rights in said stream with priority of June 15, 1883, are shut off." The court also provided that the right could be in effect if "the points of diversion of such prior rights are changed from within said Dry Bed area" and if "the flow of the river is turned into the Base Line Bypass, provided that, the Extension Bypass is capable of carrying the prior rights deliverable under the Frost Decree."

The Black Diversion No. 61 should be measured at the head of Diversion No. 61. If water delivered to this diversion comes via Extension Bypass canal, then the provisions of the decree are met and the owners of the Extension Bypass canal right (18 cfs) shall be allowed to divert.

Questions arising from diversions of water saved by construction of the Bypass canals in relation to senior upstream rights should be viewed from the standpoint that these upstream rights would shut off any way if the Bypass canals were not in use. The Bypass rights are simply the water saved from channel loss, and shall be allowed to divert when water, as provided by the court, is passed through the Bypass canals.

If we can be of any further assistance please let us know.

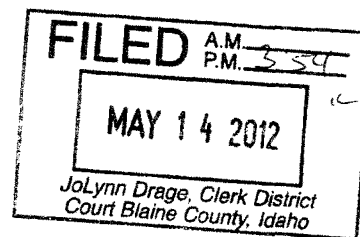
Sincerely,

Deputy Director

KD:JJ:pb

WUA000034

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 Erika E. Malmen, Bar No. 6185
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*Attorneys for Plaintiff/Counterdefendant
 Big Wood Ranch, LLC*

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
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BIG WOOD RANCH, LLC,
 Plaintiff,

v.

WATER USERS' ASSOCIATION OF
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 DITCHES, INC.,
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WATER USERS' ASSOCIATION OF
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Case No. CV 2010-842

**AFFIDAVIT OF ERIKA E. MALMEN IN
 SUPPORT OF PLAINTIFF/
 COUNTERDEFENDANT'S
 MEMORANDUM IN OPPOSITION TO
 DEFENDANT'S MOTION TO STRIKE
 AND MOTION TO EXCLUDE
 PLAINTIFF'S EXPERT WITNESS**

STATE OF IDAHO)
 : ss
County of Ada)

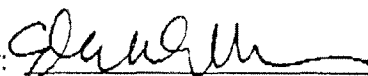
ERIKA E. MALMEN, being first duly sworn upon oath, deposes and says:

1. I am one of the attorneys for Big Wood Ranch, LLC in the above-entitled action. I have personal knowledge of and am competent to testify to the matters stated herein and the documents attached hereto.

2. Attached hereto as **Exhibit A** are true and correct copies of relevant excerpts from Plaintiff's Responses to Defendant's First Set of Discovery Requests served in this matter.

DATED: May 14, 2012.

PERKINS COIE LLP

By: 
Richard C. Boardman, ISB No. 2922
Erika E. Malmen, ISB No. 6185

*Attorneys for Plaintiff/Counterdefendant
Big Wood Ranch, LLC*


CERTIFICATE OF SERVICE

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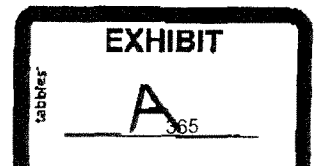
Case No. CV 2010-842

**PLAINTIFF'S RESPONSES TO
 DEFENDANT'S FIRST SET OF
 DISCOVERY REQUESTS DIRECTED
 TO PLAINTIFF**

Big Wood Ranch, LLC ("Big Wood Ranch"), by and through its counsel of record,

Perkins Coie LLP, hereby responds to Defendant's First Set of Discovery Requests as follows:

PLAINTIFF'S RESPONSES TO DEFENDANT'S FIRST
 SET OF DISCOVERY REQUESTS DIRECTED
 TO PLAINTIFF - 1
 61592-0005/LEGAL23010191.2



We will seasonably supplement this response if/when such information becomes available.

SECOND SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 7: Without waiving any prior objections, Mr. King has been provided with copies of the Complaint, Answer and Counterclaim and Answer to Counterclaim that were filed in this matter; and documents produced herewith and labeled as IDWR000001-29 and BWR000009-15, 328-343.

INTERROGATORY NO. 8: For each such person expected to be called as an expert witness, please state, in capsule summary, the qualifications and background of the individual.

ANSWER TO INTERROGATORY NO. 8: See Answers to Interrogatory No. 7.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 8: See Answer and Supplemental Answer to Interrogatory No. 7 and attached CV of Scott King.

INTERROGATORY NO. 9: State the name and address of each person whom you expect to call as an expert witness at the trial. For each such person, state the subject matter on which the expert is expected to testify, and state the substance of the opinions to which that person is expected to testify and the facts upon which those opinions are based.

ANSWER TO INTERROGATORY NO. 9: See Answers to Interrogatory No. 7.

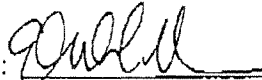
SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 9: See Answers and Supplemental Answers to Interrogatory Nos. 7 and 8.

INTERROGATORY NO. 10: Please identify each and every letter, writing or other document that you intend to offer as evidence at the trial of this action, and provide such identification by giving the names of the parties to the document, the date of the document, who has possession of a copy or the original of the document, and a summary of the facts, statements or opinions contained in any such letter, writing or other document. In lieu of answer to this interrogatory, you may attach copies of such items to your answer hereto.

ANSWER TO INTERROGATORY NO. 10: In addition to the general objections set

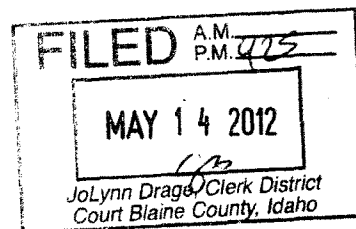
DATED: April 5, 2012.

PERKINS COIE LLP

By: 
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Case No. CV 2010-842

**REPLY MEMORANDUM IN SUPPORT
 OF PLAINTIFF/COUNTERDEFENDANT'S
 MOTION FOR SUMMARY JUDGMENT**

COMES NOW, the Plaintiff/Counterdefendant, Big Wood Ranch, LLC ("Big Wood Ranch"), by and through its counsel of record, Perkins Coie LLP, hereby submits the following Reply Memorandum in Support of Plaintiff/Counterdefendant's Motion for Summary Judgment.

This memorandum is supported by the Supplemental Affidavit of Erika E. Malmén ("Supp. Malmén Aff.") filed contemporaneously herewith.

The Defendant/Counterclaimant Water Users' Association of the Broadford Slough and Rockwell Bypass Lateral Ditches, Inc. ("Association") dodges the relevant legal issues in this case and instead relies on affidavits that do not contain any facts to support the Association's legal position. Even if this Court accepts as true all facts in the Association's affidavits, the Association still has not made a prima facie showing that it complies with applicable law. The Association's Motion and subsequent responses does not address (1) the statutory requirements that govern formation and operation of later ditch water users' associations; (2) the Idaho Supreme Court definition of "natural watercourse;" or (3) Idaho case law and statutes regarding the protection afforded bona fide purchasers.

I. THE ASSOCIATION FAILS TO MEET STATUTORY CRITERIA

The Association fails to explain how what it now characterizes as the "Slough/Bypass system" fits within the framework of I.C. § 42-1031, which sets forth the requirements for proper formation of a lateral ditch water users' association. The Association admits, as it must, that it has not complied with statutory criteria for operations--that admission alone is enough for this Court to grant Big Wood Ranch's Motion for Summary Judgment. See Ass'n SJ Opposition Br., pp. 5-6.

There are a number of statutory criteria that the Association fails to meet: (1) there is no "canal" or "same canal" in this case. The Association dismisses this argument without any explanation or analysis; (2) the Slough is not a canal (as discussed in more detail below); and (3) the Bypass cannot provide the basis for formation of the Association, even if it was a "canal" because there are not three or more parties that take water from the Bypass. The facts in this

case simply do not fit within the four corners of the statutory language and legislative intent reflected in I.C. §§ 42-1031 *et seq.*

II. THE ROCKWELL DECREE DECIDED WHO IS RESPONSIBLE FOR MAINTENANCE OF THE ROCKWELL BYPASS AND IT IS NOT BIG WOOD RANCH OR THE ASSOCIATION

Even if the Bypass were a canal and this Court somehow found that three or more parties take water from the Bypass, the Association cannot charge Big Wood Ranch for maintenance of the Bypass because other water users are required by law, per judicial decree, to maintain the Bypass. See Big Wood Ranch's SJ Opening Br., pp. 11-12. The argument is simple: other specific water users have been identified and are required by law to maintain the Bypass, as the Association concedes. See, e.g., Ass'n Answer and Counterclaim, ¶ 1. The owners of the Rockwell Bypass saved water rights accepted the burden of maintenance in exchange for the benefit of obtaining water rights. The Association cannot attempt to justify its legal existence on the basis of operation and maintenance of the Bypass.

III. THE ASSOCIATION HAS NOT AND DOES NOT COMPLY WITH ITS OWN CORPORATE GOVERNANCE DOCUMENTS

The Association's recent belated issuance of membership certificates attempts to remedy only one of the numerous *admitted* and incurable violations of the Association's own governance documents (e.g., not holding an annual meeting in 2006, not invoicing alleged members for four consecutive years). See Big Wood Ranch's SJ Opening Memo., pp. 9-10; Ass'n SJ Opposition Br., pp. 5-6. Further, the owners of the Bypass saved water rights do not qualify for membership in the Association (and they are members according to the Association) because they no longer take water from the Bypass or the Slough—a requirement set forth in the Articles of Incorporation ("AOI"). Malmen Aff., Exh. A. The previous Property owners' alleged payments to the Association are not relevant to the legal issues in this case, and the Association's assertion

that a predecessor-in-interest payment to a non-profit corporation can bind future BFPs with no notice because the AOI says so is disingenuous. Big Wood Ranch doubts the Association has fully considered the implications of this Court accepting such an argument.

IV. THE BROADFORD SLOUGH IS A NATURAL WATERCOURSE

The Big Wood River and the Broadford Slough are natural watercourses. The Association does not even attempt to address the criteria for "natural watercourse" set forth by the Idaho Supreme Court in Burgess v. Salmon River Canal Co., 119 Idaho 299, 305, 805 P.2d 1223, 1229 (1991) and in other cases. As explained in Big Wood Ranch's Memorandum in Opposition to the Association's Motion for Summary Judgment, the Broadford Slough meets every factor of the test set forth in Burgess. There is no dispute that the Slough has a defined channel and banks, discharges into the Big Wood River, and that water in the Slough is not the result of extraordinary events. See Big Wood Ranch's SJ Opposition Memo., pp. 4-6. The Association's assertion that the use of a watercourse for irrigation, combined with a headgate or a dam (at some point), render a watercourse unnatural bears no relevance to the test for a natural watercourse, and there is otherwise no support for this argument. Both the former Deputy Director of the Idaho Department of Water Resources ("IDWR") and Allen Merritt, IDWR Southern Region, have signed and/or authored documents wherein it is clearly stated that the Broadford Slough is a natural watercourse. Malmén Aff., Exh. H; Supp. Malmén Aff., Exh. R.

The Association's reliance on the Rockwell decree for the assertion that the Slough is not a natural watercourse is incorrect. There is no evidence that the "canals and ditches leading from said Big Wood River" are indeed the Slough and/or the Bypass and the paragraph the Association's quotes from here is general in nature. Ass'n SJ Opposition Br., p. 5. The Slough and the Bypass are but two of several watercourses leading from the Big Wood River; the general statement that the Association relies on is not conclusive when the decree is read in

proper context and as Big Wood Ranch has pointed out in prior briefs, the decree also more specifically refers to the Slough as a "slough," "stream," or "swamp," all of which have connotations of a natural watercourse. The decree is admittedly inconsistent in its characterization of the Slough to the extent it specifically characterizes it at all, and therefore does not address whether the Slough is a natural watercourse. The decree does, however, specifically require that the owners of the Bypass maintain the Bypass.

Idaho statutes clearly indicate that IDWR has authority over natural watercourses and it is not disputed that IDWR was managing the "Slough/Bypass system" prior to the formation of the Association. The Slough is a natural watercourse as a matter of law because the Association has not disputed that the Slough contains the characteristics of a natural watercourse set forth by the Idaho Supreme Court in Burgess and other precedent.

V. BIG WOOD RANCH IS A BONA FIDE PURCHASER ("BFP")

The Association does not meaningfully address Big Wood Ranch's bona fide purchaser ("BFP") argument. See Big Wood Ranch's SJ Opening Memo., pp. 10-11. The Association completely ignores the legal test for BFP's and instead counters with what appear to be equitable arguments that have no place in a summary judgment motion, setting aside the fact that this is a new argument that was not raised in the Association's Counterclaim or Motion. If this Court nevertheless considers the Association's equitable pleas, it is important to keep in mind that surface water was delivered to Big Wood Ranch *for over 100 years before the Association was illegally formed*. The Association's existence is not required in order for Big Wood Ranch to exercise its surface water rights.

In addition to ignoring the statutory and other applicable legal requirements, the Association appears preoccupied with facts that have no relevance and are not material to the legal issues in this case. The Association's assertions in regard to Big Wood Ranch's use of its

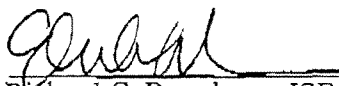
surface water rights, affiant Archie Bouttier's "apparent authority," unjust enrichment, and potential forfeiture issues are not relevant or material to the instant Motion. The Affidavit of Archie Bouttier does nothing to refute Big Wood Ranch's BFP claims—Bouttier says nothing about whether Big Wood Ranch had actual knowledge or should have known about the existence of the Association. Bouttier's Affidavit indicates that Mr. Richards knew that Bouttier was utilizing Big Wood Ranch's Property. If Big Wood Ranch would have purchased the Property in 2001 before the Association was formed, Archie Bouttier would have been doing the same activities on the Property as he was in 2006 after the Association was formed; Bouttier's activities provide no obvious clues as to the existence of the Association, and the exercise of Big Wood Ranch's decreed 1892 and 1891 priority surface water rights are appurtenant to Big Wood Ranch's Property. The Association has not refuted or even addressed the fact that the Property purchase and sale documents indicate nothing about the Association and does not dispute that all posted notices confirm IDWR's authority.

VI. CONCLUSION

Even if this Court liberally construes all facts and inferences in favor of the Association, there are no genuine issues as to any material facts in this case. The Association lacks the necessary authority to assess Big Wood Ranch. Accordingly, judgment in favor of Big Wood Ranch is warranted.

DATED: May 14, 2012.

PERKINS COIE LLP

By: 
Richard C. Boardman, ISB No. 2922
Erika E. Malmen, ISB No. 6185

*Attorneys for Plaintiff/Counterdefendant
Big Wood Ranch, LLC*

CERTIFICATE OF SERVICE


I, the undersigned, certify that on May 14, 2012, I caused a true and correct copy of the foregoing to be forwarded with all required charges prepaid, by the method(s) indicated below, in accordance with the Idaho Rules of Procedure, to the following person(s):

Gary D. Slette
Robertson & Slette, PLLC
PO Box 1906
Twin Falls, Idaho 83303-1906
Phone: (208) 933-0700

Hand Delivery
U.S. Mail
Facsimile: (208) 933-0701
Overnight Mail

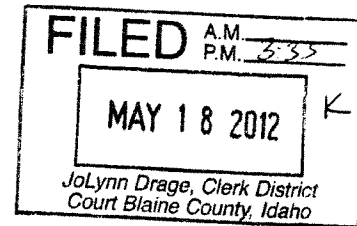
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<input type="checkbox"/>

Attorneys for Defendant/Counterclaimant



Erika E. Malmen

Richard C. Boardman, Bar No. 2922
 rboardman@perkinscoie.com
 Erika E. Malmen, Bar No. 6185
 emalmen@perkinscoie.com
 PERKINS COIE LLP
 1111 W. Jefferson Street, Suite 500
 Boise, Idaho 83702-5391
 Telephone: (208) 343-3434
 Facsimile: (208) 343-3232



*Attorneys for Plaintiff/Counterdefendant
 Big Wood Ranch, LLC*

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

BIG WOOD RANCH, LLC,
 Plaintiff,
 v.
 WATER USERS' ASSOCIATION OF
 THE BROADFORD SLOUGH AND
 ROCKWELL BYPASS LATERAL
 DITCHES, INC.,
 Defendant.

Case No. CV 2010-842

**NOTICE OF WITHDRAWAL OF
 SUPPLEMENTAL AFFIDAVIT OF ERIKA
 E. MALMEN IN SUPPORT OF
 PLAINTIFF/COUNTERDEFENDANT'S
 MOTION FOR SUMMARY JUDGMENT**

WATER USERS' ASSOCIATION OF
 THE BROADFORD SLOUGH AND
 ROCKWELL BYPASS LATERAL
 DITCHES, INC.,
 Counterclaimant,
 v.
 BIG WOOD RANCH, LLC,
 Counterdefendant.

Plaintiff/Counterdefendant, Big Wood Ranch, LLC, by and through its counsel of record, Perkins Coie LLP, hereby provides notice that the Supplemental Affidavit of Erika E. Malmen in Support of Plaintiff/Counterdefendant's Motion for Summary Judgment, which was filed with

the Court on Monday, May 14, 2012, is hereby withdrawn. Exhibit R thereto is already part of the Court record as it is attached as Exhibit B to the April 20, 2012 Affidavit of Marc Reinemann.

DATED: May 18, 2012.

