

*Attorneys for A&B Irrigation District, Burley
Irrigation District, Milner Irrigation District,
North Side Canal Company, and Twin Falls
Canal Company*

*Attorneys for American Falls Reservoir
District #2 and Minidoka Irrigation District*

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF POWER

**AFFIDAVIT OF PAUL L.
ARRINGTON**

1

Milner Irrigation District, North Side Canal Company, and Twin Falls Canal Company (member of the "SWC"), in the above captioned matter. I am over the age of 18 and have personal knowledge of the documents and legal proceedings pertinent to this matter.

2. Attached hereto, as Exhibit A, is a true and correct copy of excerpts from the Report on the Recovery of Aberdeen-Springfield Project Water by Wells, dated September, 2000, by Barnett Intermountain Water Consulting.

3. Attached hereto, as Exhibit B, is a true and correct copy of a document entitled "Summary of Minutes of the Board of Directors meetings and General Manager's Reports provide by Aberdeen-Springfield Canal Company in response to discovery," provided to SWC in response to discovery requests to Plaintiffs.

4. Attached hereto, as Exhibit C, is a true and correct copy of an *Application for Permit* from the backfile for Water Right No. 35-8980 from the website of the Idaho Department of Water Resources ("IDWR").

5. Attached hereto, as Exhibit D, is a true and correct copy of an *Application for Permit*, from the backfile for Water Right No. 35-9002, from the IDWR website.

6. Attached hereto, as Exhibit E, is a true and correct copy of a *Moratorium Exemption Questionnaire* from the backfile for Water Right No. 35-8980 from the IDWR website.

7. Attached hereto, as Exhibit F, is a true and correct copy of a *Notice of Change in Water Right Ownership*, dated April 2, 2002, from the backfile for Water Right No. 35-8980 from the IDWR website.

8. Attached hereto, as Exhibit G, is a true and correct copy of a *Notice of Change in Water Right Ownership*, dated February 3, 2012, from the backfile for Water Right No. 35-8980 from the IDWR website.
9. Attached hereto, as Exhibit H, is a true and correct copy of the *Plaintiffs' Response to Defendant-Intervenors' First Requests for Admission to Plaintiff Aberdeen-Springfield Canal Company*, dated October 2, 2014.
10. Attached hereto, as Exhibit I, is a true and correct copy of the *Plaintiffs' Response to Defendant-Intervenors' First Requests for Admission to Plaintiffs Jeffery and Chana Duffin*, dated October 2, 2014.
11. Attached hereto, as Exhibit J, is a true and correct copy of the *Application for Drilling Permit* (Permit No. 869326), dated June 14, 2013, filed by Aberdeen-Springfield Canal Company ("ASCC").
12. Attached hereto, as Exhibit K, is a true and correct copy of the *Well Drill Permit No. 869326*, dated October 16, 2013, issued by the Department of Water Resources to ASCC.
13. Attached hereto, as Exhibit L, is a true and correct copy of the *Petition for Hearing*, dated October 31, 2013, filed by the SWC in the Matter of the Well Drilling Permit No. 869326.
14. Attached hereto, as Exhibit M, is a true and correct copy of the correspondence from IDWR dated July 21, 1992 and March 15, 2002 from the backfile for Water Right No. 35-9002, on the IDWR website.
15. Attached hereto, as Exhibit N, is a true and correct copy of the *Gift Deed* from Richard W. Schelske and Iris Schelske to Jeffrey T. Duffin and Chana Duffin, dated December 31, 2011, recorded in the Bingham County, Idaho Recorder's Office as Instrument No. 636132.

16. Attached hereto, as Exhibit O, is a true and correct copy of excerpts from the *Plaintiffs' Second Supplemental Responses to Defendant-Intervenors' First Discovery Requests to Jeffrey and Chana Duffin*, dated December 19, 2014.

17. Attached hereto, as Exhibit P, is a true and correct copy of excerpts from the *Plaintiffs' Second Supplemental Responses to Defendant-Intervenors' First Discovery Requests to Aberdeen-Springfield Canal Company*, dated December 19, 2014.

18. Attached hereto, as Exhibit Q, is a true and correct copy of historical notes from the ASCC records provided to the Coalition in response to discovery requests to ASCC.

19. Attached hereto, as Exhibit R, is a true and correct copy of the transcript of the deposition of Steven T. Howser, held on February 24, 2015.

20. Attached hereto, as Exhibit S, is a true and correct copy of the transcript of the deposition of Jeffrey Duffin, held on February 24, 2015.

21. Attached hereto, as Exhibit T, is a true and correct copy of the *Quit-Claim Deed*, dated December 18, 2000, recorded in the Bingham County Recorder's Office as Instrument No. 496273.

22. I certify under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

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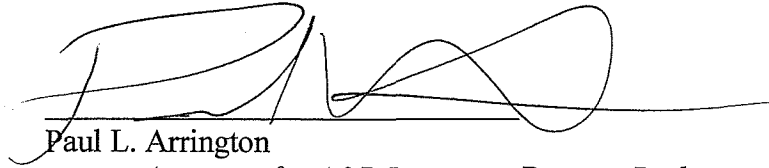
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DATED this 4th day of March 2015.

BARKER, ROSHOLT & SIMPSON, L.L.P.

A handwritten signature in black ink, appearing to read 'Paul L. Arrington', is written over a horizontal line.

Paul L. Arrington

*Attorneys for A&B Irrigation District, Burley
Irrigation District, Milner Irrigation District, North
Side Canal Company, and Twin Falls Canal
Company.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of March, 2015, I served true and correct copies of the foregoing upon the following by the method indicated:

Garrick Baxter
John Homan
Meghan Carter
Deputys Attorney General
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

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

Randy Budge
Carol Tippi Volyn
Racine, Olson, Nye, Budge & Bailey,
Chartered
P.O. Box 1391
Pocatello, Idaho 83204-1391

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

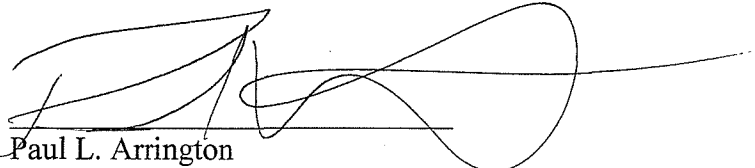
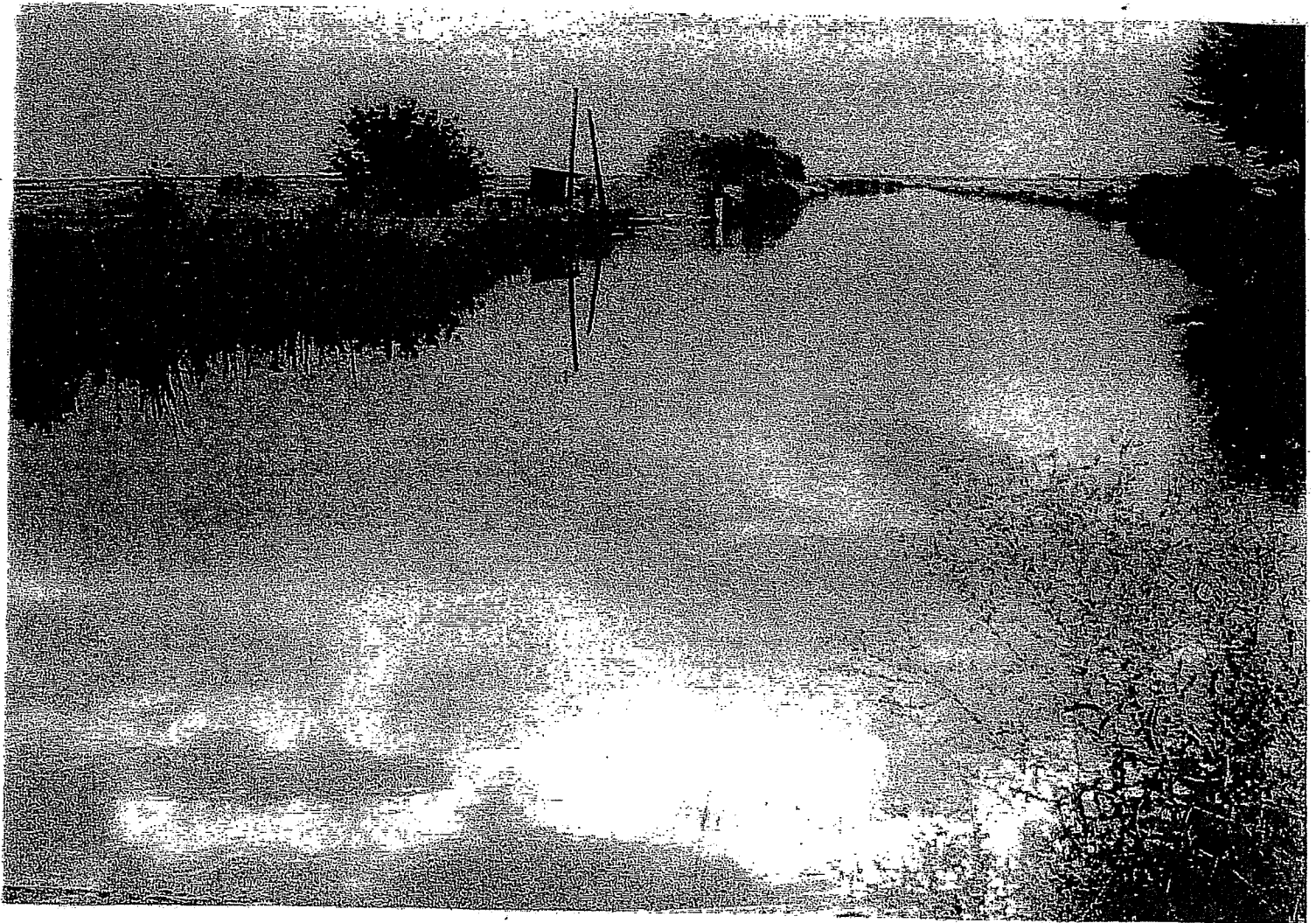