PERKINS COIE LLP

By: 
Richard C. Boardman, ISB No. 2922
Erika E. Malmén, ISB No. 6185

*Attorneys for Plaintiff/Counterdefendant
Big Wood Ranch, LLC*

CERTIFICATE OF SERVICE

I, the undersigned, certify that on May 18, 2012, I caused a true and correct copy of the foregoing to be forwarded with all required charges prepaid, by the method(s) indicated below, in accordance with the Idaho Rules of Procedure, to the following person(s):

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Robertson & Slette, PLLC
PO Box 1906
Twin Falls, Idaho 83303-1906
Phone: (208) 933-0700

Hand Delivery
U.S. Mail
Facsimile: (208) 933-0701
Overnight Mail

<input checked="" type="checkbox"/>
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<input type="checkbox"/>

Attorneys for Defendant/Counterclaimant



Erika E. Malmen

FILED A.M. 2:07 P.M.
 JUN 19 2012
 JoLynn Drage, Clerk District
 Court Blaine County, Idaho

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

BIG WOOD RANCH, LLC,)	
)	
Plaintiff/Counterdefendant,	)	Case No. CV-10-842
)	
v.	)	ORDER ON CROSS MOTIONS
	)	FOR SUMMARY JUDGMENT
)	
WATER USERS' ASSOCIATION OF)	
THE BROADFORD SLOUGH AND)	
ROCKWELL BYPASS LATERAL)	
DITCHES, INC.,)	
)	
Defendant/Counterclaimant.)	
_____)	

The parties' respective Motions for Summary Judgment came on for hearing before the court on May 21, 2012. The court has considered the written and oral arguments of the parties, together with the Affidavits submitted by the parties. For the reasons stated in its oral decision in open court at the hearing, the court hereby orders as follows:

1. The court denies the Defendant's Motion to Strike & Motion to Exclude Plaintiff's Expert Witness filed on April 23, 2012.
2. The court hereby grants the Association's Motion for Summary Judgment as to Count I of the Prayer for Relief in its Counterclaim that the Association was validly formed and is of continuing authority to act pursuant to Idaho Code § 42-1301, et seq. *A legal question exists over whether the Plaintiff is a member thereof, once a water users association is formed. (HE)*
3. The court hereby grants the Association's Motion for Summary Judgment as to the

1
2 issue in Count I of the Prayer for Relief in its Counterclaim that the Broadford Slough ditch is a
3 canal for purposes of water right delivery pursuant to Idaho Code § 42-1301, et seq.

4 4. The court reserves for future hearing and/or motion, the issue of the amount of
5 assessments or charges, if any, owing to the Defendant by the Plaintiff.

6 DATED this 15 day of ~~May~~, 2012.

7 *June*

8 *Robert J. Elgee*

9
10 ROBERT J. ELGEE, District Judge

11 CERTIFICATE OF SERVICE

12 The undersigned certifies that on the 19 day of ~~May~~, 2012, she caused a true and
13 correct copy of the foregoing instrument to be served upon the following persons in the following
14 manner:

15 Erika E. Malmen
16 Cynthia L. Yee-Wallace
17 PERKINS COIE LLP
18 1111 W. Jefferson St., Ste. 500
19 Boise, ID 83702-5391

[] Hand Deliver
[x] U.S. Mail
[] Overnight Courier
[] Facsimile Transmission 208-343-3232
[] Email EMalmen@perkinscoie.com
CYeeWallace@perkinscoie.com

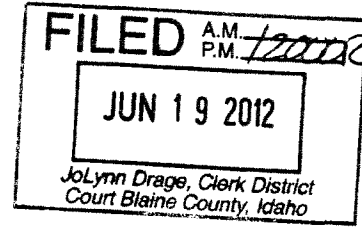
20 Gary D. Slette
21 Robertson & Slette PLLC
22 P.O. Box 1906
23 Twin Falls, ID 83303-1906

[] Hand Deliver
[x] U.S. Mail
[] Overnight Courier
[] Facsimile Transmission - 208-933-0701
[] Email gslette@rsidaholaw.com

24 CLERK OF THE COURT

25 By: *C. Ruby*

26 Deputy Clerk



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

BIG WOOD RANCH, LLC,)
)
Plaintiff/Counterdefendant,)
)
v.)
)
WATER USERS' ASSOCIATION OF)
THE BROADFORD SLOUGH AND)
ROCKWELL BYPASS LATERAL)
DITCHES, INC.,)
)
Defendant/Counterclaimant.)
_____)

Case No. CV-10-842

ORDER ON MOTION FOR
PROTECTIVE ORDER

This matter came before the court on the Defendant's Motion for Protective Order pursuant to I.R.C.P. Rule 26(c). The court has considered the oral and written arguments of the parties, and based thereon, enters the following Order:

1. Subject to the limitations set forth in paragraph 2 hereof, the depositions of Dr. Charles Brockway, Kevin Lakey, Brian Brochette and Archie Bouttier may proceed, as well as a second I.R.C.P. Rule 30(b)(6) deposition of the Defendant.

2. The depositions shall be limited and confined only to the following issues:

(a) The value of services or product delivered to the Plaintiff or its property.

(b) Whether the Plaintiff is a member of the Association that can opt in or out of membership.

A legal question exists over whether one is automatically a member once a water user's association is formed.

(PSE)

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- (c) The identity of the deliverer of the service referenced in paragraph 2(a) hereof, including maintenance of the Broadford Slough or Rockwell Bypass ditches. The scope of such identity may be:
 - (i) Idaho Department of Water Resources.
 - (ii) Rockwell Bypass Saved Water Users Association.
 - (iii) The Defendant Association.

DATED this 15 day of ~~May~~, 2012.

June

ROBERT J. ELGEE, District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that on the 19 day of ~~May~~^{*June*}, 2012, she caused a true and correct copy of the foregoing instrument to be served upon the following persons in the following manner:

Erika E. Malmen
Cynthia L. Yee-Wallace
PERKINS COIE LLP
1111 W. Jefferson St., Ste. 500
Boise, ID 83702-5391

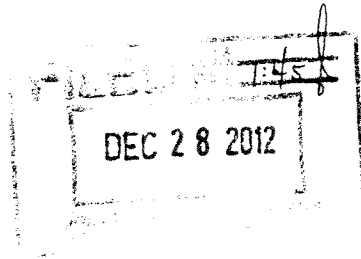
- Hand Deliver
- U.S. Mail
- Overnight Courier
- Facsimile Transmission 208-343-3232
- Email EMalmen@perkinscoie.com
CYeeWallace@perkinscoie.com

Gary D. Slette
Robertson & Slette PLLC
P.O. Box 1906
Twin Falls, ID 83303-1906

- Hand Deliver
- U.S. Mail
- Overnight Courier
- Facsimile Transmission - 208-933-0701
- Email gslette@rsidaholaw.com

CLERK OF THE COURT

By: *CR Regby*
Deputy Clerk



1
2 **Gary D. Slette ISB # 3198**
3 **ROBERTSON & SLETTE, PLLC**
4 **P.O. Box 1906**
5 **Twin Falls, Idaho 83303-1906**
6 **Telephone: (208) 933-0700**
7 **Facsimile: (208) 933-0701**
8 **rim\VER\broadford\fees_memo**

9 **IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE**

10 **STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

11 *****

12 **BIG WOOD RANCH, LLC,**)

13 **Plaintiff/Counterdefendant,**)

Case No. CV-10-842

14 **v.**)

**DEFENDANT'S MEMORANDUM
OF COSTS, DISBURSEMENTS AND
ATTORNEY'S FEES**

15 **WATER USERS' ASSOCIATION OF**)
16 **THE BROADFORD SLOUGH AND**)
17 **ROCKWELL BYPASS LATERAL**)
18 **DITCHES, INC.,**)

Defendant/Counterclaimant.)

19 **COMES NOW** the Defendant, Water Users' Association of The Broadford Slough and
20 **Rockwell Bypass Lateral Ditches, Inc. ("Association"),** by and through its counsel of record,
21 **Gary D. Slette** of the law firm of Robertson & Slette, PLLC, and submits this Memorandum of
22 **Costs, Disbursements and Attorney's Fees** based upon the court's oral Order entered in this matter
23 **on December 18, 2012.** This claim is submitted pursuant to, and in accordance with the court's
24 **oral Order and I.R.C.P. Rules 54(d) and (e).**

25 **The following costs, disbursements and attorney's fees** were incurred between December
26

1
2 5, 2012 and December 18, 2012, with respect to preparation and attendance at the second day of
3 trial in this matter scheduled for December 18, 2012:

4
5 **I.**

6 **COSTS AS A MATTER OF RIGHT**

7 There were no costs as a matter of right relative to the vacated trial date originally
8 scheduled for December 18, 2012.

9 **II.**

10 **DISCRETIONARY COSTS**

11 12/18/2012 Mileage to/from Hailey \$78.10

12
13 **III.**

14 **ATTORNEY'S FEES**

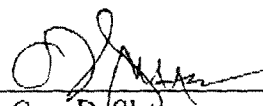
15 The Plaintiff respectfully requests fees in the amount of Three Thousand Nine Hundred
16 Seventy Five and No/100 Dollars (\$3,975.00), pursuant to the court's oral Order and Rules 54(d)
17 and (e) of the Idaho Rules of Civil Procedure. The attached Exhibit "A" sets forth an itemized
18 statement of fees incurred from December 5, 2012, to December 18, 2012.

19 **TOTAL FEES AND COSTS: \$4,053.10**

20 Said fees are reasonable and based upon the hourly rates therein set forth and the time and
21 labor expended as illustrated in the Affidavit filed contemporaneously herewith.

22 DATED this 28 day of December, 2012.

23 ROBERTSON & SLETTE, PLLC

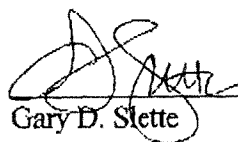
24 By: 
25 Gary D. Slette
26

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CERTIFICATE OF SERVICE

The undersigned certifies that on the 28 day of December, 2012, he caused a true and correct copy of the foregoing instrument to be served upon the following persons in the following manner:

Erika E. Malmén	<input type="checkbox"/> Hand Deliver
Cynthia L. Yee-Wallace	<input type="checkbox"/> U.S. Mail
PERKINS COIE LLP	<input type="checkbox"/> Overnight Courier
1111 W. Jefferson St., Ste. 500	<input checked="" type="checkbox"/> Facsimile Transmission 208-343-3232
Boise, ID 83702-5391	<input type="checkbox"/> Email <u>EMalmén@perkinscoie.com</u>
	<u>CYeeWallace@perkinscoie.com</u>



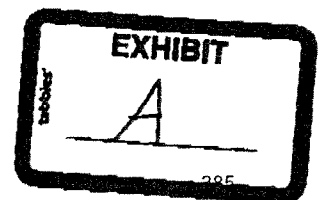
Gary D. Slette

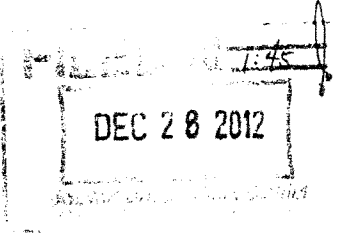
Robertson & Slette, p.l.l.c.

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount	Ref #
Client ID BROADFOR.201 BROADFORD SLOUGH DITCH CO.								
BROADFOR.201	12/05/2012	2	P	1	250.00	3.50	875.00	81
							Numerous calls w/Marc regarding trial preparation with Marc Richards; Calls f/to C. Brockway; Email to R. Boardman; Calls to/f Ray Siderius, attorney for Richards' estate; More calls w/Marc; Conference w/JER	
BROADFOR.201	12/06/2012	2	P	1	250.00	2.40	600.00	82
							Calls to/f Stoney Burke; Calls and emails to/f Mike Gacok regarding litigation over estate issues; Work on preparation for trial examination on December 18; Calls to Marc Reinemann	
BROADFOR.201	12/13/2012	2	P	1	250.00	2.00	500.00	83
							Work on preparation of direct examination questions for Marc Richards; Study Richards' deposition; Review Supplemental Trial Memo for Plaintiff	
BROADFOR.201	12/14/2012	2	P	1	250.00	0.50	125.00	86
							Calls f/to Rick Boardman regarding Brockway invoice and trial issues for Tuesday's trial	
BROADFOR.201	12/17/2012	2	P	1	250.00	3.50	875.00	85
							Prepare closing argument outline regarding testimony from Marc, Brian, Lakey and Brockway (2.5); Review email from Boardman regarding absence of Richards from trial; Calls to Evan Robertson and Marc Reinemann regarding events; Calls f/to Archie Bouttier (1.0)	
BROADFOR.201	12/18/2012	2	P	52	0.550		78.10	50
BROADFOR.201	12/18/2012	2	P	1	250.00	4.00	1,000.00	84
							Mileage to/from Hailey Travel from Twin to Hailey departing at 7:30 a.m.; Attend trial day 2; Travel to Twin Falls arriving at 11:30 a.m.	



Billable 15.90 4,053.10





Gary D. Slette ISB # 3198
ROBERTSON & SLETTE, PLLC
P.O. Box 1906
Twin Falls, Idaho 83303-1906
Telephone: (208) 933-0700
Facsimile: (208) 933-0701
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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

BIG WOOD RANCH, LLC,)
)
Plaintiff/Counterdefendant,)
)
v.)
)
WATER USERS' ASSOCIATION OF)
THE BROADFORD SLOUGH AND)
ROCKWELL BYPASS LATERAL)
DITCHES, INC.,)
)
Defendant/Counterclaimant.)

Case No. CV-10-842

AFFIDAVIT IN SUPPORT OF
DEFENDANT'S MEMORANDUM
OF COSTS, DISBURSEMENTS AND
ATTORNEY'S FEES

STATE OF IDAHO)
)
County of Twin Falls)

I, Gary D. Slette, being first duly sworn upon oath do state as follows:

1. I am the attorney of record for the Defendant above-named . I make this affidavit based on my own personal knowledge and in accordance with Idaho Rule of Civil Procedure Rule 54(e)(5). I am competent to testify to the same and would if called upon to do so. I am duly admitted to the practice of law before all courts in the State of Idaho and maintain offices at 134 Third Avenue East in Twin Falls, Idaho.

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2. The Memorandum of Costs, Disbursements and Attorney's Fees ("Memorandum") and Exhibit "A" thereto set forth a true itemization of the charges incurred by Defendant for trial preparation between December 5 and December 18, 2012, and attendance at the second day of trial scheduled in this matter on December 18, 2012.

3. The costs claimed in the accompanying Memorandum are correct and were necessarily incurred in the above case.

4. The time and labor for those days required in preparing for and attending the second day of trial scheduled in this matter for December 18, 2012, formed the basis and method of computation of the attorney fees claimed, and are as indicated in said Memorandum and Exhibit "A" thereto.


5. Defendant was charged attorney's fees on an hourly fixed fee basis of \$250.00 per hour, as indicated, which fees are reasonable and similar to or less than the amount charged by attorneys with similar skills, experience and ability in other law firms in the Wood River Valley who do similar work.

6. The court ordered that such fees and costs be paid by Plaintiff to the Defendant for Plaintiff's failure to attend the trial scheduled on December 18, 2012.

7. I believe that the amount of time expended in connection with this matter was reasonable, appropriate and necessary, and that the fee charged was reasonable and appropriate. I am familiar with the hourly fees charged in the Wood River Valley by other lawyers of comparable skill, experience and ability, in connection with matters of a similar nature, and believe the per hour amount charged was commensurate with and competitive with them.

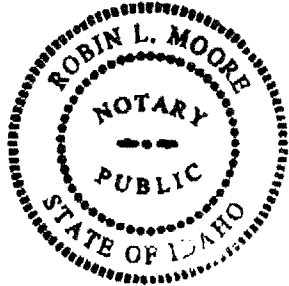
Further your affiant sayeth naught.

DATED this 28 day of December, 2012.



GARY D. SLETTE

1
2 SUBSCRIBED AND SWORN to before me this 28th day of December, 2012.



[Signature]
NOTARY PUBLIC FOR IDAHO

Residing at Jerome, Idaho

Commission Expires: 12-28-12

9 CERTIFICATE OF SERVICE

10 The undersigned certifies that on the 28 day of December, 2012, he caused a true and
11 correct copy of the foregoing instrument to be served upon the following persons in the following
12 manner:

13 Erika E. Malmen
14 Cynthia L. Yee-Wallace
15 PERKINS COIE LLP
16 1111 W. Jefferson St., Ste. 500
17 Boise, ID 83702-5391

- 13 [] Hand Deliver
- 14 [] U.S. Mail
- 15 [] Overnight Courier
- 16 [x] Facsimile Transmission 208-343-3232
- 17 [] Email EMalmen@perkinscoie.com
- 18 CYeeWallace@perkinscoie.com

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[Signature]
Gary D. Slette

ORIGINAL

FILED A.M. 115908
P.M.
JAN - 3 2013
JoLynn Drage, Clerk District
Court Blaine County, Idaho

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

BIG WOOD RANCH, LLC,)
)
Plaintiff/Counterdefendant,)
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v.)
)
)
)
WATER USERS' ASSOCIATION OF)
THE BROADFORD SLOUGH AND)
ROCKWELL BYPASS LATERAL)
DITCHES, INC.,)
)
Defendant/Counterclaimant.)
)

Case No. CV-10-842

ORDER

This matter came before the court on December 18, 2012, at 9 a.m. as the date established by the court for the continuance of the trial in this matter. The original trial date in this matter was vacated and rescheduled to November 13, 2012, at the Plaintiff's request. Although Marc Richards ("Richards"), the managing member of the Plaintiff, had acknowledged through his attorneys that he would be present for the trial on that date, Plaintiff's counsel advised Defendant's counsel on November 12 that their client was in Hawaii, and would not be able to attend.

By agreement of the parties, and pursuant to Order of the court, the trial was rescheduled to December 18, in order to allow Richards to testify. On the morning of December 18, Plaintiff's counsel advised the court of Richards' absence at the trial due to his inability to depart Hawaii. Plaintiff's counsel orally moved for a continuance of the trial over the objection of Defendant's counsel. Based upon the foregoing,

1
2 IT IS HEREBY ORDERED AS FOLLOWS:

3 1. The continuance of the trial in this matter is hereby set for Friday, January 4, 2013,
4 at 9 a.m.

5 2. Counsel for Defendant is awarded costs and attorney fees, including time spent in
6 preparation for the second day of trial, as well as travel time incurred on December 18.

7 DATED this 3 day of January, 2013.

8 
9 _____
ROBERT J. ELGEE, District Judge

10
11 CERTIFICATE OF SERVICE

12 The undersigned certifies that on the 3 day of Jan, 2013, she
13 caused a true and correct copy of the foregoing instrument to be served upon the following
14 persons in the following manner:

15 Erika E. Malmen
16 Cynthia L. Yee-Wallace
17 PERKINS COIE LLP
18 1111 W. Jefferson St., Ste. 500
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23 Twin Falls, ID 83303-1906

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 Overnight Courier
 Facsimile Transmission - 208-933-0701
 Email gslette@rsidaholaw.com

24 CLERK OF THE COURT

25 By: 
26 Deputy Clerk

FILED A.M. *BAK*
P.M.
FEB 28 2013
JoLynn Drage, Clerk District Court Blaine County, Idaho

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

BIG WOOD RANCH, LLC,)	
)	
Plaintiff/Counterdefendant,	)	Case No: CV-2010-842
)	
vs.)	
)	
WATER USERS' ASSOCIATION OF THE)	
BROADFORD SLOUGH AND ROCKWELL)	
BYPASS LATERAL DITCHES, INC.,)	
)	
Defendant/Counterclaimant.)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter was tried before the Court, without jury, on November 13, 2012, December 18, 2012, and January 4, 2013. Plaintiff/Counterdefendant Big Wood Ranch, LLC ("Big Wood Ranch") was represented by Richard C. Boardman and Erika E. Malmén of Perkins Coie LLP. Defendant/Counterclaimant Water Users' Association of the Broadford Slough and Rockwell Bypass Lateral Ditches, Inc. ("Association") was represented by Gary Slette of Robertson & Slette, PLLC. The Court, having considered the testimony of the parties and the witnesses in this case, and the parties' briefing and other pleadings and records herein, and being duly advised in the premises, finds as follows:

FINDINGS OF FACT

1. Pursuant to the court's Order dated June 15, 2012, the Defendant/Counterclaimant, the Association, has been validly formed pursuant to Idaho Code § 42-1301, et seq., and is of continuing authority to act pursuant to such statutes.

2. The Association is entitled to impose assessments on its members consistent with the provisions of Idaho Code § 42-1303.

3. Article VI of the Articles of Incorporation on file with the Idaho Secretary of State provided:

Interest in this non-profit corporation shall be memberships, all of single class, evidenced by certificates of membership. Every owner of an Idaho state water right validly entitled to be conveyed through either the Broadford Slough lateral ditch or the Rockwell Bypass lateral ditch shall be a member of the corporation, and upon receiving water through either of said lateral ditches shall be deemed to consent to membership, and to the provisions of these Articles of Incorporation and the By-laws of this corporation, as the same may now read or are hereafter duly amended to read. Such membership shall at all times be identified with, and be appurtenant to, the ownership of said water rights. Should any of said water rights, or any portion thereof, be transferred by sale or otherwise, all such transferees shall, upon acceptance of the transfer, become members of the corporation. No person or entity who is not the owner of a water right conveyed through the Broadford Slough lateral ditch or the Rockwell Bypass lateral ditch, shall become or remain a member of the corporation.

4. Article VI of the Articles of Incorporation was subsequently amended to read:

Interest in this non-profit corporation shall be memberships, all of single class, evidenced by certificates of membership. Every owner of an Idaho state water right either (a) validly entitled to be conveyed through either the Broadford Slough lateral ditch or the Rockwell Bypass lateral ditch; or (b) that has been transferred out of the Rockwell Bypass as a saved water right, but whose right to use such water is dependent upon maintenance of sufficient flows in the Rockwell Bypass as required in the Rockwell Decree dated August 25, 1949, shall be a member of the corporation, and upon either (a) receiving water through either of said lateral ditches; or (b) being able to divert such transferred water, shall be deemed to

consent to membership, and to the provisions of these Articles of Incorporation and the By-laws of this corporation, as the same may now read or are hereafter duly amended to read. Such membership shall at all times be identified with, and be appurtenant to, the ownership of said water rights. Should any of said water rights, or any portion thereof, be transferred by sale or otherwise, all such transferees shall, upon acceptance of the transfer, become members of the corporation. No person or entity who is not the owner of a water right either (a) conveyed through the Broadford Slough lateral ditch or the Rockwell Bypass lateral ditch; or (b) validly transferred from the Rockwell Bypass to another point of diversion, shall become or remain a member of the corporation.

5. Under either or both the original Article VI or the amended Article VI referenced above, membership in the Association was identified with, and appurtenant to, the ownership of any state water right entitled to be conveyed through either the Broadford Slough or the Rockwell Bypass.

6. Brian Brochette was appointed as the lateral manager for the Association upon its formation in 2002, and continues to serve in that capacity. He was also appointed a Deputy Water Master for Water District No. 37 in or about 2010 in order to avoid any claim of trespass by non-Association members when he adjusted delivery flows to the headgates of Association members. Brian Brochette is compensated solely by the Association in performing water deliveries to the members of the Association, and he receives no compensation of any kind whatsoever from District 37 or the Idaho Department of Water Resources.

7. Jann Wenner ("Wenner") was an original member of the Association upon its formation, and he was the immediate predecessor in interest of the Plaintiff/Counterdefendant, Big Wood Ranch. Wenner's surface water rights were conveyed and delivered to his property by the Association through the Broadford Slough and the Rockwell Bypass.

8. Wenner provided Archie Bouttier ("Bouttier"), another Association member, with express authority to operate his property for agricultural purposes, including the irrigation thereof

with surface water diverted from the Big Wood River into the Broadford Slough, and conveyed by the Broadford Slough and Rockwell Bypass. Bouttier regularly called upon the Association to obtain the delivery of Wenner's surface water rights. Big Wood Ranch's water arrived at and was used historically upon the Big Wood Ranch in the manner described by Bouttier in his testimony. That is, the Court accepts Bouttier's testimony over Richard's testimony in areas where they conflict, or in which conflicting inferences could be drawn.

9. Wenner paid assessments to the Association in accordance with the provisions of Idaho Code § 42-1301, et seq.

10. Marc Richards ("Richards") is the sole member and the managing member of Big Wood Ranch. Big Wood Ranch purchased its property and water rights from Wenner for Five Million Dollars (\$5,000,000) in 2006, sight unseen. The Purchase and Sale Agreement (Plaintiff's Exhibit 40) contained a provision expressly advising Big Wood Ranch to seek advice regarding the validity, quality and quantity of any water right acquired with the real estate it purchased. It also provided that, "Buyer must verify same during the inspection period." Neither Plaintiff nor Richards ever researched or verified any issues pertaining to the property's water rights, or their means of conveyance or delivery, prior to the time that Big Wood Ranch purchased the property.

11. Following Big Wood Ranch's acquisition of the property, Mr. Richards met Bouttier on the property, and instructed him to continue to operate the property for Big Wood Ranch just as he had done for Wenner. Such instruction constituted either express or apparent authority for Bouttier to call upon the Association for the conveyance and delivery of surface water rights appurtenant to Big Wood Ranch's property. Bouttier regularly called upon the Association to obtain the delivery of Big Wood Ranch's surface water rights from 2007 through 2011. In 2012, Erika Malmen, counsel for Big Wood Ranch, called the Association to request delivery of Big Wood Ranch's water for the coming water season.

12. Shortly after Big Wood Ranch's purchase of the property from Wenner, Marc Reinemann, the Association's Secretary/Treasurer, contacted Richards to advise him of the role of the Association regarding the conveyance and delivery of a member's surface water rights. Richards claimed he was using ground water, rather than surface water, and Reinemann tried to explain to Richards where the water for Big Wood Ranch came from and how it arrived on his property. Richards was under some mistaken impressions as to how the surface water arrived at the Big Wood Ranch and how it was applied to his property. Reasonable inspection of the Big Wood Ranch property would have prevented these mistaken impressions. During the same time period, Reinemann contacted other purchasers of property whose rights were delivered by the Association, and each of them is now a current dues-paying member of the Association.

13. At the specific request of someone acting for and on behalf of Richards and/or Big Wood Ranch, water has been conveyed and delivered by the Association to Big Wood Ranch for each of the years 2006 through 2012.

14. The Association regularly and routinely provides maintenance activities on the headgate of the Broadford Slough, as well as maintenance and construction activities within the channel of the Broadford Slough and the Rockwell Bypass above Big Wood Ranch's property. Such activities include the reconstruction of the Broadford Slough headgate, the measuring weir, the trapping of beavers, the removal of downed trees and beaver dams, as well as the removal of silt accumulation from those channels. In addition, the Association is routinely and regularly required to do work within the stream channel of the Big Wood River in accordance with Idaho Code § 42-3806 in order to remove sand and gravel accretions and accumulated river debris at the entrance to the ditch that leads to the headgate on the Broadford Slough. The Big Wood River experiences major fluctuations in the flow of current throughout the year. The Court takes judicial notice that high water can change the main river channel markedly from year to year,

annually deposits and/or removes substantial amounts of gravel at different locations, and frequently deposits logs and debris in both side channels and the main channel. Periodic maintenance is therefore required at the diversion point where the water flowing into the Broadford Slough and the Rockwell Bypass originally leaves the Big Wood River main channel. It is approximately one-half (1/2) mile from the Big Wood River to the Rockwell Bypass headgate. Without such maintenance activities being performed by the Association as the agent of the surface water right holders whose irrigation water is conveyed into the Broadford Slough and/or the Rockwell Bypass, the surface water rights of such water right holders would be incapable of being diverted, conveyed or delivered in periods of low river flow during the irrigation season.

15. The Rockwell Bypass was constructed in about 1936 by or at the direction of Irvin Rockwell in order to save and preserve water going into the Broadford Slough from being "lost" due to seepage or because it became trapped in the Slough. As a result of saving some of the flow of water that might otherwise have been lost, certain water right holders acquired surface water rights from the construction of the Rockwell Bypass by virtue of the *Rockwell v. Coffin Decree*. Those water right holders are denominated as the "Rockwell Bypass Saved Water Right Owners" ("Saved Water Right Owners"). The Saved Water Right Owners have been included as members of the Association who pay assessments for the maintenance of the Rockwell Bypass consistent with the court decree known as the "Rockwell Decree". The Rockwell Decree does not contain any requirement that the Saved Water Right Owners maintain any portion of the Broadford Slough upstream of the diversion into the Rockwell Bypass. The Rockwell Decree does not require that the Saved Water Right Owners must undertake any stream channel maintenance activities in the Big Wood River in order to direct the delivery of surface water rights into the Broadford Slough headgate.

16. There are many others besides the Rockwell Saved Water Rights Owners that receive water channeled down the Rockwell Bypass. In the summer months, all of the water diverted from the Big Wood River toward the Broadford Slough is diverted into the Bypass. However, the Bypass Saved Water Rights Owners account for only about 228 inches of the total 1223 inches of water delivered by the Association into the Broadford Slough/Rockwell Bypass. There is nothing in the Rockwell Decree that provides that the Saved Water Rights Owners have an exclusive obligation to maintain the Rockwell Bypass for the benefit of other users.

17. Big Wood Ranch is a member of the Association, and is one of the surface water holders in the Association that receives the benefit of the Association's activities described above. A benefit has been conferred on Big Wood Ranch by the Association which benefit was not an incidental benefit. Big Wood Ranch has appreciated the benefit by virtue of its knowledge of irrigation of its property and the claiming of agricultural tax exemptions. It would be inequitable for Big Wood Ranch to accept the benefit without payment of the value of the benefit. The Association rendered such benefit with the expectation that it would be paid for such benefit in accordance with the applicable statutes. Even if not pled, the court finds that the parties implicitly tried the issues of unjust enrichment and/or quantum meruit in this trial in accordance with IRCP Rule 15(b). Richards testified repeatedly that although Big Wood Ranch received surface water every year, Big Wood Ranch received no benefit. Nor does Richards believe that he receives any benefit by the efforts of the Association, or anyone else, to maintain the stream between the main channel of the Big Wood River and the Broadford Slough headgate. The Court finds, to the contrary, that there is likely no greater benefit that can be received upon agricultural ground from year to year than water flowing to and upon it. In addition, Idaho Code § 42-1303 mandates that total costs and charges of necessary repairs and improvements for lateral and distributing ditches "shall" be assessed pro rata to each water user

by the Association. Even without the statute, the fairest measure of the value of a benefit bestowed by the receipt of annual water, at a minimum, would be the pro rata value of the cost of maintaining that benefit.

18. Neither the Idaho Department of Water Resources nor Water District No. 37 provides any product or services to Big Wood Ranch or members of the Association beyond the diversion of water out of the Big Wood River. The administrative functions of Water District No. 37 cease at the point where water is diverted out of the Big Wood River into the channel leading to the Broadford Slough headgate. Neither Water District 37 nor the Idaho Dept. of Water Resources do any maintenance or repair on the Broadford Slough or the Rockwell Bypass.

19. There is no provision in any Idaho statute, the Association's Articles of Incorporation, or the Association's Bylaws that would allow a member to opt in or opt out of membership in the Association.

20. For purposes of Title 42 of the Idaho Code, the terms "ditch" and "canal" are synonymous with one another. In accordance with Idaho Code 42-1202, the Association is the person/entity in control of the Broadford Slough and the Rockwell Bypass, and is responsible for delivery of water rights after diversion from the natural water course of the Big Wood River. In accordance with Idaho Code 42-602, the Idaho Department of Water Resources is fulfilling its obligation to distribute water from the natural water source of the Big Wood River to the headgate on the Broadford Slough. The Idaho Legislature expressly contemplated that water users could permissively form a lateral ditch water users association pursuant to Idaho Code 42-1301. There is nothing inconsistent with the Association bylaws and its ability to assess Big Wood Ranch for the delivery of Big Wood Ranch's water under the relevant statutes regardless of Big Wood Ranch's claim that it was a bona fide purchaser. The holding in *Bishop v. Dixon*, 94 Idaho 171, 483 P.2d 1327 (1971) does not support Big Wood Ranch's claim that the Association

may not validly impose assessments upon Big Wood Ranch.

21. The Association has regularly and routinely provided Big Wood Ranch with assessment notices for assessments consistent with Idaho Code §§ 42-1303 and 42-1304. Big Wood Ranch has acknowledged receiving such assessment notices from the Association which total \$9,500 as of the date hereof, but Big Wood Ranch has refused to pay any such assessments to the Association.

22. The value of the services provided to Big Wood Ranch is based upon the charges assessed by the Association on a pro-rata basis as set forth in Idaho Code § 42-1303. All members of the Association are ratably charged in proportion to the water that such member is entitled to receive after diversion out of the Big Wood River. There is no contention by Big Wood Ranch that its assessments have been improperly or incorrectly calculated.

23. Big Wood Ranch has sought and obtained agricultural tax exemptions from Blaine County pursuant to Idaho Code § 63-602K for land that is actively devoted to agriculture. As a material part of seeking and obtaining such exemption, Big Wood Ranch has represented that portions of its property are actually irrigated. Richards testified that he knew the property was irrigated annually, and that it was Archie Bouttier who undertook those irrigation activities on Big Wood Ranch's property consistent with authority provided by Richards.

CONCLUSIONS OF LAW

1. It is not important to distinguish between the terms "canal" and other terms used by the Legislature to define water distribution systems or channels in this case. The Idaho Legislature uses the terms "laterals, distributing ditches, canals, distributing laterals, irrigating works, ditches, conduits used for irrigating purposes, works or aqueducts," throughout Title 42, Chapters 9, 12, and 13 to describe water distribution systems. These same chapters of the Idaho Code repeatedly affirm the principle that where some of those entitled to receive

water down some form of water distribution system perform maintenance or repairs on that system, they are entitled to receive compensation from the others that benefit, and/or they are entitled to make assessments in order to see that maintenance or repairs are undertaken and fairly paid for. See, e.g. I.C. §42-910, §42-1206, §42-1303, § 42-1308(2). It is evident, therefore, that one of the major policy reasons behind the implementation of statutory schemes providing for water districts or water user's associations is to avoid the free rider problem—exactly the scenario posed by this case. Big Wood Ranch's claims all follow one common thread, and that is a claim that Big Wood Ranch is entitled to receive its water, which is carried quite some distance from the Big Wood River through an extensive system of ditches or canals or distributing laterals to the Big Wood Ranch, without charge or assessment for any portion of the maintenance required upon the distribution system. In short, Big Wood Ranch asserts it is entitled to free rider status in this case. Given the clear legislative intent in this area, the Court concludes that membership in a water user's association and/or payment for a user's pro rata share of maintenance upon the water delivery system is not necessarily voluntary.