Paul L. Arrington

Exhibit A

ABERDEEN-SPRINGFIELD CANAL COMPANY



Report on the Recovery of Aberdeen-Springfield Project Water by Wells

Barnett Intermountain Water Consulting
106 West 500 South, Suite 101
Bountiful, Utah 84010

September 2000

ASCC_01049

2.2 Wells

Over the decades since the deliveries of water from the Snake River have taken place, hundreds of wells have been drilled in the ASCC service area. Some were drilled initially as drainage wells. With time, some of the drainage wells were converted to production wells and, in later years, wells were drilled to produce water from the recharged underlying aquifer for flood irrigation. Much of the flood irrigation has now been converted to sprinklers and there is economy and convenience in providing pumped water from the ground directly into pressurized sprinkler systems. Figure 6 is a photograph of a well with a sprinkler system in the distance. Figure 7 is a map which shows the location of producing wells within the ASCC service area reported to the IDWR by the two newly created ground water districts; the Aberdeen-American Falls Ground Water District and the Bingham Ground Water District. The map was provided by the IDWR. The IDWR reports there has been identified 270 producing wells, but some in this total will be dropped from the forthcoming reports if they are irrigating less than 5 acres.

The many irrigation wells in the area that are operated by ASCC shareholders have become an extension of the ASCC delivery system and allow for the recovery of project water from the recharged ground water system for use on project lands. Many of these irrigation wells were drilled after 1952. Castelin (1974) investigated the drilling of wells and stated the following:

Figure 5, showing cumulative totals of wells by type drilled in the area from 1949 to 1970, gives an indication of degree and type of development occurring. Additional wells are in use, but many of those drilled prior to

Exhibit B

Summary of Minutes of the Board of Directors meetings and General Manager's Reports provided by Aberdeen-Springfield Canal Company in response to discovery.

1910-1920:

First recognition of increasing ground water levels due to flood irrigation and canal loss. General Manager begins to monitor ground water levels in wells, particularly in those areas most affected.

During this time, the Board of Directors begin to discuss drainage options.

1921-1940:

Minutes of Board Meetings - 1926 seemed to be the year that shareholders started petitioning the Company to dig drains. In 1927 those requests became frequent and in 1928 the shareholders passed a resolution at their Annual Meeting that the Company would construct drains on a 50/50 cost share with shareholders. What's more, in 1928 the Board passed a resolution to construct drains and investigate the possibility of pumping water from the drains for irrigation use.

During this 20 year period the Company embarks on a continuous program of digging drains. Two types of drains are discussed. 'Surface' drains are ditches constructed to remove irrigation run-off water resulting from flood irrigation. The other type, most often simply referred to as 'drains' are constructed to facilitate the removal of sub-surface water (sub water). In the late 1920's the Board and General Manager discuss making use of the water being developed through drains "...to the advantage of adjoining lands."

First use of 'drain wells'. Common use of that term today suggests injection wells. However, these are wells that were excavated to depths of 100-150 feet in the vicinity of constructed drains. Initially, wells were constructed that would flow under artesian pressure into the drain. Water developed from these wells was directed to drains. It was noted that the successful installation of drain wells resulted in a subsequent drop in local ground water elevations at a rate greater than that accomplished by the constructed drain alone. The General Manager's Report from February, 1930 discusses, "...the drilling of a 12" hole for pump drainage work...", indicating the Company was no longer relying on wells that flowed under artesian pressure. In the same report, the General Manager goes on to say,

"It is believed that this well is so located that all the water that can be developed here can be used to advantage on the adjoining lands."

There are several proposed open drain projects in the neighborhood of Sterling which it is believed can be built with advantage to the adjoining lands."

During the drought of the 1930's, more of these drain wells appear to have been constructed, some by the Company, others by shareholders, and began to be used to supplement surface water deliveries by pumping directly into a Company canal or lateral. In addition, the Company, with State and Federal

money, excavated 'drought wells' through the drought of the 30's. It appears at least nine such wells were used to pump water directly into Company canals.

1941-1960:

The Company continues digging new drains as well as cleaning existing drains. A couple more drain wells are excavated. Pumps installed on at least three of these. The General Managers through this period continue a program of monitoring ground water levels throughout the system and report that ground water levels fluctuate with canal diversion. Also in late 40's early 50's shareholders begin requesting permission to pump directly from drains and drain wells. The Board grants many of these requests.

In September of 1954, Bob Mann approaches Board about digging a well to drain his lands below the Lowline. In October, 1954 the Board decides to drill a well for the dual purpose of drainage and pumping water into the lowline canal. In 1958 the Company's 'Mann well' pumped into the Lowline canal.

Sept. 1956 - Board decides to drill a well on the 'V' lateral right of way to drain adjacent lands.

Dec. 1956 - At the annual shareholder's meeting, the shareholders direct the Board to use money in the drainage fund (\$0.10/share) to investigate drilling wells for drainage purposes.

Jan. 1957 - Board decides to pump the drought well on V lateral, drill another well on V lateral (approved Sept. 1956), and drill a well at the head end of the Jack Powell drain.

Jun. 1957 - More discussion of drain wells by the Board.

Jul. 1957 - More well discussion.

Sept. 1957 - The Board discusses use of the 'Slaugh' drain well pumping into V lateral.

Oct. 1957 - Discussion by the Board of two wells drilled on the Jack Powell farm and direct the General Manager to begin an investigation of whether either might work as either an injection well or a drain well.

Dec. 1957 - The General Manager discusses canal loss. Board considers estimates for providing power lines to "...the flowing wells along the Lowline near the Prudhomme farm." in order to power 40HP pumps. A shareholder (Palmer) requests permission to use the 'Davidson' well.

Dec. 19 57 At the Annual meeting, the General Manager discusses increasing canal losses. The shareholders direct Board to pump water from wells into canals wherever possible.

Mar. 1958 - The Board decides to use the Slaugh well again this year. Also to dig another well on the Lowline right of way 3/4 mile south of Prudhomme drain wells, and pump it into the Lowline.

Apr. 1958 - Drainage committee report -

May 1958 - Board decides to pay Idaho Power Company to provide electric power to the Mann well.

Jul. 1958 - Pump and motor for Mann well purchased.

Feb. 1959 - The Board and General Manager discuss canal losses. Requests from shareholders to pump from a drain.

Apr. 1959 - The Board considers more requests to pump from a drain, and a request to pump a drain into 'J' lateral.

Jun. 1959 - Board discussion of a drain well in Cornforth-Smith drain and potential well in Phillips' property to pump into a lateral.

Jul. 1959 - Board has further discussion of drain well in Phillips' property.

Sept. 1959 - The Board hears a request to pump drain water into an irrigation ditch.

Aug. 1960 - The Board grants permission to Sherman Smith to pump from the Cornforth-Smith drain and use that water to irrigate.

1960-1970:

This decade marked more drought years. Pumps installed on two more drain wells (one new - a second 'Bob Mann' well). Pumps were used to pump water directly into the canal 1961, 1962, 1965, and 1969.

Jul. 1961 - Board authorizes emergency pumping of a well into the canal.

Jul. 1961 - Board acquires Aberdeen City drought well and directs it be pumped. Also that the Westfall drought well be leased to shareholders. Discussion of pumping the Prudhomme drain wells into the Lowline.

Jul. 1961 -Permission granted by Board to pump from Aberdeen drain for irrigation.

Sep. 1961 - Permission granted to pump from Loomis drain and permission granted to pump Slauch well during the time water is shut-out of the canal.

1971-1980: (Awaiting photocopies)

This decade had increasing use of water developed originally for drainage for irrigation purposes, especially in dry years and occasionally when capacity limitations affected delivery on the ends of laterals and in the lower reaches of the system.

Increasing losses from the canal are a common concern, and a few, limited attempts at lining are undertaken. There is a concerted effort to repair sinkholes throughout the system, but especially in the Springfield area (with marginal results).

Three pumps used in 1981, 1982, 1987, 1989

1981-

Three pumps used in drought years of 1991, 1992,

Mar. 1995 - Two applications for recovery wells (Knudsen and Driscoll).

Other documents provided (there are more that have yet to be photocopied):

Notes from the General Manager's 'Figuring Book'. This is a large format notebook used by multiple General Managers beginning in 1938 and ending in 1986. It contains notes on digging drains, drainage investigations, well construction, pumping of wells, ground water levels in wells, power costs, and canal loss rates. Most of these notes were made in pencil and didn't scan well. We have attempted to provide transcripts where the copies are difficult to read. Page numbers were noted on the copy and transcript.

"Report on the Recovery of Aberdeen-Springfield Project Water by Wells" - Barnett Intermountain Water Consulting, September, 2000: This report was commissioned by the Board of Directors. It used historical ground water elevation data collected by the General Manager of Aberdeen-Springfield Canal Company from 1942 to 1990.

"Characterization, Modeling and Mapping of Canal Seepage from Ground Water Elevation Responses" - Cephas Holder, May, 2009: Master's Thesis. The author is an employee of Aberdeen-Springfield Canal Company.

Aberdeen-Springfield Canal Company files relating to 'Drought Wells' and 'Drainage'. These files contain information about wells (drilling records, etc), constructing and cleaning of drains.

Application to Change or Add Point of Delivery submitted by Jeff Duffin on March 17, 2013 and approved April 8, 2013. This document is used by ASCC to move, change, or add a point of delivery of ASCC water to shareholders for use on lands with ASCC shares appurtenant. Attached is a graphic of our Ground Water Elevation Model showing an increase in ground water levels in the area of ASCC Recovery Head Gate JR-2-1 (the Duffin well). This graphic shows changes in ground water levels from April 1, 2012 to May 30, 2012.

Exhibit C

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of applicant VERN R. DUFFIN Phone 397-4100
Post office address 2142 South, 2800 West, Aberdeen, ID 83210
2. Source of water supply groundwater which is a tributary of Snake River
3. Location of point of diversion is SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of NW $\frac{1}{4}$, Govt. Lot _____
Sec. 20 Township 5 S Range 31 E B.M. Bingham County; additional
points of diversion if any: _____
4. Water will be used for the following purposes:
Amount 2.200 ^{cfs} for irrigation purposes from April 1 to Nov 1 (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
5. Total quantity to be appropriated is (a) 2.2 cfs and/or (b) 330
cubic feet per second acre feet per annum
6. Proposed diverting works:
 - a. Description of ditches, flumes, pumps, headgates, etc. 100 hpr elec motor, deep well
turbine pump, static water level 40' - pump set at 120' panel
and $\frac{1}{2}$ mile 8" mainline
 - b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total
reservoir capacity _____ acre-feet; period of year when water will be diverted to storage:
_____ to _____ inclusive.
 - c. Proposed well diameter is 16" inches; proposed depth of well is 170 feet.
 - d. Is ground water with a temperature of greater than 90°F being sought? NO
7. Time required for the completion of the works and application of the water to the proposed beneficial use is
one years (minimum 1 year).

- 8. Description of proposed uses (if irrigation only, go to item 9):**

a. Hydropower; show total feet of head and proposed capacity in KW. _____

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

c. Municipal; show name of municipality. _____

d. Domestic; show number of households. _____

e. Other; describe fully. _____

- 9. Description of place of use:**

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of the use (example: *D* for *Domestic*) in the corresponding place of use below. See instructions for standard symbols.

[illegible]

Total number of acres to be irrigated 110

10. Describe any other water rights used for the same purposes as described above. _____

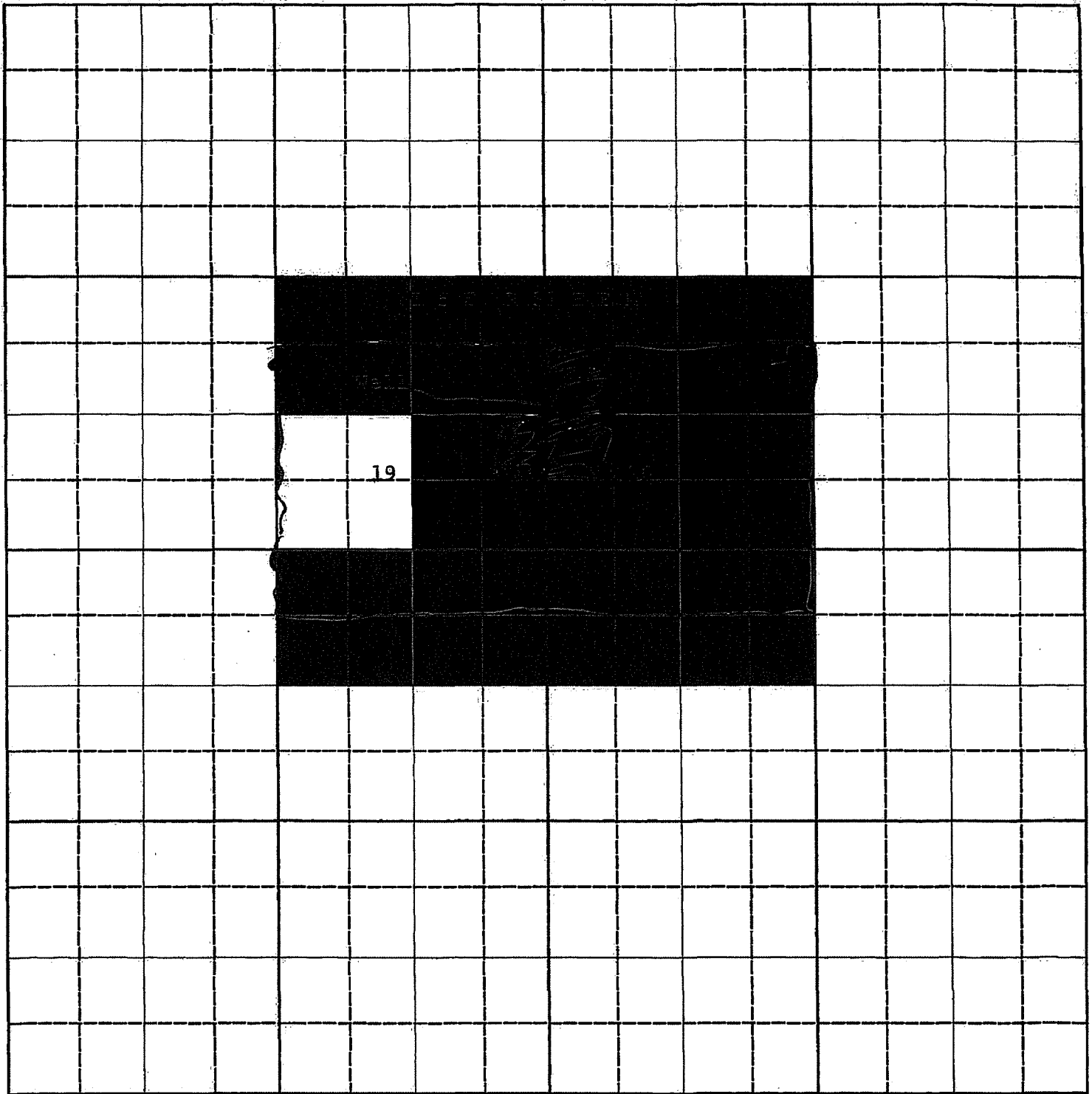
11. a. Who owns the property at the point of diversion? Applicant

b. Who owns the land to be irrigated or place of use? Applicant

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing. _____

12. Remarks: This well and system was drilled and used since I purchased this ground from my father in 1971. I just overlooked filing on the the same until now.

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



Scale: 2 inches equal 1 mile.

BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

Thomas R. Luffin
(Applicant)

Received by CU Date 1-16-92 Time 1:05p. Preliminary check by KCW
Fee \$ 85.00 Receipted by HWT # E016855 Date 1-16-92
Publication prepared by RB Date 2-20-92 Published in Morning News
Publication approved LB Date 3-4-92

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. _____, and said application is hereby _____.