2. The Court rejects Big Wood Ranch's assertions that it receives no benefit by water provided by the Association, that it can choose whether it wishes to belong to the Association, and the claim that it can "opt out" of the Association and thereby avoid paying assessments for the share of water it receives. The Court rejects Big Wood Ranch's arguments that Richards' professed ignorance as to how he obtained his surface water somehow relieves Big Wood Ranch of an obligation to pay its assessments to the Association. Richards and Big Wood Ranch cannot escape "knowledge" of how surface water is channeled to and arrives upon the Big Wood Ranch. Specifically, the Court also rejects Big Wood Ranch's assertions that the Rockwell Decree, (providing that the parties to the Decree—the

Rockwell Saved Water Rights Owners, must maintain the Rockwell Bypass), can be interpreted to mean that those parties to the Rockwell Decree have an *exclusive* obligation to maintain the Rockwell Bypass, and that therefore Big Wood Ranch has no obligation whatever to maintain or pay for maintenance upon any portion of its water delivery system. Using the figures above, the parties to the Rockwell Decree would comprise only about 18% of the total water usage diverted from the Big Wood River into the Broadford Slough/Rockwell Bypass system; in addition, there are long stretches (at least the first half-mile) of the water delivery system which are maintained by the Association that the parties to the Rockwell Decree have never been separately required to maintain.

The Court also rejects Big Wood Ranch's contention that because Big Wood Ranch historically obtained its water from the Big Wood River, even before the Rockwell Bypass, and with or without the Rockwell Bypass, Big Wood Ranch is somehow exempt from current assessments for maintenance. The simple fact is there is more maintenance required to Big Wood Ranch's water delivery system than just the Rockwell Bypass, and there is no reason the Rockwell Saved Water Rights Owners should have an *exclusive* obligation to maintain the Bypass when there are many other water users that utilize the same water delivery system.

3. As a member of the Association, Big Wood Ranch is obligated to pay past due assessments to the Association pursuant to either (a) the applicable statutes; (b) express request each year for delivery of water; (c) the doctrine of unjust enrichment (See *Teton Peaks Investment v. Ohme*, 146 Idaho 394 (2008)); or (d) quantum meruit or acceptance of benefits. Big Wood Ranch is obligated to pay future assessments to the Association so long as its surface water is delivered through either the Broadford Slough or the Rockwell Bypass.

4. There is now due and owing the sum of Nine Thousand Five Hundred Dollars (\$9,500) for delinquent assessments as more specifically described in Idaho Code § 42-1304.

Pursuant to Idaho Code § 42-1304, a penalty of ten percent (10%) is to be added to each such delinquent assessment, and the total amount due thereon is to draw interest at the rate of ten percent (10%) per annum from the 15th day of June of each year such assessment was due until the same is paid.

5. Based upon the Order referenced in paragraph 1 of the Findings of Fact, the court concludes that Big Wood Ranch is not entitled to the declaratory relief sought in Count One of its Complaint, and that Big Wood Ranch is therefore not entitled to the relief it sought in its Prayer for Relief.

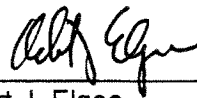
6. Based upon the Order referenced in paragraph 1 hereof, and the foregoing Findings of Fact, the court concludes that the Association is entitled to a judicial declaration declaring the validity of the formation of the Association, together with the Association's continuing authority to act pursuant to Idaho Code § 42-1301, et seq.

7. The court concludes that Big Wood Ranch has defaulted in the payment of its assessments to the Association, and that the Association is entitled to a judgment as sought in Count Four of its Counterclaim, and in paragraph 4 of its Prayer for Relief.

8. The Court will enter a separate judgment form as required by IRCP 54(a) which will contain the recitals submitted by the Association and be entitled "Judgment" on its proposed Findings of Fact and Conclusions of Law.

IT IS SO ORDERED.

DATED THIS 28 day of February, 2013



Robert J. Elgee
Blaine County District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that on the 29 day of February, 2013, she caused a true and correct copy of the foregoing instrument to be served upon the following persons in the following manner:

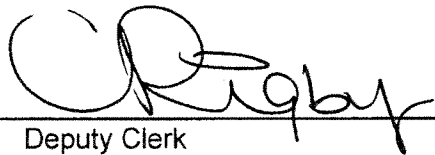
Richard Boardman
Erika E. Malmén
PERKINS COIE LLP
P.O. Box 737
Boise, ID 83701

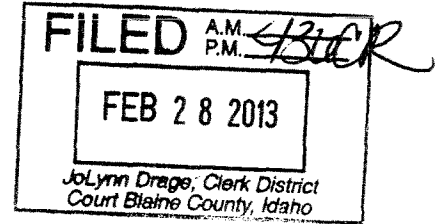
Hand Deliver
 U.S. Mail
 Overnight Courier
 Fax 208-343-3232
 Email
EMalmen@perkinscoie.com
CYeeWallace@perkinscoie.com

Gary D. Slette
Robertson & Slette PLLC
P.O. Box 1906
Twin Falls, ID 83303-1906

Hand Deliver
 U.S. Mail
 Overnight Courier
 Fax 208-933-0701
 Email gslette@rsidaholaw.com

By: _____


Deputy Clerk



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

BIG WOOD RANCH, LLC,)
)
 Plaintiff/Counterdefendant,) Case No: CV-2010-842
)
 vs.)
)
 WATER USERS' ASSOCIATION OF THE)
 BROADFORD SLOUGH AND ROCKWELL)
 BYPASS LATERAL DITCHES, INC.,)
)
 Defendant/Counterclaimant.)

JUDGMENT

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Big Wood Ranch, LLC's Complaint is dismissed with prejudice, and it shall take nothing thereby.
2. The Court declares that the Water Users' Association was validly formed pursuant to Idaho Code § 42-1301, et seq., and has continuing authority to act thereunder.
3. Judgment is hereby entered against Big Wood Ranch, LLC and in favor of the Water Users' Association in the amount of Nine Thousand Five Hundred Dollars (\$9,500), together with a penalty of ten percent (10%) added to each such delinquent assessment, together with interest on the total amount due at the rate of ten percent (10%) per annum from the 15th day of June of each year such assessment was due until paid.

4. The issue of attorney fees under Idaho Code § 42-1307, or any other applicable statute or rule, shall be addressed in post-trial proceedings.

DATED this 28 day of February, 2013.



Robert J. Elgee
Blaine County District Judge

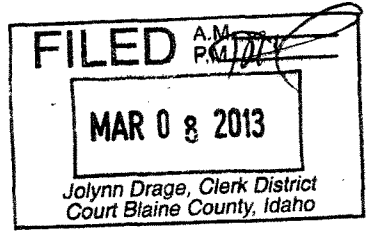
CERTIFICATE OF SERVICE

The undersigned certifies that on the 28 day of February, 2013, she caused a true and correct copy of the foregoing instrument to be served upon the following persons in the following manner:

Richard Boardman	<input type="checkbox"/>	Hand Deliver
Erika E. Malmen	<input type="checkbox"/>	U.S. Mail
PERKINS COIE LLP	<input type="checkbox"/>	Overnight Courier
P.O. Box 737	<input type="checkbox"/>	Fax 208-343-3232
Boise, ID 83701	<input checked="" type="checkbox"/>	Email
		EMalmen@perkinscoie.com
		CYeeWallace@perkinscoie.com

Gary D. Slette	<input type="checkbox"/>	Hand Deliver
Robertson & Slette PLLC	<input type="checkbox"/>	U.S. Mail
P.O. Box 1906	<input type="checkbox"/>	Overnight Courier
Twin Falls, ID 83303-1906	<input type="checkbox"/>	Fax 208-933-0701
	<input checked="" type="checkbox"/>	Email gslette@rsidaholaw.com

By: 
Deputy Clerk



Gary D. Slette ISB # 3198
ROBERTSON & SLETTE, PLLC
P.O. Box 1906
Twin Falls, Idaho 83303-1906
Telephone: (208) 933-0700
Facsimile: (208) 933-0701
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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

BIG WOOD RANCH, LLC,)	
	)	Case No. CV-10-842
Plaintiff/Counterdefendant,)	
	)	AFFIDAVIT IN SUPPORT OF
v.	)	DEFENDANT'S POST-JUDGMENT
	)	MEMORDANDUM OF COSTS,
	)	DISBURSEMENTS AND
WATER USERS' ASSOCIATION OF	)	ATTORNEY'S FEES
THE BROADFORD SLOUGH AND)	
ROCKWELL BYPASS LATERAL)	
DITCHES, INC.,)	
)	
Defendant/Counterclaimant.)	

STATE OF IDAHO)
County of Twin Falls)

I, Gary D. Slette, being first duly sworn upon oath do state as follows:

1. I am the attorney of record for the Defendant above-named. I make this affidavit based on my own personal knowledge and in accordance with Idaho Rule of Civil Procedure Rule 54(e)(5). I am competent to testify to the same and would if called upon to do so. I am duly admitted to the practice of law before all courts in the State of Idaho and maintain offices at 134 Third Avenue East in Twin Falls, Idaho.

1
2 2. The Memorandum of Costs, Disbursements and Attorney's Fees ("Memorandum")
3 and Exhibits "A" and "B" thereto set forth a true itemization of the charges incurred by Defendant
4 in the above-entitled action from the time Plaintiff filed the Complaint until the time the
5 Defendant filed the Memorandum and this Affidavit.

6 3. The costs claimed as a matter of right (a) are listed in the accompanying
7 Memorandum; (b) are correct; and (c) were necessarily incurred in the above case.

8 4. The costs claimed as discretionary costs (a) are listed in the accompanying
9 Memorandum; (b) were necessary and exceptional costs reasonably incurred in this litigation; and
10 (c) should in the interest of justice be assessed against the adverse party. Furthermore, Idaho Code
11 § 42-1307 provides for the recovery of "all costs incurred" in an action to collect unpaid
12 assessments of a lateral ditch water users' association.

13 5. The time and labor required in prosecuting this action formed the basis and
14 method of computation of the attorney fees claimed, and are as indicated in said Memorandum
15 and Exhibit "B" thereto. The litigation was definitely made novel and difficult due to the
16 strenuous and varied positions advanced by the Plaintiff throughout the course of the litigation.
17 No time limitations were imposed by the Defendant other than to seek an economical and
18 complete resolution of all the claims in order to have finality to all issues.

19 6. J. Evan Robertson and Gary D. Slette have been in practice for 37 and 28 years,
20 respectively, and possess experience and ability in the areas of corporate law, water law, and
21 litigation. Given the paucity of cases that exist with regard to lateral ditch water users'
22 associations, and given the legal complexity of issues asserted by the Plaintiff and its counsel,
23 there were substantial and varied skills required to perform the requisite legal services.

24 7. While it is difficult to assess the relative desirability or undesirability of this case,
25 the undersigned would say only that Evan Robertson and/or Gary Slette have been representing
26 the Defendant since the time of its formation more than a decade ago. They were familiar with the
individuals involved, as well as the nature and extent of the water delivery system operated by the
Defendant. From the Defendant's perspective, it would not have made any practical or economic
sense whatsoever to retain a different law firm with the requisite need to educate such different
firm regarding the Association's formation and operation, as well as the nature of its facilities. For

1
2 that reason, the time incurred by the Defendant's counsel in traveling for depositions and trial was
3 necessary and reasonable.

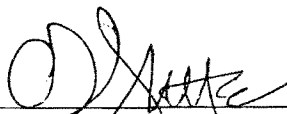
4 8. Defendant was charged attorney's fees on an hourly fixed fee basis of \$250.00 per
5 hour, which fees are reasonable and similar to or less than the amount charged by other attorneys
6 with similar skills, experience and ability in other law firms in the Wood River Valley who do
7 similar work.

8 9. The final result of the litigation was entirely favorable from the
9 Defendant/Counterclaimant's standpoint. Courts have awarded fees in other cases involving
10 commercial transactions and the frivolous defense or prosecution of claims. Idaho Code § 42-
11 1307 was adopted by the Idaho legislature in 1927, and presumably, the statute has been applied
12 in similar cases in the last 86 years.

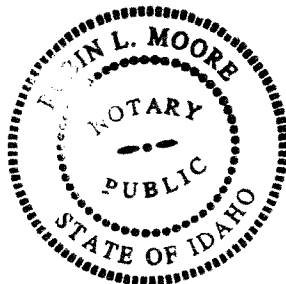
13 10. I believe that the amount of time expended in connection with this matter was
14 reasonable, appropriate and necessary, and that the fee charged was reasonable and appropriate. I
15 am familiar with the hourly fees charged in the Wood River Valley by other lawyers of
16 comparable skill, experience and ability, in connection with matters of a similar nature, and
17 believe the per hour amount charged was commensurate with and competitive with them.

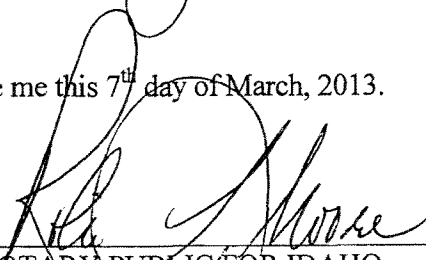
18 Further your affiant sayeth naught.

19 DATED this 7th day of March, 2013.

20
21 
22 _____
23 GARY D. SLETTE

24 SUBSCRIBED AND SWORN to before me this 7th day of March, 2013.



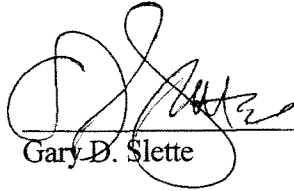
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28 _____
29 NOTARY PUBLIC FOR IDAHO
30 Residing at Jerome, Idaho
31 Commission Expires: 12-28-18

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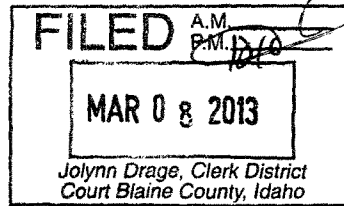
CERTIFICATE OF SERVICE

The undersigned certifies that on the 7th day of March, 2013, he caused a true and correct copy of the foregoing instrument to be served upon the following persons in the following manner:

Richard Boardman	<input type="checkbox"/> Hand Deliver
Erika E. Malmén	<input type="checkbox"/> U.S. Mail
PERKINS COIE LLP	<input type="checkbox"/> Overnight Courier
1111 W. Jefferson St., Ste. 500	<input checked="" type="checkbox"/> Facsimile Transmission 208-343-3232
Boise, ID 83702-5391	



Gary D. Slette



Gary D. Slette ISB # 3198
ROBERTSON & SLETTE, PLLC
P.O. Box 1906
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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

BIG WOOD RANCH, LLC,)	
)	
Plaintiff/Counterdefendant,	)	Case No. CV-10-842
)	
v.	)	DEFENDANT'S POST-JUDGMENT
	)	MEMORANDUM OF COSTS,
	)	DISBURSEMENTS AND
WATER USERS' ASSOCIATION OF	)	ATTORNEY'S FEES
THE BROADFORD SLOUGH AND)	
ROCKWELL BYPASS LATERAL)	
DITCHES, INC.,)	
)	
Defendant/Counterclaimant.)	
)	

COMES NOW the Defendant, Water Users' Association of The Broadford Slough and Rockwell Bypass Lateral Ditches, Inc. ("Association"), by and through its counsel of record, Gary D. Slette of the law firm of Robertson & Slette, PLLC, and submits this Post-Judgment Memorandum of Costs, Disbursements and Attorney's Fees based upon the court's Judgment entered in this matter on February 28, 2013. This claim is submitted pursuant to, and in accordance with I.R.C.P. Rules 54(d) and (e), and is based upon Idaho Code §§ 12-120(3), 12-121, 12-123 and 42-1307.

1
2 The following costs, disbursements and attorney's fees were incurred on and after
3 November 8, 2010. Because there has been no final disposition of the court's Order dated January
4 3, 2013, with regard to costs and fees incurred between December 5, 2012, and December 18,
5 2012, such costs and fees are included herein.
6

7 **I.**

8 **COSTS AS A MATTER OF RIGHT**

9 05/04/2011 Filing Fee – Notice of Appearance \$ 58.00
10 04/16/2012 Deposition – M. Richards 30(b)(6) BWR \$ 268.00
11 04/16/2012 Deposition – M. Reinemann 30(b)(6) Assn \$ 250.48
12 05/30/2012 Deposition – Kevin Lakey \$ 142.84
13 05/30/2012 Deposition – Charles E. Brockway \$ 107.27
14 05/30/2012 Deposition – Brian Brockett \$ 131.55
15 06/06/2012 Deposition – Marc Reinemann \$ 105.84
16 06/06/2012 Deposition – Robert Archie Bouttier \$ 81.21
17 06/29/2012 Transcription fee for court's ruling
18 On May 21, 2012 Hearing \$ 50.00
19 11/13/2012 Charles E. Brockway, PE – trial attendance \$1,014.00

20 **Total Costs: \$2,209.19**

21 **II.**

22 **DISCRETIONARY COSTS**

23 Defendant claims discretionary costs pursuant to Idaho Code § 42-1307 and IRCP Rule
24 54(d)(1)(D) in the amount of \$1,077.74. Said discretionary costs are more particularly set forth in
25 **Exhibit "A"** attached hereto. Such costs were necessary and exceptional costs reasonably
26 incurred herein. Idaho Code § 42-1307 allows for the recovery of all costs incurred in this action.

III.

ATTORNEY'S FEES

The Defendant respectfully requests fees in the amount of **Sixty Seven Thousand
Seventy Five and No/100 Dollars** (\$67,075), pursuant to Rules 54(d) and (e) of the Idaho Rules

1
2 of Civil Procedure, and Idaho Code §§ 42-1307, 12-120(3), 12-121 and 12-121(3). The attached
3 **Exhibit "B"** sets forth an itemized statement of fees incurred from November 8, 2010, through
4 March 7, 2013.

5
6
7 **TOTAL FEES AND COSTS: \$70,361.93**

8 Said fees are reasonable and based upon the hourly rates therein set forth and the time and
9 labor expended as illustrated in the Affidavit filed contemporaneously herewith.

10 DATED this 7 day of March, 2013.

11 ROBERTSON & SLETTE, PLLC

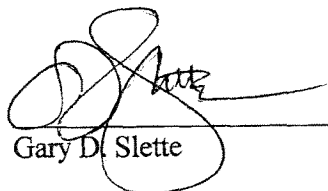
12 By: 
13 Gary D. Slette

14 CERTIFICATE OF SERVICE

15 The undersigned certifies that on the 7 day of March, 2013, he caused a true and
16 correct copy of the foregoing instrument to be served upon the following persons in the following
17 manner:

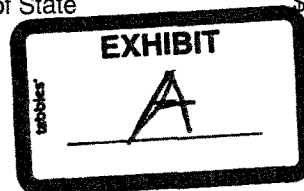
18 Richard Boardman
19 Erika E. Malmen
20 PERKINS COIE LLP
21 1111 W. Jefferson St., Ste. 500
22 Boise, ID 83702-5391

[] Hand Deliver
[] U.S. Mail
[] Overnight Courier
[x] Facsimile Transmission 208-343-3232

23 
24 Gary D. Slette
25
26

**BIG WOOD RANCH, LLC V WATER USERS' ASSOCIATION OF THE BROADFORD
SLOUGH AND ROCKWELL BYPASS LATERAL DITCHES, INC. - BLAINE CO. CASE CV-2010-842**

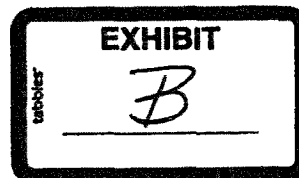
<u>Date</u>	<u>Costs Description</u>	<u>Amount</u>
02/08/12	Color Copy Charge	\$6.00
02/08/12	Copy Charges	\$45.00
02/22/12	Facsimile costs	\$1.00
02/22/12	Courier Fee to Perkins Coie, LLP	\$16.00
03/20/12	Facsimile costs	\$1.00
03/22/12	Postage	\$5.00
03/22/12	Facsimile costs	\$1.00
03/23/12	Color Copy Charge at Copy-It	\$22.13
03/29/12	Postage	\$0.45
03/29/12	Postage	\$0.65
04/04/12	Facsimile costs	\$2.00
04/06/12	Facsimile costs	\$2.00
04/11/12	Postage	\$4.80
04/12/12	Facsimile costs	\$4.00
04/12/12	Postage	\$1.90
04/16/12	Mileage to/from Ketchum	\$92.40
04/20/12	Courier Fee to Perkins Coie, LLP	\$23.44
04/20/12	Copy Charges	\$62.40
04/20/12	Copy Charges	\$62.40
04/23/12	Filing Fee to Idaho Secretary of State for Articles of Amendment	\$50.00
04/27/12	Postage	\$5.30
04/27/12	Postage	\$5.75
05/02/12	Courier Fee to Blaine County District Court and Idaho Secretary of State	\$26.00



05/04/12	Courier Fee to Blaine County District Court	\$12.00
05/04/12	Courier Fee to E. Malman at Perkins Coie, LLP	\$14.00
05/04/12	Courier Fee to Blaine County District Court	\$12.00
05/04/12	Courier Fee to E. Malman at Perkins Coie, LLP	\$14.00
05/07/12	Color Copy Charge at Copy-It	\$62.07
05/07/12	Facsimile costs	\$1.00
05/16/12	Facsimile costs	\$10.00
05/21/12	Mileage to/from Hailey	\$78.10
05/23/12	Postage	\$1.30
05/23/12	Postage	\$0.90
05/24/12	Facsimile costs	\$4.00
05/29/12	Postage	\$0.90
05/29/12	Postage	\$0.65
06/06/12	Mileage to/from Ketchum	\$92.40
06/11/12	Facsimile costs	\$2.00
09/10/12	Facsimile costs	\$2.00
10/22/12	Facsimile costs	\$2.00
11/06/12	Facsimile costs	\$1.00
11/06/12	Courier Fee to E. Malman	\$15.00
11/08/12	Mileage to/from Shoshone and Bellevue	\$71.50
11/08/12	Facsimile costs	\$2.00
11/13/12	Mileage to/from Hailey	\$78.10
12/18/12	Mileage to/from Hailey	\$78.10
12/28/12	Facsimile costs	\$4.00
01/04/13	Mileage to/from Hailey	\$78.10
	<u>TOTAL OF COSTS</u>	<u>\$1,077.74</u>

**BIG WOOD RANCH, LLC V WATER USERS' ASSOCIATION OF THE BROADFORD SLOUGH
AND ROCKWELL BYPASS LATERAL DITCHES, INC. - BLAINE CO. CASE CV-2010-842**

<u>Date</u>	<u>Description</u>	<u>JER Hours</u>	<u>Amount</u>
11/08/10	Two Telephone calls with Marc Reinemann regarding collection matter; Review Perkins Coie Complaint and motion to remove to District Court; Review ditch company status	1.20	\$300.00
12/07/10	Telephone conference with Reinemann; Research; Conference with Doug Jones of IDWR; Conference with Brockway	2.00	\$500.00
03/07/11	Telephone conference with Reinemann regarding meeting assessments and status of company; Telephone conference with Kevin Lakey	0.90	\$225.00
03/16/11	Conference with Reinemann regarding assessments and corporate status; Telephone conference with Kevin Lakey	0.60	\$150.00
03/24/11	Telephone conference with Allen Merritt of IDWR; Review email from Kevin Lakey	0.90	\$225.00
07/26/11	Conference with Kevin Lakey regarding deliveries; Telephone conference with Perkins Coie regarding Bigwood Ranches	0.90	\$225.00
09/21/11	Conference with Erika Malman regarding possible Settlement and input from Kevin Lakey and IDWR; Telephone conference with Brockway	1.20	\$300.00
10/14/11	Telephone conference with Erika Malman; Research on diversion points for Slough Water Rights; Conference with Brockway	1.50	\$375.00
10/24/11	Telephone conference with Erika Malman regarding possible settlement proposal	0.80	\$200.00
11/10/11	Telephone conference with Reinemann	0.20	\$50.00
12/05/11	Conference call with Judge Elgee; Conference with Gary D. Slette (GDS); Review provisions of Title 42, Chapter 9, Idaho Code	2.40	\$600.00
12/20/11	Conference with GDS; Review draft pleadings in District Court proceeding	0.80	\$200.00
12/28/11	Review Motion for Summary Judgment; Review material from Blau and Brockway	1.10	\$275.00
02/07/12	Review Discovery Responses; Conference with GDS	0.80	\$200.00
03/06/12	Conference with GDS on "natural stream channel" issue; Review Burley case regarding stream channel status	0.60	\$150.00
04/10/12	Review Memorandum in Support of Summary Judgment; Conference with GDS	1.00	\$250.00



04/17/12	Review draft Brief for Summary Judgment; Conference with GDS	0.50	\$125.00
05/21/12	Conference with GDS regarding litigation; Attend court proceedings	3.20	\$800.00
05/25/12	Conference with GDS; Attend District Court proceedings	2.20	\$550.00
01/04/13	Conference with GDS; Attend District Court proceedings on Broadford Slough	1.50	\$375.00
			<u>\$6,075.00</u>

<u>Date</u>	<u>Description</u>	<u>GDS Hours</u>	<u>Amount</u>
11/22/11	Calls from/to Marc Reinemann; Call to Alex Ridland and Jim Hurst; Research file documents and Complaint; Conference with J. Evan Robertson (JER); Attend meeting with IDWR representatives	3.50	\$875.00
11/22/11	Conference with Brockway and IDWR Director Spackman	2.50	\$625.00
12/05/11	Conference with JER; Participate in status conference with Judge regarding trial dates, etc.; Email to Marc	1.20	\$300.00
12/14/11	Calls from/to Cynthia Yee-Wallace; Conference with JER; Review Complaint; Review Idaho Code sections regarding lateral ditch associations and section pertaining to ditch companies under Chapter 9	2.00	\$500.00
12/15/11	Work on drafting Answer and Counterclaim to Big Wood Complaint; Review and revision of pleading; Emails to Marc and Brian Brockette; Email to Marc regarding amounts owing; Conference with JER	2.00	\$500.00
12/16/11	Research old communications with IDWR regarding Rockwell Bypass; Calls to Allen Merritt at IDWR; Calls from/to Brian; Conference with JER regarding Answer and Counterclaim	1.60	\$400.00
12/19/11	Calls with Terry Blau; Continue drafting and revision of Answer and Counterclaim; Emails with Marc; Conference with JER; Calls to/from Brockway regarding document review and revisions	2.20	\$550.00
12/20/11	Review information from A. Merritt of IDWR; Emails from/to Yee-Wallace regarding Answer; Finalize document and file with court	1.20	\$300.00
12/22/11	Calls to/from Brian; Calls and emails with Marc; Work on drafting Affidavit for Terry Blau; Calls to Brockway regarding aerial photographs of diversion point of Broadford and at Rockwell confluence	1.80	\$450.00
12/30/11	Work on drafting Motion and Memo regarding Summary Judgment; Research filings with Secretary of State	1.50	\$375.00
01/12/12	Work on research and begin drafting Summary Judgment brief; Draft Affidavits of Brockway and Terry Blau; Numerous phone calls with Brockway and Blau; Revisions to Affidavits	3.50	\$875.00

01/24/12	Work on responses to Requests for Admission; Calls and emails to Marc and Brian; Conference with JER regarding discovery issues	2.00	\$500.00
02/01/12	Work on preparation of Discovery Responses regarding Interrogatories and Requests for Admission	1.50	\$375.00
02/06/12	Work on preparation of admissions; Conference with JER	1.20	\$300.00
02/07/12	Calls from/to Marc regarding specific admissions; Work on going through responses to Interrogatories; Begin reviewing all old files of Association; Calls to/from Lee Peterson; Draft Peterson Affidavit	3.00	\$750.00
02/08/12	Numerous calls with Brockway; Meeting with Lee Peterson; Work on changes to Admissions; Emails to/from opposing counsel; Work on assembly of documents for production request; Revise Brockway Affidavit	2.50	\$625.00
02/13/12	Calls to/from Brian; Meeting with Brian and hike to Rockwell Bypass diversion and Broadford Slough diversion structures	1.50	\$375.00
02/21/12	Calls with Marc regarding Discovery Responses; Review complete file of documents to be produced in Request for Production; Revise Interrogatory Responses	1.20	\$300.00
02/22/12	Assemble all Discovery Responses and review all files to be provided to Plaintiff	1.00	\$250.00
03/02/12	Emails and calls with Erika Malmen regarding summary judgment hearing and conflict issues; Calls from/to Brian and Marc regarding Association issues; Research Salmon River Canal case and <i>Dayley v. City of Burley</i> regarding natural streams	1.40	\$350.00
03/23/12	Calls from/to Marc; Revise Cameron Affidavit; Calls to Jim Hurst; Draft Hurst Affidavit; Calls to Leroy Lewis; Draft Lewis Affidavit; Draft Lakey Affidavit; Review and revise all affidavits; Prepare Supplemental discovery responses	3.50	\$875.00
03/30/12	Emails from/to Erika Malman; Calls and emails with Brian and Marc regarding deposition issues; Email to Erika regarding deposition of her client; Calls from/to Brockway regarding expert witness issue	2.00	\$500.00
04/02/12	Calls to/from Chuck regarding expert witness issues; Draft Responses to Interrogatory for Brockway as expert; Emails and calls to Marc	1.50	\$375.00
04/04/12	Draft Rule 30(b)(6) deposition notice for the Plaintiff; Emails from/to Erika Malmen; Calls to/from Marc regarding meet and confer letter; review and revise deposition notice	1.40	\$350.00
04/05/12	Work on drafting Summary Judgment brief; Numerous emails to/f Erika Malmen; Calls w/Marc regarding discovery supplement; Research old Idaho Supreme Court cases regarding slough as natural stream	3.00	\$750.00

04/06/12	Work on review and revisions to first part of Motion for Summary Judgment brief; Dictate more of Motion for Summary Judgment brief	2.50	\$625.00
04/09/12	Calls w/Marc; meeting w/Marc; review Answers to Plaintiff's Discovery regarding insufficiency of responses	1.20	\$300.00
04/11/12	Work on Supplemental Responses to Discovery; Review expert disclosure by Plaintiff; Draft Motion to Strike; Emails f/to E. Malmen; Calls to/f Marc	2.00	\$500.00
04/13/12	Calls f/to Brian; Review Brochette Affidavit; Draft Marc's Affidavit; Calls f/to Marc; Work on review and revision to brief; Draft portions of brief regarding I.C. 42-901, et seq.	3.50	\$875.00
04/16/12	Travel to/f Ketchum (Travel time of 2.8 hours); Attend Rule 30(b)(6) depos of Marc Reinemann and Marc Richards	7.50	\$1,875.00
04/17/12	Work on Motion for Summary Judgment brief; Revise Marc's Affidavit; Calls f/to Marc	3.50	\$875.00
04/18/12	Work on review of depositions of Marc Reinemann and Marc Richards; Work on revisions to Marc's Affidavit; Calls f/to Marc; Work on preparation of Certificates for all; Calls to/f Brian B; Revise Motion for Summary Judgment brief and prepare all Affidavits for filing	4.00	\$1,000.00
04/20/12	Review Articles and Bylaws regarding changes of membership to accommodate saved water users; Calls and emails to/f Marc; Draft Amendment to Articles; Draft Minutes of Meeting; Draft notice of meeting and waiver of notice; Review and revise all documents	2.50	\$625.00
04/23/12	Complete review of deposition of Marc Reinemann; Calls f/to Marc; Calls to Erika Malmen	1.50	\$375.00
04/25/12	Review Plaintiff's Motion for Summary Judgment and Affidavits of King and Malmen; Calls w/Brian; Call to Marc	2.50	\$625.00
04/26/12	Email from Erika Malmen regarding discovery responses; Emails to Marc and Brian; Call from Brian regarding Malmen's request for photos	0.80	\$200.00
04/30/12	Draft Affidavit of Marc Reinemann; Draft Affidavit of Brian Brochette; Research regarding Response Brief; Dictate first draft of Brief; Work on review and revisions; Call to Marc	3.50	\$875.00
05/01/12	More work on preparation of Brief in Response to BWR's Motion for Summary Judgment; Numerous calls w/Brian and Marc; Conference w/JER	3.50	\$875.00
05/02/12	Calls w/Marc; Add additional provision in Brief per Marc's suggestions; Call to Archie Bouttier; Draft Affidavit for Archie to sign; More calls w/Archie and additional revisions to Archie's Affidavit	2.00	\$500.00
05/03/12	More calls w/Marc; Final review and revisions to Brief; Calls w/Archie	1.50	\$375.00

05/07/12	Review Motion for Summary Judgment Response Brief from E. Malmen	1.50	\$375.00
05/14/12	Review Reply Brief filed by Plaintiff; Multiple calls and emails w/Erika Malmen; Calls f/to Brian	1.50	\$375.00
05/15/12	Review Response Brief and Affidavit of Malmen; Prepare Motion to Strike; Prepare Reply Brief; Numerous calls and emails f/to E. Malmen; Calls to/f C. Brockway regarding deposition; Calls f/to B. Brockett regarding depo; More emails w/Erika	2.50	\$625.00
05/16/12	Emails w/E. Malmen; Revise Motion to Strike Malmen Affidavit and Brief in Support; Prepare Motion to Shorten Time; Review and revise all docs; Prepare Notices of Hearing	2.00	\$500.00
05/18/12	Work on review of all Briefs and Affidavits regarding both parties' summary judgment motions for preparing for Monday's hearing; Research cases and authorities from both motions	4.00	\$1,000.00
05/21/12	Work on preparation of outline for oral argument in morning; Review and revise argument; Travel to Hailey (Travel time of 2.4 hours); Attend oral argument in Hailey until 5:15 pm; meeting with clients after hearing; Travel to Twin Falls; Conference w/JER	11.00	\$2,750.00
05/22/12	Conference w/JER; Work on drafting Order for court's signature; Calls to/f Marc; Calls f/t Brian regarding depositions; Review and revise Order; Draft letter to court	1.50	\$375.00
05/23/12	Calls and emails w/Malmen and Boardman; Conference w/JER regarding depositions; Emails to/f Cheyenne regarding protective order; Draft Protective Order Motion and Motion to Shorten Time; Calls w/Brian B.; Call from Kevin Lakey	2.00	\$500.00
05/25/12	Prepare for hearing on Motion for Protective Order; Conference w/JER; Calls f/to Brian; Attend hearing in Twin Falls; Calls f/to Marc and Brian regarding outcome; Calls f/to R. Boardman; Calls w/Brockway and Lakey; Emails to all regarding depositions	2.50	\$625.00
05/27/12	Review notes from court hearing on Protective Order; Emails f/to R. Boardman; Draft Order for court on Motion for Protective Order	1.20	\$300.00
05/29/12	Calls f/to C. Brockway; Calls to/f Kevin Lakey; Numerous calls w/Brian and Marc regarding deposition issues and 30(b)(6) deposition; Calls and emails w/R. Boardman	1.50	\$375.00
05/30/12	Attend deposition of Kevin Lakey; Attend deposition of Brian Brockett; Attend deposition of Charles Brockway; Conference w/Rick Boardman regarding Bouttier and Marc R. depositions; Emails f/to E. Malmen; Call to M. Reinemann	5.00	\$1,250.00
06/01/12	Calls f/to Marc regarding deposition issues; Calls to/f Archie Bouttier regarding deposition matters and tape	1.00	\$250.00