1. Approval of said application is subject to the following limitations and conditions:

a. SUBJECT TO ALL PRIOR WATER RIGHTS.

b. Proof of construction of works and application of water to beneficial use shall be submitted on or before _____, 19 ____.

c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.

d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.

e. Other:

Exhibit D

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of applicant Vern Duffin Phone 397-4100

Post office address 2142 S. 2800 W - Aberdeen Td. 83213

2. Source of water supply Groundwater which is a tributary of _____

3. Location of point of diversion is SW* 1/4 of SW* 1/4 of NW 1/4, Govt. Lot _____

Sec. 20 Township 6S Range 31E B.M. Bingham County; additional points of diversion if any: _____

4. Water will be used for the following purposes:

Amount 3.66 for IRR purposes from 4-1 to 10-31 (both dates inclusive)
(cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

5. Total quantity to be appropriated is (a) 3.66 and/or (b) _____
cubic feet per second acre feet per annum

6. Proposed diverting works:

a. Description of ditches, flumes, pumps, headgates, etc. 100HP PUMP TIED INTO A BURIED 8" MAINLINE RUNNING EAST & WEST FROM WELL, RISERS EVERY 60' FOR 7 WHEEL LINES.

b. Height of storage dam N/A feet; active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet; period of year when water will be diverted to storage: _____ to _____ inclusive.

c. ~~Proposed~~ well diameter is 18" inches; proposed depth of well is 140 feet.

d. Is ground water with a temperature of greater than 90°F being sought? No

7. Time required for the completion of the works and application of the water to the proposed beneficial use is 1 years (minimum 1 year).

RECEIVED

* Changes as per telecon w/Vern Duffin 6-16-92 APR 30 1992

8. Description of proposed uses (if irrigation only, go to item 9):

- Hydropower; show total feet of head and proposed capacity in KW. _____
- Stockwatering; list number and kind of livestock. _____
- Municipal; show name of municipality. _____
- Domestic; show number of households. _____
- Other; describe fully. _____

9. Description of place of use:

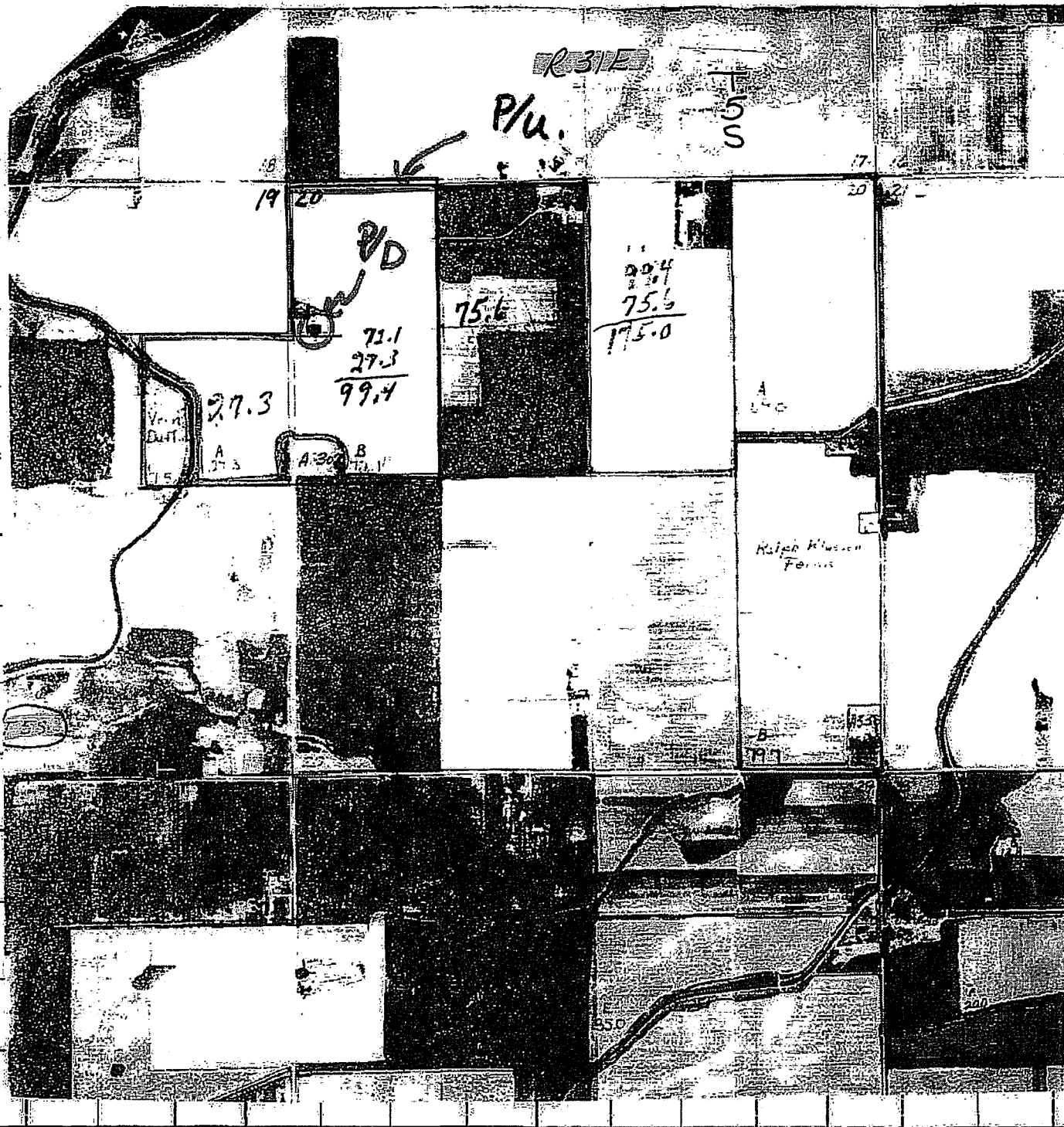
- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- If water is used for other purposes, place a symbol of the use (example: *D* for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
55	31E	20					39	39	37	40									155
55	31E	19				28													28

Total number of acres to be irrigated 183

- Describe any other water rights used for the same purposes as described above. ABERDEEN SPRING-FIELD CANAL C.
- Who owns the property at the point of diversion? APPLICANT
 - Who owns the land to be irrigated or place of use? APPLICANT & LAVERDA BARRON FAY BAKER
 - If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing. APPLICANT LEASES 80 ACRES IN THE E½NW¼ OF SEC 20 FROM MS BARRON & BAKER.
- Remarks: _____

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



Scale: 2 inches equal 1 mile.

BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

David R. Hoffman
(Applicant)

Received by HDW Date 4-30-92 Time 1330 Preliminary check by KCW
Fee \$ 105.00 Received by HDW # E017221 Date 4-30-92
Publication prepared by _____ Date _____ Published in _____
Publication approved _____ Date _____

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. _____, and said application is hereby _____.

1. Approval of said application is subject to the following limitations and conditions:

a. SUBJECT TO ALL PRIOR WATER RIGHTS.

b. Proof of construction of works and application of water to beneficial use shall be submitted on or before _____, 19 ____.

c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.

d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.

e. Other:

Exhibit E

MORATORIUM EXEMPTION QUESTIONNAIRE

IF YOUR APPLICATION PROPOSES AN IRRIGATION USE, PLEASE
COMPLETE AND RETURN THE FOLLOWING:

- Has ALL the land you propose to irrigate been irrigated with surface water in the past?

yes

- Do you summer fallow any of your irrigated land? If so, how many acres?

none

- List the water right(s) you have used to irrigate the land listed on the application. If you have received water from a canal company or water district, please identify the name of canal or water district.

Abundant Springs Canal

- During the last ten years, how many years has your surface irrigation water been available for the entire irrigation season?

all of it

- What crops have you grown in the past ten years?

Potatoes, Sugar Beets & Wheat

I understand if my proposed diversion of groundwater is approved as a supplemental use, that I can only use my well during periods of drought, when a full supply of water is not available. I also agree that my surface water will be fully used to the extent available, will not be sold or used on other lands, and that a change in use of my surface water may result in revocation of any groundwater right granted pursuant to my application for supplemental water.

Dated this 2 day of June, 1992.

(Please sign)

Kern Spafford

Right #

35-08980

Exhibit F

RECEIVED

APR - 2 2002

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP

Department of Water Resources

Please print or type. Attach pages with additional information. Instructions are included at the end of this form.
 Incomplete forms will be returned.

1. Please list the water right number(s) and/or adjudication claim number(s) (if any) for each water right to be changed. List just the adjudication claim number if there is no corresponding water right record on file with the department. Indicate, by checking in the space provided (under the "split" heading), if the change in ownership is limited to a portion of a water right in which case division of the existing water right or adjudication claim record will be required.