06/06/12	Travel t/f Ketchum for depositions (Travel time of 2.8 hours); Attend Marc's 2nd deposition; Attend Archie Bouttier deposition; Meeting w/R. Boardman to discuss case issues	6.50	\$1,625.00
06/11/12	Review Pre-Trial Memo submitted by Plaintiff; Prepare Association's Pre-Trial Memo; Review and revise	1.20	\$300.00
06/14/12	Review email from R. Boardman regarding Objection to Form of Order; Email to District Court	0.60	\$150.00
06/20/12	Calls to/f Marc; Calls to/f Kevin Lakey; Emails to witnesses; Calls to/f R. Boardman regarding potential settlement issue	1.00	\$250.00
06/22/12	Calls to/f Marc regarding authority for accepting 75% of fees and all assessments; Calls to/f R. Boardman regarding potential settlement; Work on review of depositions in preparation for trial; Work on exhibit and witness list for court	3.50	\$875.00
6/26/2012	Work on trial preparation; Work on Association's exhibit list and go through all documents in file	2.50	\$625.00
07/09/12	Calls f/to E. Malmen; Participate in court status hearing regarding resetting of trial date; Email to Marc and Brian	0.60	\$150.00
09/04/12	Review Third Discovery Response from Plaintiff including letters to Lakey; Calls w/Marc; Review and revise Marc's response letter to Malmen; More calls w/Marc; Further review and revision to letter	2.00	\$500.00
09/06/12	Draft our 3rd set of discovery responses; Review letter from Lakey to Malmen	1.50	\$375.00
10/26/12	Calls and emails with E. Malmen and R. Boardman regarding Monday status conference; Work on review of issues for status conference; Emails f/to Brian	1.00	\$250.00
10/29/12	Participate in pre-trial conference with Plaintiff's attorneys and Judge Elgee; Call to R. Boardman	0.80	\$200.00
11/01/12	Work on assembling documents for exhibit list pursuant to Scheduling Order	1.00	\$250.00
11/05/12	More work on preparation of exhibits and exhibit list; Calls f/to Marc	1.20	\$300.00
11/06/12	Emails with Marc, Brian, Archie and Kevin; Finalize exhibits for delivery; Calls and emails w/R. Boardman and E. Malmen; Work on review of depositions for trial preparation	2.50	\$625.00
11/07/12	Begin review of all depositions in case; Calls w/Marc; Emails to Marc, Brian and Archie regarding witness preparation; Calls and emails w/Kevin Lakey; Calls to/f C. Brockway regarding Rockwell Bypass decree	3.50	\$875.00

11/08/12	Travel to Shoshone for meeting w/Kevin Lakey (travel time of 2.4 hours); Continue travel to Bellevue for meeting with Brian and Marc for witness preparation; Review Plaintiff's exhibits delivered to our office on Thursday	6.00	\$1,500.00
11/09/12	Work on review of Plaintiff's exhibits received on Thursday; calls to/f Marc; Complete first review of depositions in this case; Work on preparation of questions for our witnesses; Calls to Drougas and Hanggi	7.50	\$1,875.00
11/10/12	Review Plaintiff's Pre-Trial Memorandum; Research cases cited in memo; Additional research of lateral ditch association cases and Idaho statutes; Work on preparation of questions for Marc Richards; Calls to Archie Bouttier	4.50	\$1,125.00
11/12/12	Calls to/f R. Boardman and E. Malmen regarding exhibit stipulation and M. Richards' non-attendance; Work on trial preparation throughout day; Work on preparation of testimony for Association witness; Conference w/JER regarding trial matters	6.00	\$1,500.00
11/13/12	7 a.m. - Travel to Hailey (Travel time of 2.4 hours); Attend first day of trial; Return to Twin Falls at 6:30 p.m.	11.50	\$2,875.00
11/14/12	Participate in conference call w/Judge Elgee and E. Malmen regarding future trial date; Calls t/f Marc	0.80	\$200.00
11/16/12	Review old file regarding M. Richards' reimbursement of costs and fees to Wenner; Emails f/to Malmen and Boardman regarding trial date and issues pertaining to Wenner fees from 2007	0.80	\$200.00
11/21/12	Numerous calls to/f Valdi Pace regarding Big Wood Ranch agricultural exemption forms and assessments related to its property on Broadford Road	1.00	\$250.00
11/29/12	Calls and emails to/f Valdi; Prepare request to Blaine Co. Assessors Office for copy of Richards' Certifications of Exemption forms; Emails f/to Marc regarding Richards' statements on forms	0.80	\$200.00
12/05/12	Numerous calls w/Marc regarding trial preparation with M. Richards; Calls f/to C. Brockway; Email to R. Boardman; Calls to/f Ray Siderius, attorney for Richards' brother's estate; More calls w/Marc; Conference w/JER	3.50	\$875.00
12/06/12	Calls to/f Stoney Burke; Calls and emails to/f Mike Gacek regarding litigation over estate issues; Work on preparation for trial examination on December 18; Calls to M. Reinemann	2.40	\$600.00
12/13/12	Work on preparation of direct examination questions for Marc Richards; Study Richards' deposition; Review Supplemental Trial Memo for Plaintiff	2.00	\$500.00
12/14/12	Calls f/to R. Boardman regarding Brockway invoice and trial issues for Tuesday's trial	0.50	\$125.00

12/17/12	Prepare closing argument outline regarding testimony from Marc, Brian, Lakey and Brockway (2.5); Review email from Boardman regarding absence of Richards from trial; Calls to Evan Robertson and Marc Reinemann regarding events; Calls f/to Archie Bouttier (1.0)	3.50	\$875.00
12/18/12	Travel from Twin to Hailey departing at 7:30 a.m. (Travel time of 2.4 hours); Attend trial day 2; Travel to Twin Falls arriving at 11:30 a.m.	4.00	\$1,000.00
12/19/12	Calls to/f Marc regarding trial testimony issues	0.40	\$100.00
12/27/12	Review transcript of Dr. Brockway testimony from first day of trial; Call and email w/M. Reinemann; Email to Boardman regarding payment of Brockway fees	1.00	\$250.00
12/27/12	Work on drafting order for court regarding most recent continuance; Draft Memorandum of Costs/Fees between 12/5 and 12/18; Draft GDS Affidavit; Draft cover letter to court; Review and revise all documents; Emails to/f Valdi Pace regarding agriculture exemption	2.50	\$625.00
12/28/12	Review all notes from trial testimony; Call to Marc; Work on drafting Findings of Fact, Conclusions of Law and proposed Judgment to be provided to court in advance of trial testimony	2.00	\$500.00
12/31/12	Call from Marc; Emails to group regarding Friday trial	0.30	\$75.00
01/02/13	Numerous additions and revisions to Findings and Conclusions document; Emails to R. Boardman; Calls to/f Marc; Emails w/Marc, Brian and Archie; Call from Chuck Brockway	2.50	\$625.00
01/02/13	Work on trial preparation/additional questions for M. Richards	2.00	\$500.00
01/03/13	Calls to Blaine County Assessor; Final preparation for Richards' examination; Email and call to Archie regarding rebuttal questioning	3.50	\$875.00
01/04/13	Depart Twin Falls at 7 a.m. for Hailey; Attend 2nd day of trial; Argue closing arguments; Travel to Twin Falls (Travel time of 2.4 hours)	8.00	\$2,000.00
01/08/13	Work on revising proposed Findings of Fact and Conclusions of Law based on evidence from Friday trial hearing; Review exhibits and depo testimony; Multiple revisions to draft; Calls and emails to Marc and Brian	2.00	\$500.00
01/09/13	Work on revisions to our FOF/COL; Review Plaintiff's proposed Findings and Conclusions; Work on numerous revisions to our FOF/COL	1.70	\$425.00
02/28/13	Review Findings & Conclusions and final Judgment from court; Calls to Marc Reinemann; Emails to Marc and others regarding final decision	1.00	\$250.00
03/01/13	Calls f/to Marc; Work on drafting Memorandum of Costs and Attorney Fees; Review IRCP regarding allowable costs; Draft GDS Affidavit	2.50	\$625.00

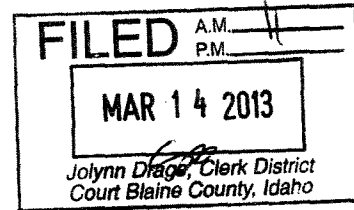
03/07/13 Work on review and revision of all documents for submission of cost and fee claim; Review IC 42-1307 and IRCP 54 regarding amounts that can be claimed; Calls to Marc

1.50 \$375.00
\$61,000.00

TOTAL OF ROBERTSON FEES
TOTAL OF SLETTE FEES
GRAND TOTAL OF FEES

\$6,075.00
\$61,000.00
\$67,075.00

Richard C. Boardman, Bar No. 2922
 rboardman@perkinscoie.com
 Erika E. Malmen, Bar No. 6185
 emalmen@perkinscoie.com
 PERKINS COIE LLP
 1111 W. Jefferson Street, Suite 500
 Boise, Idaho 83702-5391
 Telephone: (208) 343-3434
 Facsimile: (208) 343-3232



*Attorneys for Plaintiff/Counterdefendant
 Big Wood Ranch, LLC*

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

BIG WOOD RANCH, LLC,
 Plaintiff,

v.

WATER USERS' ASSOCIATION OF
 THE BROADFORD SLOUGH AND
 ROCKWELL BYPASS LATERAL
 DITCHES, INC.,
 Defendant.

Case No. CV 2010-842

**PLAINTIFF'S MOTION TO
 ALTER/AMEND JUDGMENT**

ORAL ARGUMENT REQUESTED

WATER USERS' ASSOCIATION OF
 THE BROADFORD SLOUGH AND
 ROCKWELL BYPASS LATERAL
 DITCHES, INC.,

Counterclaimant,

v.

BIG WOOD RANCH, LLC,
 Counterdefendant.

Plaintiff/Counterdefendant, Big Wood Ranch, LLC, by and through its counsel of record, Perkins Coie LLP, hereby moves this Court pursuant to I.R.C.P. 59(e) to alter or amend the Judgment in Favor of Water Users' Association of The Broadford Slough and Rockwell Bypass Lateral Ditches, Inc. entered February 28, 2013, including any interlocutory orders entered by the Court.

This Motion is based on the pleadings and records on file herein and the Memorandum in Support of Motion to Alter or Amend, which shall be filed no later than March 28, 2013, pursuant to I.R.C.P. Rule 7(b)(3). Oral argument is requested on this Motion.

DATED: March 14, 2013.

PERKINS COIE LLP

By: 
Richard C. Boardman, ISB No. 2922
Erika E. Malmen, ISB No. 6185

*Attorneys for Plaintiff/Counterdefendant
Big Wood Ranch, LLC*

CERTIFICATE OF SERVICE

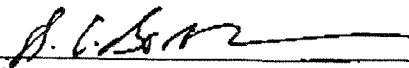
I, the undersigned, certify that on March 14, 2013, I caused a true and correct copy of the foregoing to be forwarded with all required charges prepaid, by the method(s) indicated below, in accordance with the Idaho Rules of Procedure, to the following person(s):

Gary D. Slette
Robertson & Slette, PLLC
PO Box 1906
Twin Falls, Idaho 83303-1906
Phone: (208) 933-0700

Hand Delivery
U.S. Mail
Facsimile: (208) 933-0701
Overnight Mail

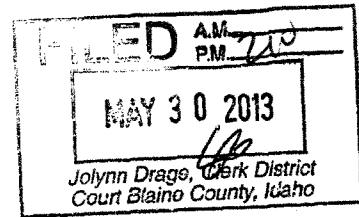
<input type="checkbox"/>
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<input checked="" type="checkbox"/>
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Attorneys for Defendant/Counterclaimant


Richard C. Boardman
Erika E. Malmen

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Gary D. Slette ISB # 3198
ROBERTSON & SLETTE, PLLC
P.O. Box 1906
Twin Falls, Idaho 83303-1906
Telephone: (208) 933-0700
Facsimile: (208) 933-0701
trim\UER\broadford\fees_memo_3



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

BIG WOOD RANCH, LLC,)	
)	
Plaintiff/Counterdefendant,	)	Case No. CV-10-842
)	
v.	)	DEFENDANT'S SUPPLEMENTAL
	)	POST-JUDGMENT MEMORANDUM
	)	OF ATTORNEY'S FEES
)	
WATER USERS' ASSOCIATION OF)	
THE BROADFORD SLOUGH AND)	
ROCKWELL BYPASS LATERAL)	
DITCHES, INC.,)	
)	
Defendant/Counterclaimant.)	
)	

COMES NOW the Defendant, Water Users' Association of The Broadford Slough and Rockwell Bypass Lateral Ditches, Inc. ("Association"), by and through its counsel of record, Gary D. Slette of the law firm of Robertson & Slette, PLLC, and submits this Supplemental Post-Judgment Memorandum of Attorney's Fees based upon the court's Order on Plaintiff's Motion to Alter or Amend Judgment. This claim is submitted pursuant to, and in accordance with I.R.C.P. Rule 54(e), and is based upon Idaho Code §§ 12-120(3), 12-121, 12-123 and 42-1307.

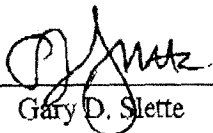
The following attorney's fees were incurred on and after March 14, 2013, the date on which the Plaintiff filed its Motion to Alter or Amend Judgment.

1
2 The Defendant respectfully requests additional fees in addition to those awarded on May
3 20, 2013, in the amount of **Five Thousand Eight Hundred Dollars (\$5,800)**, pursuant to Rules
4 54(e) of the Idaho Rules of Civil Procedure, and Idaho Code §§ 42-1307, 12-120(3), 12-121 and
5 12-121(3). The attached **Exhibit "A"** sets forth an itemized statement of fees incurred from
6 March 14, 2013, through May 22, 2013.
7

8 Said additional fees in the total amount of \$5,800 are reasonable and based upon the
9 hourly rates therein set forth and the time and labor expended as illustrated in the Affidavit filed
10 contemporaneously herewith.

11 DATED this 30 day of May, 2013.

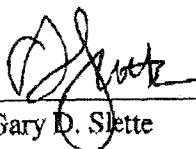
12 ROBERTSON & SLETTE, PLLC

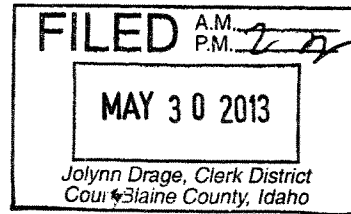
13 By: 
14 Gary D. Slette

15 CERTIFICATE OF SERVICE

16 The undersigned certifies that on the 30 day of May, 2013, he caused a true and correct
17 copy of the foregoing instrument to be served upon the following persons in the following
18 manner:

19 Richard Boardman	<input type="checkbox"/> Hand Deliver
20 Erika E. Malmen	<input type="checkbox"/> U.S. Mail
21 PERKINS COIE LLP	<input type="checkbox"/> Overnight Courier
22 1111 W. Jefferson St., Ste. 500	<input checked="" type="checkbox"/> Facsimile Transmission 208-343-3232
23 Boise, ID 83702-5391	

24
25
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Gary D. Slette



1
 2 **Gary D. Slette ISB # 3198**
 3 **ROBERTSON & SLETTE, PLLC**
 4 **P.O. Box 1906**
 5 **Twin Falls, Idaho 83303-1906**
 6 **Telephone: (208) 933-0700**
 7 **Facsimile: (208) 933-0701**
 8 \\rm\VER\broadford\ees_aff_3.a

9 **IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE**

10 **STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

11 **BIG WOOD RANCH, LLC,**)

Case No. CV-10-842

12 **Plaintiff/Counterdefendant,**)

**AFFIDAVIT IN SUPPORT OF
DEFENDANT'S SUPPLEMENTAL
POST-JUDGMENT
MEMORDANDUM OF
ATTORNEY'S FEES**

13 **v.**)

14 **WATER USERS' ASSOCIATION OF**)
15 **THE BROADFORD SLOUGH AND**)
16 **ROCKWELL BYPASS LATERAL**)
17 **DITCHES, INC.,**)

18 **Defendant/Counterclaimant.**)

19 **STATE OF IDAHO**)

20)
21 **County of Twin Falls**)

22 I, Gary D. Slette, being first duly sworn upon oath do state as follows:

23 1. I am the attorney of record for the Defendant above-named. I make this Affidavit
24 based on my own personal knowledge and in accordance with Idaho Rule of Civil Procedure Rule
25 54(e)(5). I am competent to testify to the same and would if called upon to do so. I am duly
26 admitted to the practice of law before all courts in the State of Idaho and maintain offices at 134
Third Avenue East in Twin Falls, Idaho.

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2. The Supplemental Memorandum of Attorney's Fees ("Supplemental Memorandum") and Exhibit "A" thereto set forth a true itemization of the attorney fees incurred by Defendant in the above-entitled action from March 14, 2013, the date Plaintiff filed its Rule 59(e) Motion to Alter or Amend Judgment, until the time the Defendant prepared its Supplemental Memorandum and this Affidavit.

3. The time and labor required in addressing the Plaintiff's motions formed the basis and method of computation of the attorney fees claimed, and are as indicated in said Memorandum and Exhibit "A" thereto. The issues advanced in Plaintiff's Motion to Alter or Amend Judgment were such that the Defendant was required to expend significant additional attorney fees in order to address the varied positions advanced by the Plaintiff. No time limitations were imposed by the Defendant other than to seek an economical and complete resolution of all the claims in order to have finality to all issues. Idaho Code § 42-1307 provides for the recovery of reasonable attorney fees incurred in an action to collect unpaid assessments of a lateral ditch water users' association.

4. I have been in practice for 28 years and possesses experience and ability in the areas of corporate law, water law, and litigation. Given the paucity of cases that exist with regard to lateral ditch water users' associations, and given the legal complexity of issues asserted by the Plaintiff and its counsel, there were substantial and varied skills required to perform the requisite legal services.

5. While it is difficult to assess the relative desirability or undesirability of this case, I would say only that I have been representing the Defendant since the time of its formation more than a decade ago. I am familiar with the individuals involved, as well as the nature and extent of the water delivery system operated by the Defendant. From the Defendant's perspective, it would not have made any practical or economic sense whatsoever to retain a different law firm with the requisite need to educate such different firm regarding the Plaintiff's Rule 59(e) Motion to Alter or Amend Judgment. For that reason, the time incurred by your affiant in traveling for depositions and trial was necessary and reasonable.

6. Defendant was charged attorney's fees on an hourly fixed fee basis of \$250.00 per hour, which fees are reasonable and similar to or less than the amount charged by other attorneys

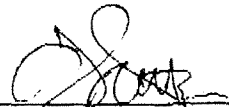
with similar skills, experience and ability in other law firms in the Wood River Valley who do similar work.

7. The final result of the Plaintiff's Rule 59(e) Motion was favorable from the Defendant/Counterclaimant's standpoint. Courts have awarded fees in other cases involving commercial transactions and the frivolous defense or prosecution of claims. Idaho Code § 42-1307 was adopted by the Idaho legislature in 1927, and presumably, the statute has been applied in similar cases in the last 86 years. Plaintiff's Rule 59(e) Motion destroyed the finality of the original Judgment entered in this case, and as a consequence, an award of additional fees incurred up to the entry of the Amended Judgment would appropriately be awarded.

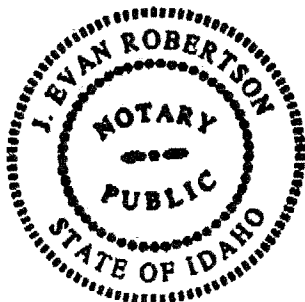
8. I believe that the amount of time expended in connection with this matter was reasonable, appropriate and necessary, and that the fee charged was reasonable and appropriate. I am familiar with the hourly fees charged in the Wood River Valley by other lawyers of comparable skill, experience and ability, in connection with matters of a similar nature, and believe the per hour amount charged was commensurate with and competitive with them.

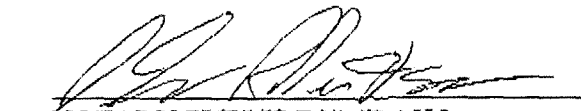
Further your affiant sayeth naught.

DATED this 30 day of May, 2013.


GARY D. SLETTE

SUBSCRIBED AND SWORN to before me this 29th day of May, 2013.



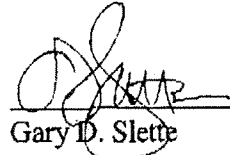

NOTARY PUBLIC FOR IDAHO
Residing at Twin Falls, Idaho
Commission Expires: 12-13-17

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CERTIFICATE OF SERVICE

The undersigned certifies that on the 30 day of May, 2013, he caused a true and correct copy of the foregoing instrument to be served upon the following persons in the following manner:

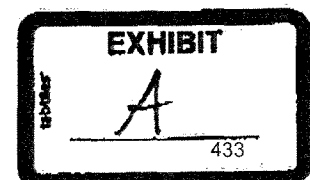
Richard Boardman	<input type="checkbox"/> Hand Deliver
Erika E. Malmen	<input type="checkbox"/> U.S. Mail
PERKINS COIE LLP	<input type="checkbox"/> Overnight Courier
1111 W. Jefferson St., Ste. 500	<input checked="" type="checkbox"/> Facsimile Transmission 208-343-3232
Boise, ID 83702-5391	



 Gary D. Slette

**BIG WOOD RANCH, LLC V WATER USERS' ASSOCIATION OF THE BROADFORD SLOUGH
AND ROCKWELL BYPASS LATERAL DITCHES, INC. - BLAINE CO. CASE CV-2010-842**

<u>Date</u>	<u>Description</u>	<u>GDS Hours</u>	<u>Amount</u>
03/19/13	Calls from/to Marc; Research IRCP 59(e) and Idaho case law addressing effect of motion on appeal and/or attorney fee claims; Emails to Marc	1.00	\$250.00
03/25/13	Draft Response Brief regarding Objection to Cost and fees; Review and revise brief; Calls to/from Marc; Emails to Marc, etc., regarding response	1.50	\$375.00
03/28/13	Review Memorandum in Support of Motion to Alter or Amend; Calls with Marc	1.40	\$350.00
04/18/13	Work on reviewing trial exhibits and documentation in order to respond to Motion to Alter or Amend; Begin drafting Response Memorandum; Calls from/to Marc	3.50	\$875.00
04/23/13	Work on review and revisions to first portion of response brief; Dictate additional portions of brief	1.50	\$375.00
04/25/13	Complete dictation of first draft of Response Brief regarding Plaintiff's Motion to Alter or Amend	3.00	\$750.00
04/26/13	Work on multiple reviews and revisions to Response Brief; Research Bishop case	2.00	\$500.00
04/29/13	Emails to/from Marc regarding Broadford response; Additional revisions to brief per JER	0.80	\$200.00
05/16/13	Work on preparation for hearing on Motion to Alter or Amend and review attorney fee claim and objection; Additional research on issues raised by Boardman in his Brief	2.50	\$625.00
05/20/13	Travel to/from Hailey; Attend oral argument on Motion to Alter or Amend Judgment and Motion to Disallow Costs/Fees; Conference with clients following hearing (Does not include 3 hours for travel time)	2.00	\$500.00
05/21/13	Emails to/from district court regarding statutory basis for fee award; Draft Order on both Motions filed by BWR; Draft Amended Judgment to incorporate costs and fees	2.00	\$500.00
05/22/13	Review and revise Order and Amended Judgment; Prepare Supplemental Memorandum of Costs and Attorney Fees relative to IRCP Rule 59(e) Motion and Motion to Disallow	2.00	\$500.00
TOTAL OF SUPPLEMENTAL FEES			\$5,800.00



FILED A.M. *990*
P.M. *990*
JUN 13 2013
JoLynn Drage, Clerk District
Court Blaine County, Idaho

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

9	BIG WOOD RANCH, LLC,)	
)	
10	Plaintiff/Counterdefendant,	)	Case No. CV-10-842
)	
11	v.	)	ORDER ON PLAINTIFF/ COUNTERDEFEDANT'S MOTION TO ALTER OR AMEND JUDGMENT AND MOTION TO DISALLOW ATTORNEYS' FEES
)	
12)	
13	WATER USERS' ASSOCIATION OF)	
	THE BROADFORD SLOUGH AND)	
14	ROCKWELL BYPASS LATERAL)	
	DITCHES, INC.,)	
15)	
16	Defendant/Counterclaimant.)	
)	

The Plaintiff/Counterdefendant's Motion to Alter or Amend Judgment and Motion to Disallow Attorneys' Fee came on for hearing before the court on May 20, 2013. The court has considered the written and oral arguments of the parties, together with the Affidavits submitted by the parties.

A. With regard to Plaintiff/Counterdefendant's Motion to Alter or Amend Judgment, the court orders as follows:

1. With regard to the last sentence of paragraph 11 of the court's Finding of Fact and Conclusions of Law, the words "the Association" are stricken, so that that sentence reads:

In 2012, Erika Malmen, counsel for Big Wood Ranch, called to request delivery of Big Wood Ranch's water for the coming water season.

2. With regard to the last sentence of paragraph 12 of the court's Finding of Fact and

1
2 Conclusions of Law, the words "each of them is" are stricken, so that that sentence reads:

3 During the same time period, Reinemann contacted other purchasers
4 of property whose rights were delivered by the Association, and
5 most of them are now a current dues-paying member of the
6 Association.

7 3. All other provisions of the Findings of Fact and Conclusions of Law not hereby
8 altered or amended are ratified and confirmed as the Findings of Fact and Conclusions of Law to
9 support the final judgment in this case.

10 B. With regard to Plaintiff/Counterdefendant's Motion to Disallow Costs and Attorneys' Fees,
11 the court orders as follows:

12 1. Costs as a matter of right in the amount of \$2,209.19 are awarded in favor of the
13 Defendant/Counterclaimant, Water Users' Association of the Broadford Slough and the Rockwell
14 Bypass Lateral Ditches, Inc. ("Association").

15 2. Notwithstanding Idaho Code § 42-1307, discretionary costs in the amount of
16 \$1,077.74 are disallowed as not being exceptional costs.

17 3. Attorney fees in the amount of \$67,075 are awarded in favor of the Association,
18 pursuant to Idaho Code § 42-1307.

19 4. An Amended Judgment incorporating the aforementioned costs and attorney fees
20 shall be submitted to the court.

21 DATED this 5 day of ^{June}~~May~~, 2013.

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ROBERT J. ELGEE, District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that on the 13 day of May, 2013, she caused a true and correct copy of the foregoing instrument to be served upon the following persons in the following manner:

Erika E. Malmen
Richard Boardman
PERKINS COIE LLP
1111 W. Jefferson St., Ste. 500
Boise, ID 83702-5391

- Hand Deliver
- U.S. Mail
- Overnight Courier
- Facsimile Transmission 208-343-3232
- Email EMalmen@perkinscoie.com
CYecWallace@perkinscoie.com

Gary D. Slette
Robertson & Slette PLLC
P.O. Box 1906
Twin Falls, ID 83303-1906

- Hand Deliver
- U.S. Mail
- Overnight Courier
- Facsimile Transmission - 208-933-0701
- Email gslette@rsidaholaw.com

CLERK OF THE COURT

By: 
Deputy Clerk

FILED A.M. 2:29 P.M. 2013
 JUN 13 2013
 JoLynn Drage, Clerk District Court Blaine County, Idaho

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

BIG WOOD RANCH, LLC,)
)
 Plaintiff/Counterdefendant,) Case No. CV-10-842
)
 v.) AMENDED JUDGMENT
)
)
 WATER USERS' ASSOCIATION OF)
 THE BROADFORD SLOUGH AND)
 ROCKWELL BYPASS LATERAL)
 DITCHES, INC.,)
)
 Defendant/Counterclaimant.)
)

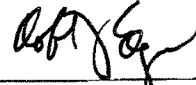
The Court hereby amends its Judgment previously entered in this matter on February 28, 2013, to read:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Big Wood Ranch, LLC's Complaint is dismissed with prejudice, and it shall take nothing thereby.
2. The Court declares that the Water Users' Association was validly formed pursuant to Idaho Code § 42-1301, et seq., and has continuing authority to act thereunder.
3. Judgment is hereby entered against Big Wood Ranch, LLC and in favor of the Water Users' Association in the amount of Nine Thousand Five Hundred Dollars (\$9,500), together with a penalty of ten percent (10%) added to each such delinquent assessment, together with interest on the total amount due at the rate of ten percent (10%) per annum from the 15th day of June of each year such assessment was due until paid.

1
2 4. Judgment is further entered against Big Wood Ranch, LLC and in favor of the
3 Water Users' Association in the amount of \$2,209.19 for costs as a matter of right; and the amount
4 of \$67,075.00 for attorneys' fees, pursuant to Idaho Code § 42-1307.

5 DATED this 6 day of May, 2013.

6 
7 
8 _____
9 ROBERT J. ELGEE, District Judge

10 CERTIFICATE OF SERVICE

11 The undersigned certifies that on the 13 day of May, 2013, she caused a true and
12 correct copy of the foregoing instrument to be served upon the following persons in the following
13 manner:

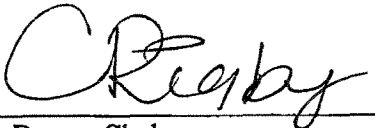
14 Erika E. Malmen
15 Richard Boardman
16 PERKINS COIE LLP
17 1111 W. Jefferson St., Ste. 500
18 Boise, ID 83702-5391

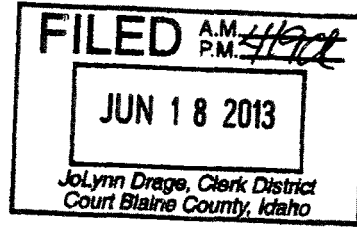
[] Hand Deliver
[] U.S. Mail
[] Overnight Courier
[x] ~~Facsimile Transmission 208-343-3232~~
email

19 Gary D. Slette
20 Robertson & Slette PLLC
21 P.O. Box 1906
22 Twin Falls, ID 83303-1906

[] Hand Deliver
[] U.S. Mail
[] Overnight Courier
[] Facsimile Transmission - 208-933-0701
[x] Email gslette@rsidaholaw.com

23 CLERK OF THE COURT

24
25 By: 
26 _____
Deputy Clerk



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

BIG WOOD RANCH, LLC,)
)
 Plaintiff/Counterdefendant,)
)
 v.)
)
 WATER USERS' ASSOCIATION OF)
 THE BROADFORD SLOUGH AND)
 ROCKWELL BYPASS LATERAL)
 DITCHES, INC.,)
)
 Defendant/Counterclaimant.)

Case No. CV-10-842
ORDER ON DEFENDANT'S
SUPPLEMENTAL POST-
JUDGMENT MEMORANDUM
OF ATTORNEY'S FEES

This matter comes before the court on Defendant/Counterclaimant's Supplemental Post-Judgment Memorandum of Attorney's Fees filed with this court on May 30, 2013. Based thereon, the court finds as follows:

1. The attorney's fees incurred by the Defendant/Counterclaimant were necessarily incurred in order to defend against the Plaintiff/Counterdefendant's IRCP Rule 59(e) Motion to Alter or Amend Judgment.

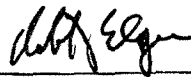
2. Pursuant to Idaho Code § 42-1307, the Defendant/Counterclaimant is entitled to collect a reasonable attorney's fee to be fixed by the court. The court has reviewed the Supplemental Post-Judgment Memorandum of Attorney's Fees, and supporting Affidavit, and finds that the claimed fees are reasonable.

3. The Plaintiff/Counterdefendant has not filed any objection to the allowance of attorney's fees pursuant to IRCP Rule 54(e)(6).

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2 IT IS HEREBY ORDERED that the Defendant/Counterclaimant herein is awarded
3 \$5,800, which amount is in addition to the costs and attorney's fees previously awarded in this
4 case.

5 A Second Amended Judgment incorporating the aforementioned attorney fees shall be
6 submitted to the court.

7 DATED this 18 day of June, 2013.

8 

9 ROBERT J. ELGEE, District Judge


10
11 CERTIFICATE OF SERVICE

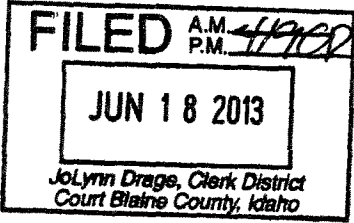
12 The undersigned certifies that on the 20 day of June, 2013, she caused a true and
13 correct copy of the foregoing instrument to be served upon the following persons in the following
14 manner:

15 Erika E. Malmen [] Hand Deliver
16 Richard Boardman [] U.S. Mail
17 PERKINS COIE LLP [] Overnight Courier
18 1111 W. Jefferson St., Ste. 500 [] Facsimile Transmission 208-343-3232
19 Boise, ID 83702-5391 [x] Email EMalmen@perkinscoie.com

20 Gary D. Slette [] Hand Deliver
21 Robertson & Slette PLLC [] U.S. Mail
22 P.O. Box 1906 [] Overnight Courier
23 Twin Falls, ID 83303-1906 [] Facsimile Transmission - 208-933-0701
24 [x] Email gslette@rsidaholaw.com

25 CLERK OF THE COURT

26 By: 
Deputy Clerk



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

8	BIG WOOD RANCH, LLC,)	
		)	Case No. CV-10-842
9	Plaintiff/Counterdefendant,)	
		)	SECOND
10	v.	)	AMENDED JUDGMENT
)	
)	
12	WATER USERS' ASSOCIATION OF)	
	THE BROADFORD SLOUGH AND)	
13	ROCKWELL BYPASS LATERAL)	
	DITCHES, INC.,)	
14)	
	Defendant/Counterclaimant.)	
15)	

The Court hereby amends its Amended Judgment previously entered in this matter on June 6, 2013, to read:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Big Wood Ranch, LLC's Complaint is dismissed with prejudice, and it shall take nothing thereby.
2. The Court declares that the Water Users' Association was validly formed pursuant to Idaho Code § 42-1301, et seq., and has continuing authority to act thereunder.
3. Judgment is hereby entered against Big Wood Ranch, LLC and in favor of the Water Users' Association in the amount of Nine Thousand Five Hundred Dollars (\$9,500), together with a penalty of ten percent (10%) added to each such delinquent assessment, together with interest on the total amount due at the rate of ten percent (10%) per annum from the 15th day of June of each year such assessment was due until paid.

1
2 4. Judgment is further entered against Big Wood Ranch, LLC and in favor of the
3 Water Users' Association in the amount of \$2,209.19 for costs as a matter of right, and the total
4 amount of \$72,875.00 for attorneys' fees, pursuant to Idaho Code § 42-1307.