Water Right No(s).	Adjudication Claim No(s).	Split	Water Right No(s).	Adjudication Claim No(s).	Split
<u>35-7667</u>	_____	___	_____	<u>35-2296</u>	___
<u>35-9000</u>	_____	___	_____	<u>35-4022</u>	___
<u>35-8980</u>	} <u>EASTERN</u>	___	_____	<u>35-2385</u>	___
<u>35-9002</u>		___	_____	<u>35-2485</u>	___
_____	<u>35-7068</u>	___	_____	_____	___

2. The following **REQUIRED** information must be submitted with this form:

A. The appropriate **FILING FEE**. See instructions for fee amounts.

B. A copy of the most recent **DEED, TITLE POLICY, CONTRACT OF SALE** or other legal document indicating your ownership of the property and water right(s) or claim(s) in question, **WITH ATTACHED LEGAL DESCRIPTION**.

C. Either of the following (if necessary to clarify division of water rights or other complex property descriptions):
PLAT OF PROPERTY or **SURVEY MAP** clearly showing the location of the point(s) of diversion and place of use of your water right(s) and/or adjudication claim(s) (these are usually attached to your deed or on file with the county).

OR

If your water right(s) and/or adjudication claim(s) is for ten or more acres of irrigation, you must submit a USDA Farm Service Agency **AERIAL PHOTO** with the irrigated acres outlined and point(s) of diversion clearly marked. The **AERIAL PHOTO** should be submitted in place of the **PLAT OF PROPERTY** or **SURVEY MAP**.

3. Name and Address of Former Owner/Claimant(s) Vern R and Marilyn A Duffin, husband and wife
2142 S 2800 W, Aberdeen, ID 83210
4. New Owner/Claimant(s) Richard W and Iris Schelske, husband and wife
 Name Connector (Check one): [] and, [] or, [] and/or
- New Mailing Address PO Box 272
- City, State and ZIP Code Aberdeen, ID 83210
- New Telephone Number (208) 397-4816
5. Date you acquired the property 3/13/02

6. If the change in ownership affects the entire water right for each water right or adjudication claim number listed in item 1, THEN SKIP THIS ITEM AND GO TO ITEM 7. If the change in ownership divides the water right(s) among multiple owners, you must describe, in detail, your portion of each water right after the change. Fill in the appropriate spaces in the box(es) below to describe your water right(s) after the change (one water right per box, you may copy this page as necessary). If your quantity of water is greater than a proportionate split, you must attach documentation to show justification for a larger amount. If you are not sure how to identify your portion of the original water right or adjudication claim records, please contact the nearest IDWR office for assistance.

DESCRIPTION OF YOUR PORTION OF WATER RIGHT (If the right(s) will not be split, skip this area and proceed to item 7)		
Water Right and/or Adjudication Claim Number _____		
Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation	_____	_____
Stock	_____	_____
Domestic	_____	_____
Other _____	_____	_____
Total	_____	_____

DESCRIPTION OF YOUR PORTION OF WATER RIGHT (If the right(s) will not be split, skip this area and proceed to item 7)		
Water Right and/or Adjudication Claim Number _____		
Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation	_____	_____
Stock	_____	_____
Domestic	_____	_____
Other _____	_____	_____
Total	_____	_____

7. Signature of New Owner(s) or Claimant(s) Richard W. Schickler
(include title if applicable) Iris Schickler

For Snake River Basin Adjudication Claims: Please attach a Notice of Appearance completed by your attorney, if you wish IDWR to correspond with him/her for all matters related to your claims.

For Office Use Only			
Received by <u>gc</u>	Date <u>3/22/02</u>	Fee <u>\$225-</u>	
Received by <u>gc</u>	Date <u>3/26/02</u>	Receipt No. <u>E027574</u>	
Processed by _____	AJ Date _____	WR _____	Date _____

Exhibit G

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED
FEB 03 2012
Department of Water Resources
Eastern Region

Notice of Change in Water Right Ownership

1. List the numbers of all water rights and/or adjudication claim records to be changed. If you only acquired a portion of the water right or adjudication claim, check "Yes" in the "Split?" column.

Water Right/Claim No.	Split?	Water Right/Claim No.	Split?	Water Right/Claim No.	Split?
35-07068 <i>OK</i>	Yes <input type="checkbox"/>	35-7667 <i>OK</i>	Yes <input type="checkbox"/>		Yes <input type="checkbox"/>
35-02296 <i>OK</i>	Yes <input type="checkbox"/>	35-9000 <i>OK</i>	Yes <input type="checkbox"/>		Yes <input type="checkbox"/>
35-04022 <i>OK</i>	Yes <input type="checkbox"/>	35-8980 <i>OK</i>	Yes <input type="checkbox"/>	<i>Specifically referenced on the deed</i>	
35-02385 <i>OK</i>	Yes <input type="checkbox"/>	35-9002 <i>OK</i>	Yes <input type="checkbox"/>		
35-02485 <i>OK</i>	Yes <input type="checkbox"/>		Yes <input type="checkbox"/>		

2. Previous Owner's Name: Richard and Iris Schelske
Name of current water right holder/claimant
3. New Owner(s)/Claimant(s): Richard Schelske and Iris Schelske
Name of each new owner as listed on the conveyance document
- Jeffrey T. Duffin
New owner continued Name connector ☐ and ☐ or ☒ and/or
- Chana Duffin
Mailing address
- PO Box 525 Aberdeen ID 83210
City State ZIP
- 208-221-1115 jeff@sunriverofidaho.com
Telephone Email

4. If the water rights and/or adjudication claims were split, how did the division occur?
- ☐ The water rights or claims were divided as specifically identified in a deed, contract, or other conveyance document.
- ☐ The water rights or claims were divided proportionately based on the portion of their place(s) of use acquired by the new owner.

5. Date you acquired the water rights and/or claims listed above: 12/22/2011

6. This form must be signed and submitted with the following **REQUIRED** items:

- A copy of the conveyance document – warranty deed, quitclaim deed, court decree, contract of sale, etc. The conveyance document must include a legal description of the property or description of the water right(s) if no land is conveyed.
- Plat map, survey map or aerial photograph which clearly shows the place of use and point of diversion for each water right and/or claim listed above (if necessary to clarify division of water rights or complex property descriptions).
- Filing fee (see instructions for further explanation):
 - \$25 per *undivided* water right.
 - \$100 per *split* water right.
 - No fee is required for pending adjudication claims.

7. Signature: *Richard Schelske* *Iris Schelske* 12/22/2011
Signature of new owner/claimant Title, if applicable Date

Signature: *Jeffrey T. Duffin* *Chana Duffin* 12-22-2011
Signature of new owner/claimant Title, if applicable Date

For IDWR Office Use Only:

Received by *JB* Date 2/3/2012 Receipt No. E037300 Receipt Amt. \$225.-

Approved by _____ Processed by _____ Date _____

RECORDING REQUESTED

BY:

Baker & Harris
266 W Bridge
Blackfoot, ID 83221

Instrument # 634092
BINGHAM COUNTY, IDAHO
2011-12-27 08:16:31 AM No. of Pages: 6
Recorded for: BAKER & HARRIS
SARA J. STAUB Fee: \$25.00
Ex-Officio Recorder Deputy C Robinson
Index To: GREENFIELD ACRES WATER &
Electronically Recorded by Simplifile

space above this line for Recording use only

GIFT DEED

THIS DEED is made this 22 day of December, 2011, between Richard W. Schelske and Iris Schelske, husband and wife, dba D-7 Farms, the Grantors, and Jeffrey T. Duffin and Chana Duffin, husband and wife, of PO Box 525, Aberdeen, ID 83210, the Grantees.

WITNESSETH:

That the said Grantors, for and in consideration of LOVE and AFFECTION, do by these presents give, convey and confirm unto the said Grantees, their heirs and assigns, forever, an undivided one-half interest in and to the following-described real and personal property lying and being in the Counties of Bingham and Power, State of Idaho, and described as follows:

LEGAL DESCRIPTIONS

Parcel D1:

Township 7 South, Range 30 E.B.M., Power County, Idaho
Section 9: NE ¼

Parcel D2:

Township 6 South, Range 30 E.B.M., Power County, Idaho
Section 34: NE ¼

EXCEPTING THEREFROM: A tract of land in the NE ¼ NE ¼ of said section described as follows: Beginning at a point which is W. 25 feet from the NE corner of said Section 34; thence S. 0°01' E. 100 feet; thence S. 89°52' W. 150 feet; thence N. 0°01' W. 100 feet; thence N. 89°52' E. 150 feet to the point of beginning.

Parcel D3:

Township 6 South, Range 30 E.B.M., Bingham County, Idaho
Section 26: SW ¼, Except the West 33 feet for road right-of-way.

Parcel D4:

Township 6 South, Range 30 E.B.M., Bingham County, Idaho
Section 26: SE ¼

Parcel D5:

Township 6 South, Range 30 E.B.M., Bingham County, Idaho
Section 15: SW ¼

Excepting therefrom the following described parcel: A parcel of land in the SW¼ SW¼ of Section 15, Township 6 South, Range 30 E.B.M., Bingham County, Idaho, described as follows: Commencing at the Southwest corner of said Section 15 which is monumented with a 5/8" rebar and aluminum cap stamped for corner and PELS 2341; thence South 89°59'00" East along the South line of said Section 15, a distance of 872.74 feet to the TRUE POINT OF BEGINNING, Thence N 01°57'25" West, a distance of 168.85 feet to a ½" rebar and plastic cap stamped PELS 2341; thence N 89°09'10" East, a distance of 65.26 feet to a ½" rebar and plastic cap stamped PELS 2341; thence N 00°50'00" West, a distance of 42.17 feet to a ½" rebar and plastic cap stamped PELS 2341; thence S 89°59'00" East, a distance of 156.39 feet to a ½" rebar and plastic cap stamped PELS 2341; thence S 00°01'00" West a distance of 211.90 feet to a point on the South line of said Section 15; thence N 89°59'00" West, along said South line, a distance of 215.20 feet to the TRUE POINT OF BEGINNING.

Excepting therefrom the Southerly 30.00 feet of the above described parcel for the county road right-of-way.

Together with an easement for ingress and egress over and across the Easterly 103.00 feet of the following described parcel.

A parcel of land in the SW¼SW¼ of Section 15, Township 6 South, Range 30 E.B.M., Bingham County, Idaho, described as follows: Commencing at the Southwest corner of said Section 15 which is monumented with a 5/8" rebar and aluminum cap stamped for corner and PELS 2341; thence South 89°59'00" East along the South line of said Section 15, a distance of 872.74 feet to the TRUE POINT OF BEGINNING, Thence N 01°57'25" West, a distance of 168.85 feet to a ½" rebar and plastic cap stamped PELS 2341; thence N 89°09'10" East, a distance of 65.26 feet to a ½" rebar and plastic cap stamped PELS 2341; thence N 00°50'00" West, a distance of 42.17 feet to a ½" rebar and plastic cap stamped PELS 2341; thence S 89°59'00" East, a distance of 156.39 feet to a ½" rebar and plastic cap stamped PELS 2341; thence S 00°01'00" West a distance of 211.90 feet to a point on the South line of said Section 15; thence N 89°59'00" West, along said South line, a distance of 215.20 feet to the TRUE POINT OF BEGINNING.

Parcel D6:

Township 6 South, Range 31 E.B.M., Bingham County, Idaho

Section 20: S½S½NE¼; S½SE¼NW¼; Excepting therefrom the following described parcel: A parcel of land in the S½SE¼NE¼ of Section 20, Township 6 South, Range 31 East of the Boise Meridian, Bingham County, Idaho, described as follows: Commencing at the East ¼ corner of said Section 20 which is monumented with a 5/8" rebar and aluminum cap stamped PELS 2341, said point being left of State Highway 39 center line sta. 478+76.41 a distance of 28.97 feet; thence North 89°46'28" West along the latitudinal center line of said Section 20, a distance of 32.50 feet to a point on the Westerly right-of-way line of said State Highway 39 being 61.47 feet left of State Highway 39 center line sta. 478 + 76.41, said point being monumented with a ½" rebar and plastic cap stamped PELS 2341, the TRUE POINT OF BEGINNING; thence North 89°46'28" West, continuing along said latitudinal centerline,

a distance of 323.15 feet to a ½" rebar and plastic cap stamped PELS 2341; thence North 00°02'12" West a distance of 505.00 feet to a ½" rebar and plastic cap stamped PELS 2341; thence South 89°46'28" East, a distance of 323.15 feet to a point on the Westerly right-of-way line of said State Highway 39, said point being left of said State Highway 39 center line sta. 483+71.42 a distance of 60.09 feet and monumented with a ½" rebar and plastic cap stamped PELS 2341; thence South 00°02'12" East along said right-of-way line, a distance of 505.00 feet to the TRUE POINT OF BEGINNING.

Parcel D7:

Township 5 South, Range 31 E.B.M., Bingham County, Idaho
Section 19: SE¼NE¼
Section 20: W¼NW¼

WATER RIGHTS

Together With:

Parcel D1:

Idaho Department of Water Resources License Number 35-07068, Priority Date February 26, 1969, 2.8 cfs.

Parcel D2:

Idaho Department of Water Resources License Number 35-02296, Priority Date January 20, 1953, 2.38 cfs.

Parcel D3:

Idaho Department of Water Resources License Number 35-04022, Priority Date November 20, 1959, 2.22 cfs.

Parcel D4:

Idaho Department of Water Resources License Number 35-02385, Priority Date August 27, 1954, 2.42 cfs.

Parcel D5:

Idaho Department of Water Resources License Number 35-02485, Priority Date November 30, 1956, 2.3 cfs.

Parcel D6:

60 shares of stock, Certificate #5410 or as may be re-issued in Aberdeen-Springfield Canal Company.

Idaho Department of Water Resources License Number 35-7667, Priority Date June 11, 1992, 1.1 cfs.

Idaho Department of Water Resources Permit Number 35-9000, 0.9 cfs.

Parcel D7:

110 shares of stock, Certificate #5409 or as may be re-issued in Aberdeen Springfield Canal Company.

Idaho Department of Water Resources Permit Number 35-8980, 2.2 cfs.

Idaho Department of Water Resources Permit Number 35-9002, 3.66 cfs.

IRRIGATION EQUIPMENT

Together with all fixtures, including but not limited to the following: All pumps, motors, columns, tubes, shafts, bowls, panels and all electrical appurtenances, mainline, laterals, wheel lines, pivot/circle irrigation systems, risers, heads, couplers, end plugs, valves, valve openers, reducers, joints, tees and wyes, as well as all additions and replacements thereof, hereby declared appurtenant thereto and which are more particularly described as follows:

Parcel D1:

- 1 - 150hp General Electric Motor Serial #FLJ604172
- 1 - Berkley Turbine Pump Serial #7426074
- 2640 feet 8" Steel Mainline
- 6 - ¼ mile Thunderbird Wheel Lines

Parcel D2:

- 1 - 125hp US Motor Serial #1070092
- 1 - Layne & Bowler Turbine Pump Serial #26080
- 2640 feet 8" Buried Steel Mainline
- 6 - ¼ mile Funk Electric Wheel Lines

Parcel D3:

- 1 - 125hp US Motor Serial #1171897
- 1 - Wintroath Turbine Pump Serial #9297
- 100 feet 8" Buried Steel Mainline
- 1 - Eight Tower Model 5071 Valley Center Pivot with corner system Serial #24252

Parcel D4:

- 1 - 100hp A.O. Smith Motor Serial #7010
- 1 - Layne Turbine Pump Serial #27937
- 2600 feet 8" Buried Steel Mainline
- 6 - ¼ mile Thunderbird Wheel Lines

Parcel D5:

- 1 - 250hp US Motor Serial #629J0
- 1 - Worthington 14MI6 Pump Serial #Unknown
- 4600 feet 6" Steel Mainline
- 10 - ¼ mile Thunderbird Wheel Lines

Parcel D6:

- 1 - 50hp General Electric Motor Serial #JJJ926374
- 1 - Johnson Turbine Pump Serial #Unknown
- 3300 feet 6" Buried Steel Mainline
- 3 - ¼ mile Thunderbird Wheel Lines

Parcel D7:

- 1 - 100hp U.S. Motor Serial #11005788
- 1 - Wintroath Turbine Pump Serial #Unknown
- 2600 feet 8" Buried Transite Mainline
- 7 - ¼ mile Thunderbird Wheel Lines

FIXTURES

Parcel D2

- 2- Potato Cellars

Parcel D5

- 5- Granaries
- 1- Shed
- 2- Shops

Parcel D7

- House

SUBJECT TO a debt owing to Idaho AgCredit, FLCA, a wholly owned subsidiary of Idaho Agricultural Credit Association, a corporation, existing and operating under the Farm Credit Act of 1971, as amended, having its principal place of business at 188 W Judicial, PO Box 985, Blackfoot, Idaho 83221, one-half of which the Grantees assume and agree to pay.

TO HAVE AND TO HOLD all and singular the said premises together with the appurtenances and privileges thereto belonging unto the said Grantees, their successors and assigns, forever.

WITNESS the hand of the Grantors the day and year first above written.

Richard W. Schelske 12-22-11 Iris Schelske 12-22-11
Richard W. Schelske Iris Schelske

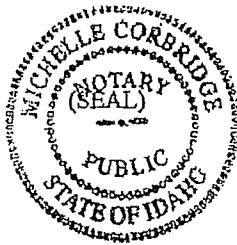
STATE OF IDAHO)

: ss.