5 DATED this 18 day of June, 2013.

6 

7 ROBERT J. ELGEE, District Judge

8
9 CERTIFICATE OF SERVICE

10 The undersigned certifies that on the 20 day of June, 2013, she caused a true and
11 correct copy of the foregoing instrument to be served upon the following persons in the following
12 manner:

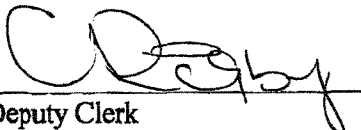
13 Erika E. Malmen
14 Richard Boardman
15 PERKINS COIE LLP
16 1111 W. Jefferson St., Ste. 500
17 Boise, ID 83702-5391

Hand Deliver
 U.S. Mail
 Overnight Courier
 Facsimile Transmission 208-343-3232
 Email emalmen@perkinscoie.com
rboardman@perkinscoie.com

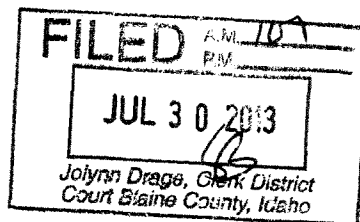
18 Gary D. Slette
19 Robertson & Slette PLLC
20 P.O. Box 1906
21 Twin Falls, ID 83303-1906

Hand Deliver
 U.S. Mail
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 Facsimile Transmission - 208-933-0701
 Email gslette@rsidaholaw.com

22 CLERK OF THE COURT

23 By: 
24 Deputy Clerk

Richard C. Boardman, Bar No. 2922
 rboardman@perkinscoie.com
 Erika E. Malmen, Bar No. 6185
 emalmen@perkinscoie.com
 PERKINS COIE LLP
 1111 W. Jefferson Street, Suite 500
 Boise, Idaho 83702-5391
 Telephone: (208) 343-3434
 Facsimile: (208) 343-3232



*Attorneys for Plaintiff/Appellant
 Big Wood Ranch, LLC*

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

BIG WOOD RANCH, LLC,
 Plaintiff/Appellant,

v.

WATER USERS' ASSOCIATION OF
 THE BROADFORD SLOUGH AND
 ROCKWELL BYPASS LATERAL
 DITCHES, INC.,
 Defendant/Respondent.

WATER USERS' ASSOCIATION OF
 THE BROADFORD SLOUGH AND
 ROCKWELL BYPASS LATERAL
 DITCHES, INC.,
 Counterclaimant,

v.

BIG WOOD RANCH, LLC,
 Counterdefendant.

Case No. CV 2010-842

NOTICE OF APPEAL

TO: THE ABOVE NAMED DEFENDANT/RESPONDENT, WATER USERS' ASSOCIATION OF THE BROADFORD SLOUGH AND ROCKWELL BYPASS LATERAL DITCHES, INC., AND THEIR RESPECTIVE ATTORNEYS, GARY D. SLETTE, ROBERTSON & SLETTE, PLLC, P.O. BOX 1906, TWIN FALLS, IDAHO 83303-1906, AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellant Big Wood Ranch, LLC, by and through its counsel of record, Perkins Coie LLP, appeals against the above-named Respondent to the Idaho Supreme

Court from the District Court's Second Amended Judgment dated June 18, 2013 and, specifically, the pre-trial summary judgment Order filed June 19, 2012 and accompanying oral ruling on May 21, 2012.

2. Appellant has a right to appeal the above judgment to the Idaho Supreme Court on the grounds that the Judgment described in paragraph 1 above is appealable pursuant to I.A.R. 11(a)(1).

3. Following is a preliminary statement of the issues on appeal which Appellant intends to assert. This list of issues shall not prevent the Appellant from asserting other issues on appeal:

(A) Did the district court err when it declared that the Defendant/Respondent was validly formed pursuant to Idaho Code § 42-1301 et. seq., based upon its summary judgment ruling and Order filed June 19, 2012.

4. No orders have been entered sealing the District Court's file.

5. Appellant requests preparation of the reporter's transcript of the Court's oral summary judgment ruling of May 21, 2012, which has previously been prepared. Transcript is requested in electronic format.

6. Appellant requests the following additional documents be included in the clerk's record:

DATE FILED	DESCRIPTION
04/20/2012	Defendant/Counterclaimant's Motion for Summary Judgment
04/20/2012	Memorandum in Support of Defendant's Motion for Summary Judgment
04/20/2012	Affidavit of Terry Blau
04/20/2012	Affidavit of Gary D. Slette
04/20/2012	Affidavit of Lee Peterson
04/20/2012	Affidavit of Leroy Lewis
04/20/2012	Affidavit of Charles E. Brockway

04/20/2012	Affidavit of Ed Cameron
04/20/2012	Affidavit of Kevin Lakey
04/20/2012	Affidavit of Marc Reinemann
04/20/2012	Affidavit of Brian Brockette
04/23/2012	Plaintiff's Motion for Summary Judgment
04/23/2012	Memorandum in Support of Plaintiff's Motion for Summary Judgment
04/23/2012	Affidavit of Erika E. Malmén in Support of Motion for Summary Judgment
04/23/2012	Affidavit of Scott N. King, P.E.
05/04/12	Response Memorandum in Opposition to Plaintiff/Counterdefendant's Motion for Summary Judgment
05/04/12	Second Affidavit of Gary D. Slette
05/04/12	Second Affidavit of Brian Brockette
05/04/12	Second Affidavit of Marc Reinemann
05/07/12	Affidavit of Robert Archie Bouttier
05/07/12	Plaintiff/Counterdefendant's Memorandum in Opposition to Defendant/Counterclaimant's Motion for Summary Judgment
05/14/12	Reply Memorandum in Support of Plaintiff/Counterdefendant's Motion for Summary Judgment
05/14/12	Supplemental Affidavit of Erika E. Malmén in Support of Plaintiff/Counterdefendant's Motion for Summary Judgment
06/19/2012	Order on Cross Motions for Summary Judgment

7. The undersigned hereby certifies:

(A) That a copy of this Notice of Appeal has been served on the reporter of whom a transcript has been requested as named below at the address set out below:

Susan P. Israel
P.O. Box 1379
Ketchum, Idaho 83340

(B) That the reporter will be paid any additional fee for preparation and/or processing of the reporter's transcript as set forth above upon determination of the cost by the reporter;

(C) That the estimated fee for preparation of the clerk's record will be paid upon determination of the cost by the clerk;

(D) That the appellate filing fee has been paid; and,

(E) That service has been made upon all parties required to be served pursuant to I.A.R. 20.

DATED: July 30, 2013 .

PERKINS COIE LLP

By: *[Signature]*
Richard C. Boardman, ISB No. 2922
Erika E. Malmen, ISB No. 6185

*Attorneys for Plaintiff/Appellant
Big Wood Ranch, LLC*

CERTIFICATE OF SERVICE

I, the undersigned, certify that on July 30, 2013, I caused a true and correct copy of the foregoing to be forwarded with all required charges prepaid, by the method(s) indicated below, in accordance with the Idaho Rules of Procedure, to the following person(s):

Gary D. Slette
Robertson & Slette, PLLC
PO Box 1906
Twin Falls, Idaho 83303-1906
Phone: (208) 933-0700

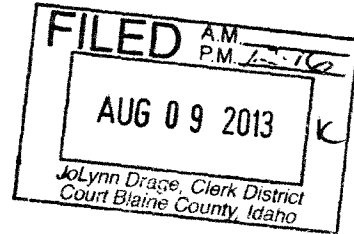
Attorneys for Defendant/Respondent

Hand Delivery
U.S. Mail
Facsimile: (208) 933-0701
Overnight Mail

[Signature]
Richard C. Boardman

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Gary D. Slette ISB # 3198
ROBERTSON & SLETTE, PLLC
P.O. Box 1906
Twin Falls, Idaho 83303-1906
Telephone: (208) 933-0700
Facsimile: (208) 933-0701
I:\m\VER\broadford\ISC\req add record



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

BIG WOOD RANCH, LLC,)
)
Plaintiff/Counterdefendant,)
(Appellant))

v.)
)

WATER USERS' ASSOCIATION OF)
THE BROADFORD SLOUGH AND)
ROCKWELL BYPASS LATERAL)
DITCHES, INC.,)
)
Defendant/Counterclaimant.)
(Respondent))

Case No. CV-10-842

RESPONDENT'S REQUEST FOR
ADDITIONAL CLERK'S RECORD

TO: THE ABOVE-NAMED APPELLANT, AND ITS ATTORNEYS OF RECORD,
AND THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Respondent/Defendant above-named hereby requests, pursuant to I.A.R. Rule 19, the inclusion of the following material, including any and all exhibits appended to those documents listed below, in the clerk's record in addition to that required to be included by the Idaho Appellate Rules and those documents specifically requested in Appellant's Notice of Appeal filed in this matter on July 30, 2013.

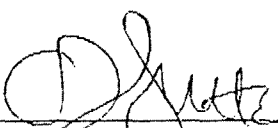
DATE FILED	DESCRIPTION
11/05/2010	Complaint
11/05/2010	Motion to Transfer and Consolidate Small Claims Case
11/08/2010	Order Granting Motion to Transfer and Consolidate Small Claims Case
12/20/2011	Answer & Counterclaim
05/14/2012	Affidavit of Erika E. Malmen in Support of Plaintiff/Counterdefendant's Memorandum in Opposition to Defendant's Motion to Strike and Motion to Exclude Plaintiff's Expert Witness
05/18/2012	Notice of Withdrawal of Supplemental Affidavit of Erika E. Malmen in Support of Plaintiff/Counterdefendant's Motion for Summary Judgment
06/19/2012	Order on Motion for Protective Order
07/02/2012	Transcript Filed (Hearing on 5/21/12)
12/28/2012	Defendant's Memorandum of Costs, Disbursements and Attorneys Fees
12/28/2012	Affidavit in Support of Defendant's Memorandum of Costs, Disbursements and Attorney's Fees
01/03/2013	Order
02/28/2013	Judgment
02/28/2013	Findings of Fact and Conclusions of Law
03/08/2013	Affidavit in Support of Defendant's Post-Judgment Memorandum of Costs, Disbursements and Attorney's Fees
03/08/2013	Defendant's Post-Judgment Memorandum of Costs, Disbursements and Attorney's Fees
03/14/2013	Plaintiff's Motion to Alter/Amend Judgment
05/30/2013	Defendant's Supplemental Post-Judgment Memorandum of Attorney's Fees
05/30/2013	Affidavit in Support of Defendant's Supplemental Post-Judgment Memorandum of Attorney's Fees
06/13/2013	Order on Plaintiff/Counterdefendant's Motion to Alter or Amend Judgment and Motion to Disallow Attorney's Fees
06/13/2013	Amended Judgment
06/18/2013	Order on Defendant's Supplemental Post-Judgment Memorandum of Attorney's Fees
06/18/2013	Second Amended Judgment

2. The Respondent/Defendant does not request any additional transcripts.
3. I certify that this Request for Additional Record has been served upon the Clerk of the District Court and upon all parties required to be served pursuant to I.A.R. Rule 20.

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DATED this 9th day of August, 2013.

ROBERTSON & SLETTE, PLLC


By: 
Gary D. Slette

CERTIFICATE OF SERVICE

The undersigned certifies that on the 9th day of August, 2013, he caused a true and correct copy of the foregoing instrument to be served upon the following persons in the following manner:

Richard Boardman
Erika E. Malmen
PERKINS COIE LLP
1111 W. Jefferson St., Ste. 500
Boise, ID 83702-5391

- Hand Deliver
- U.S. Mail
- Overnight Courier
- Facsimile Transmission 208-343-3232


Gary D. Slette

EXHIBITS

Court's Exhibits (1/4/2013):

- 1- Published Deposition of Marc Richards
- 2- Transcript of Testimony of Charles E. Brockway (11/13/2012)
- 3- Transcript of Court's Ruling (5/21/2012)

Plaintiff's Exhibits (11/13/2012 & 1/4/2013):

- BWR-1 Rockwell v. Coffin Decree, Findings of Fact and Conclusions of Law (IDWR000015-29)
- BWR-2 Big Wood Ranch's surface water rights(Water Right No. 37-00537B)
- BWR-3 Big Wood Ranch's surface water rights (Water Right No. 37-00538B)
- BWR-4 Big Wood Ranch's surface water rights (Water Right No. 37-07312C)
- BWR-5 The Rockwell saved water rights (Water Right No. 37-8330)
- BWR-6 The Rockwell saved water rights (Water Right No. 37-833F)
- BWR-7 The Rockwell saved water rights (Water Right No. 37-833H)
- BWR-8 The Rockwell saved water rights (Water Right No. 37-833K)
- BWR-9 The Rockwell saved water rights (Water Right No. 37-833P)
- BWR-10 The Rockwell saved water rights (Water Right No. 37-833Q)
- BWR-11 The Rockwell saved water rights (Water Right No. 37-833R)
- BWR-12 August 23, 2012 letter from E. Malmen to K. Lakey regarding Water Delivery (BWR000344)
- BWR-13 August 27, 2012letter from K. Lakey to E. Malmen regarding water delivery (BWR000346)
- BWR-14 August 30, 2012letter from M. Reinemann to E. Malmen regarding water delivery
- BWR-15 August 31, 2012 letter from E. Mahnen to K. Lakey regarding water delivery (BWR000347)
- BWR-16 September 6, 2012letter from K. Lakey to E. Malmen regarding water delivery
- BWR-20 Articles of Incorporation of Water Users' Association (WUA000002- 7)
- BWR-21 Bylaws of Water Users' Association (WUA000008-14)
- BWR-40 Real Estate Purchase and Sale Agreement and Title Documents (BWR000207-337)
- BWR-41 2009 aerial photographs prepared by Brockway Engineering, PLLC (WUA000166-169)

Defendant's Exhibits (11/13/2012 & 1/4/2013):

- WUA-503 Original Water Users' Association Membership list and sharing ratios
- WUA-504 Recent amendment
- WUA-505 Invoices to Big Wood Ranch since 2007
- WUA-506 Check register of Water Users' Association
- WUA-507 2011 invoices to WU Association
- WUA-508 NAIP Aerial Photo provided by Brockway Engineers
- WUA-509 NAIP Aerial Photo provided by Brockway Engineers
- WUA-510 NAIP Aerial Photo provided by Brockway Engineers
- WUA-511 River work in Big Wood near Broadford headgate

- WUA-512 Channel on river leading to Broadford headgate after work completed
- WUA-513 Channel on river leading to Broadford headgate after work completed
- WUA-514 Upstream side of Broadford headgate with brush guard (cow catcher)
- WUA-515 Warning sign on Broadford headgate
- WUA-516 Broadford/Rockwell Bypass split
- WUA-517 Rockwell Bypass headgate
- WUA-518 Looking downstream to wier
- WUA-519 Wier
- WUA-520 Beaver dam above Rockwell/Broadford split
- WUA-521 Beaver dam above Rockwell/Broadford split
- WUA-522 Breached beaver dam above Rockwell/Broadford split
- WUA-523 Breached beaver dam above Rockwell/Broadford split
- WUA-524 Rockwell Bypass ditch with grass growth
- WUA-525 Rockwell Bypass ditch after backhoe work but before tractor work
- WUA-526 Rockwell Bypass ditch after work with tractor
- WUA-527 Big Wood Ranches headgate on Rockwell Bypass
- WUA-536 Ag. Tax Exemption
- WUA-537 Ag. Tax Exemption
- WUA-538 Deed of Trust

Dated this 3 day of Sept., 2013


Crystal Rigby, Deputy Clerk

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

BIG WOOD RANCH, LLC.,)
)
Plaintiff / Counterdefendant /Appellant,)
)
vs.)
)
WATER USERS' ASSOCIATION OF)
THE BROADFORD SLOUGH AND)
ROCKWELL BYPASS LATERAL)
DITCHES, INC.,)
)
Defendant/ Counterclaimant /Respondent,)
)
_____)

Supreme Court No. 41265
Certificate of Service


STATE OF IDAHO)
) ss.
County of Blaine)

I, Crystal Rigby, Deputy Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Blaine, do hereby certify that the above and foregoing Clerk's Record on Appeal was compiled and bound under my direction and is a true, full and correct Record of the pleadings and documents as are automatically required under Rule 28 of the Idaho Appellate Rules as well as those requested by the Appellant.

I do further certify that all exhibits offered or admitted in the above-entitled cause and exhibits requested by the Appellant will be duly lodged with the Clerk of the Supreme Court along with the Clerk's Record and the Court Reporter's Transcript on Appeal.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Hailey, Idaho, this 3 day of Sept., 2013.

Jolynn Drage, Clerk of the Court

By 
Crystal Rigby, Deputy Clerk

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

BIG WOOD RANCH, LLC.,)	
	)	Supreme Court No. 41265
Plaintiff / Counterdefendant /Appellant,)	
	)	Certificate of Service
vs.)	
)	
WATER USERS' ASSOCIATION OF)	
THE BROADFORD SLOUGH AND)	
ROCKWELL BYPASS LATERAL)	
DITCHES, INC.,)	
)	
Defendant/ Counterclaimant /Respondent,)	
)	
_____)	

I, Crystal Rigby, Deputy Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Blaine, do hereby certify that I have personally served or mailed, by United States mail, one copy of the Clerk's Record and Court Reporter's Transcript to each of the Attorneys of Record in this cause as follows:

Richard Boardman
1111 W. Jefferson St., Ste 500
Boise, ID 83702

Gary Slette
PO Box 1906
Twin Falls, ID 83303

Attorney for Plaintiff/ Counterdefendant/
Appellant

Attorney for Defendant /
Counterclaimant / Respondent

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal
of the said Court this 3 day of Sept., 2013.

JOLYNN DRAGE, Clerk of the Court

By 
Crystal Rigby, Deputy Clerk