County of Bingham)

On this 22 day of December, 2011, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared Richard W. Schelske and Iris Schelske, husband and wife, dba D-7 Farms, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

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



Michelle Corbridge
Notary Public for Idaho
Residing at ~~Blackfoot~~ Aberdeen RS.
My Commission Expires: 08/28/2015

<p>RECORDING REQUESTED BY: Baker & Harris 266 W Bridge Blackfoot, ID 83221</p>	<p>Instrument # 201466 POWER COUNTY, IDAHO 12-23-2011 10:53:33 AM No. of Pages: 6 Recorded for: BAKER & HARRIS CHRISTINE STEINLICHT Fee: \$26.00 Ex-Officio Recorder Deputy: maureen schelske Electronically Recorded by Simplifile</p> <p>space above this line for Recording use only</p>
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GIFT DEED

THIS DEED is made this 22 day of December, 2011, between Richard W. Schelske and Iris Schelske, husband and wife, dba D-7 Farms, the Grantors, and Jeffrey T. Duffin and Chana Duffin, husband and wife, of PO Box 525, Aberdeen, ID 83210, the Grantees.

WITNESSETH:

That the said Grantors, for and in consideration of LOVE and AFFECTION, do by these presents give, convey and confirm unto the said Grantees, their heirs and assigns, forever, an undivided one-half interest in and to the following-described real and personal property lying and being in the Counties of Bingham and Power, State of Idaho, and described as follows:

LEGAL DESCRIPTIONS

Parcel D1:

Township 7 South, Range 30 E.B.M., Power County, Idaho
Section 9: NE ¼

Parcel D2:

Township 6 South, Range 30 E.B.M., Power County, Idaho
Section 34: NE¼

EXCEPTING THEREFROM: A tract of land in the NE¼NE¼ of said section described as follows: Beginning at a point which is W. 25 feet from the NE corner of said Section 34; thence S. 0°01' E. 100 feet; thence S. 89°52' W. 150 feet; thence N. 0°01' W. 100 feet; thence N. 89°52' E. 150 feet to the point of beginning.

Parcel D3:

Township 6 South, Range 30 E.B.M., Bingham County, Idaho
Section 26: SW¼, Except the West 33 feet for road right-of-way.

Parcel D4:

Township 6 South, Range 30 E.B.M., Bingham County, Idaho
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a distance of 323.15 feet to a ½" rebar and plastic cap stamped PELS 2341; thence North 00°02'12" West a distance of 505.00 feet to a ½" rebar and plastic cap stamped PELS 2341; thence South 89°46'28" East, a distance of 323.15 feet to a point on the Westerly right-of-way line of said State Highway 39, said point being left of said State Highway 39 center line sta. 483+71.42 a distance of 60.09 feet and monumented with a ½" rebar and plastic cap stamped PELS 2341; thence South 00°02'12" East along said right-of-way line, a distance of 505.00 feet to the TRUE POINT OF BEGINNING.

Parcel D7:

Township 5 South, Range 31 E.B.M., Bingham County, Idaho
Section 19: SE¼NE¼
Section 20: W¼NW¼

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- 1 - 50hp General Electric Motor Serial #JJI926374
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Parcel D7:

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- 7 - ¼ mile Thunderbird Wheel Lines

FIXTURES

Parcel D2

- 2- Potato Cellars

Parcel D5

- 5- Granaries
- 1- Shed
- 2- Shops

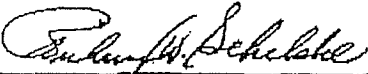
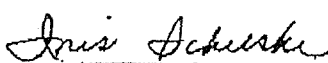
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TO HAVE AND TO HOLD all and singular the said premises together with the appurtenances and privileges thereto belonging unto the said Grantees, their successors and assigns, forever.

WITNESS the hand of the Grantors the day and year first above written.

 12-22-11  12-22-11
Richard W. Schelske Iris Schelske

STATE OF IDAHO)

: ss.

County of Bingham)

On this 21 day of December, 2011, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared Richard W. Schelske and Iris Schelske, husband and wife, dba D-7 Farms, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

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



Michelle Corbridge
Notary Public for Idaho
Residing at ~~Blackfoot~~ Aberdeen Id.
My Commission Expires: 08/28/2015

Exhibit H

Randall C. Budge (ISB #: 1949)
Carol Tippi Volyn (ISB#: 6371)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
P.O. Box 1391
Pocatello, Idaho 83204-1391
Telephone: (208)232-6101
Fax: (208)232-6109

Attorneys for Plaintiffs

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF POWER**

ABERDEEN-SPRINGFIELD CANAL
COMPANY, an Idaho Corporation, Jeffrey and
Chana Duffin, individual, as stockholders, and as
husband and wife,

Plaintiffs,

vs.

IDAHO DEPARTMENT OF WATER
RESOURCES, an executive department of the
State of Idaho,

Defendants,

and

A&B IRRIGATION DISTRICT, AMERICAN
FALLS RESERVOIR DISTRICT #2, BURLEY
IRRIGATION DISTRICT, MILNER
IRRIGATION DISTRICT, MINIDOKA
IRRIGATION DISTRICT, NORTH SIDE
CANAL COMPANY, and TWIN FALLS
CANAL COMPANY,

Defendant-Intervenors.

Case No. CV-2014-165

**PLAINTIFFS' RESPONSES TO
DEFENDANT-INTERVENORS'
FIRST REQUESTS FOR
ADMISSION TO PLAINTIFF
ABERDEEN-SPRINGFIELD CANAL
COMPANY**

Plaintiff, through Counsel responds to SWC's First Request for Admission to Plaintiff

dated September 5, 2014 pursuant to Rules 33, 34 and 36 of the Idaho Rules of Civil Procedure
as follows.

**PLAINTIFFS' RESPONSES TO DEFENDANT-INTERVENORS' FIRST REQUESTS FOR ADMISSION
TO PLAINTIFF ASCC - 1**

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Please admit that the well referenced in Paragraph VIII of your *Complaint for Declaratory Relief* was not excavated, opened, drilled, or constructed by the Aberdeen-Springfield Canal Company.

RESPONSE TO REQUEST FOR ADMISSION NO. 1: Admit.

REQUEST FOR ADMISSION NO. 2: Please admit that the well referenced in Paragraph VIII of your *Complaint for Declaratory Relief* was not excavated, opened, drilled, or constructed pursuant to a well drilling permit issued by the Idaho Department of Water Resources to the Aberdeen-Springfield Canal Company.

RESPONSE TO REQUEST FOR ADMISSION NO. 2: Admit.

REQUEST FOR ADMISSION NO. 3: Please admit that the well referenced in Paragraph VIII of your *Complaint for Declaratory Relief* was not excavated, opened, drilled, or constructed pursuant to a water right permit or license issued by the Idaho Department of Water Resources.

RESPONSE TO REQUEST FOR ADMISSION NO. 3: After reasonable inquiry, this Defendant does not have sufficient information at this time to admit or deny this request and therefore, it is denied.

REQUEST FOR ADMISSION NO. 4: Please admit that the well referenced in Paragraph VIII of your *Complaint for Declaratory Relief* is the point of diversion included in application for permit no. 35-8980 filed by Vern Duffin on January 16, 1992.

RESPONSE TO REQUEST FOR ADMISSION NO. 4: After reasonable inquiry, this Defendant does not have sufficient information at this time to admit or deny this request and therefore, it is denied.

REQUEST FOR ADMISSION NO. 5: Please admit that the Idaho Department of Water Resources has not issued a water right permit or license for application for permit no. 35-8980.

RESPONSE TO REQUEST FOR ADMISSION NO. 5: After reasonable inquiry, this Defendant does not have sufficient information at this time to admit or deny this request and therefore, it is denied.

Dated this 2nd day of October, 2014.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: Randall C. Budge

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 2nd day of October, 2014, I caused a true and correct copy of the foregoing document to be served on the following parties by the indicated methods:

Garrick Baxter
John Homan
Meghan Carter
Deputy Attorney General
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098
garrick.baxter@idwr.idaho.gov
john.homan@idwr.idaho.gov
meghan.carter@idwr.idaho.gov

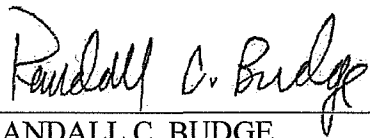
☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email

John K. Simpson
Travis L. Thompson
Paul L. Arrington
Scott A. Magnuson
BARKER ROSHOLT & SIMPSON, LLP
195 River Vista Place, Suite 204
Twin Falls, Idaho 83301-3029
tlr@idahowaters.com

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email

W. Kent Fletcher
FLETCHER LAW OFFICE
P.O. Box 248
Burley, Idaho 83318
wkf@pmt.org

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email



RANDALL C. BUDGE

Exhibit I

Randall C. Budge (ISB #: 1949)
Carol Tippi Jarman (ISB#: 6371)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
P.O. Box 1391
Pocatello, Idaho 83204-1391
Telephone: (208)232-6101
Fax: (208)232-6109

Attorneys for Plaintiffs

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF POWER**

ABERDEEN-SPRINGFIELD CANAL
COMPANY, an Idaho Corporation, Jeffrey and
Chana Duffin, individual, as stockholders, and as
husband and wife,

Plaintiffs,

vs.

IDAHO DEPARTMENT OF WATER
RESOURCES, an executive department of the
State of Idaho,

Defendants,

and

A&B IRRIGATION DISTRICT, AMERICAN
FALLS RESERVOIR DISTRICT #2, BURLEY
IRRIGATION DISTRICT, MILNER
IRRIGATION DISTRICT, MINIDOKA
IRRIGATION DISTRICT, NORTH SIDE
CANAL COMPANY, and TWIN FALLS
CANAL COMPANY,

Defendant-Intervenors.

Case No. CV-2014-165

**PLAINTIFFS' RESPONSES TO
DEFENDANT-INTERVENORS'
FIRST REQUESTS FOR
ADMISSION TO PLAINTIFFS
JEFFREY AND CHANA DUFFIN**

Plaintiff, through Counsel responds to SWC's First Requests for Admission to Plaintiff

dated September 5, 2014 pursuant to Rules 33, 34 and 36 of the Idaho Rules of Civil Procedure
as follows.

**PLAINTIFFS' RESPONSES TO DEFENDANT-INTERVENORS' FIRST REQUESTS FOR ADMISSION
TO PLAINTIFFS DUFFIN - 1**

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Please admit that the well referenced in Paragraph VIII of your *Complaint for Declaratory Relief* was not excavated, opened, drilled, or constructed by the Aberdeen-Springfield Canal Company.

RESPONSE TO REQUEST FOR ADMISSION NO. 1: Admit.

REQUEST FOR ADMISSION NO. 2: Please admit that the well referenced in Paragraph VIII of your *Complaint for Declaratory Relief* was not excavated, opened, drilled, or constructed pursuant to a well drilling permit issued by the Idaho Department of Water Resources.

RESPONSE TO REQUEST FOR ADMISSION NO. 2: Admit.

REQUEST FOR ADMISSION NO. 3: Please admit that the well referenced in Paragraph VIII of your *Complaint for Declaratory Relief* was not excavated, opened, drilled, or constructed pursuant to a water right permit or license issued by the Idaho Department of Water Resources.

RESPONSE TO REQUEST FOR ADMISSION NO. 3: After reasonable inquiry, this Defendant does not have sufficient information at this time to admit or deny this request and therefore, it is denied.

REQUEST FOR ADMISSION NO. 4: Please admit that the well referenced in Paragraph VIII of your *Complaint for Declaratory Relief* is the point of diversion included in application for permit no. 35-8980 filed by Vern Duffin on January 16, 1992.

RESPONSE TO REQUEST FOR ADMISSION NO. 4: After reasonable inquiry, this Defendant does not have sufficient information at this time to admit or deny this request and therefore, it is denied.

REQUEST FOR ADMISSION NO. 5: Please admit that the Idaho Department of Water Resources has not issued a water right permit or license for application for permit no. 35-8980.

RESPONSE TO REQUEST FOR ADMISSION NO. 5: After reasonable inquiry, this

Defendant does not have sufficient information at this time to admit or deny this request and therefore, it is denied.

REQUEST FOR ADMISSION NO. 6: Please admit that you have been delivered surface water by Aberdeen-Springfield Canal Company to the 175 acre parcel referenced in Paragraph VIII of your *Complaint for Declaratory Relief*.

RESPONSE TO REQUEST FOR ADMISSION NO. 6: Admit.

Dated this 2nd day of October, 2014.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: _____

Randall C. Budge

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 2nd day of October, 2014, I caused a true and correct copy of the foregoing document to be served on the following parties by the indicated methods:

Garrick Baxter
John Homan
Meghan Carter
Deputy Attorney General
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098
garrick.baxter@idwr.idaho.gov
john.homan@idwr.idaho.gov
meghan.carter@idwr.idaho.gov

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wkf@pmt.org

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email



RANDALL C. BUDGE

Exhibit J

Form 235-1

09/2010

RECEIVED

JUL 08 2013

DEPARTMENT OF
WATER RESOURCES

Drilling Permit No.

869326

Drilling Permit I.D. Tag No.

00020824

Water Right Permit No.

Injection Permit No.

State of Idaho
Department of Water Resources
APPLICATION FOR DRILLING PERMIT
(FOR THE CONSTRUCTION OF A WELL)

1. **Property Owner (please print):** Aberdeen-Springfield Canal Company

2. **Current Mailing Address:** P.O. Box 857

City: Aberdeen State: ID Zip Code: 83210-0857 Telephone: (208) 397-4192

3. **Proposed Well Location:** Twp. 5 South Rge. 31 East Sec. 20 SE 1/4 SE 1/4 NE 1/4

Gov't Lot No. County Bingham Lat. 42d58m30.47s N Long. 112d50m53.5s W

Street Address of Well Location approx. 1530 N Powerline Rd. City

Lot, block and subdivision Give at least name of road + Distance to Nearest Road or Landmark

4. **Proposed Use of Well: (Note: Any well drilled for a Public Water Supply requires prior DEQ approval.)**

☐ DOMESTIC (42-111a): The use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation of up to 1/2 acre of land, if the total use is not in excess of 13,000 gpd.

☐ DOMESTIC (42-111b): Any other use if the diversion rate does not exceed 0.04 cfs (18 gpm) and a diversion volume of 2500 gpd.

NON-DOMESTIC: ☐ Irrigation ☐ Municipal ☐ Industrial ☐ Public Water Supply
☐ Commercial ☒ Other Recovery (IC 42-228)
(Describe)

☐ INJECTION

☐ MONITORING: A well bore schematic and map is required. No. of proposed wells: _____

5. **Well Construction Information:**

A. ☒ New well ☐ Modify ☐ Deepening ☐ Replace Previous Well # _____

B. Proposed Casing Diameter 24" Proposed Maximum Depth 150'

C. Anticipated bottom hole temperature:

☒ 85°F or less (Cold Water Well) ☐ 85°F to 212°F (Low Temp. Geo. Well) ☐ 212°F or more (Geothermal Well)

6. **Construction Start Date:** July 1, 2013

7. **Drilling Company Name:** Vollmer Well Drilling Driller's Lic. No. 383

NOTE: The actual well driller must be identified prior to drilling.

8. **Applicant's Signature:**  Date: June 14, 2013

Title: General Manager

Address (if different than owner): _____

City: _____ State: _____ Zip Code: _____ Telephone: _____



Aberdeen-Springfield Canal Company

144 South Main
PO BOX 857
Aberdeen, ID 83210
www.ascanal.org
Tel (208) 397-4192 Fax (208) 397-4510

RECEIVED

JUL 08 2013

DEPARTMENT OF
WATER RESOURCES

June 14, 2013

Idaho Department of Water Resources
900 N Skyline Dr. Suite A
Idaho Falls, ID 83402-1718

Re: Supplementary information for Application for Drilling Permit.

Aberdeen-Springfield Canal Company (ASCC) is responsible for providing irrigation water to nearly 62,000 acres of crop land through 190 miles of surface canals and laterals. Irrigation on the system began in the early 1900's and since the beginning deliveries to shareholders have been measured, as have diversions and spills. For approximately the first 20 years of operation, system transmission loss was estimated at 30-40%. By the late 1920's, transmission loss rates had climbed to 50% and the Company and its shareholders formed the South Bingham Drainage District to begin constructing drains to alleviate system-wide sub-water problems. For the past 25 years, transmission loss rates have increased to 55-60%. Over the last 25 years, ASCC's average annual loss is 184,945 acre-feet/year.

ASCC began measuring the depth-of-surface in local wells in 1942 as part of its effort to locate drain projects. Depth-of-surface measurements were taken monthly by the Company's General Manager, a practice that did not end until 1992. Over the years, a total of 82 wells were measured ranging in depth from 50-225'. The composite hydrology developed from this data clearly (and statistically significantly) showed the positive response in depth-of-surface measurements in all wells (regardless of depth) in response to bringing water into the ASCC system. In 2007, ASCC began development of a GIS-based ground-water response model using this historical well data. That development culminated in a statistically valid model that was used to estimate relative loss rates by reach of canal (Holder, C.B. 2009, *Characterization, Modeling and Mapping of Canal Seepage from Ground Water Elevation Responses*, Master's Thesis, Idaho State University). Soon thereafter, ASCC entered into a Memorandum of Agreement with the Idaho Department of Water Resources to further the calibration of the State's ESPA ground-water model. This memorandum included the placement of pressure-transducer dataloggers in some of the wells that produced ASCC's historical data. ASCC began collecting data in 2010 and started including this data in its model.

Briefly, ASCC's ground-water response model creates a three-dimensional ground-water elevation surface under about 70% of the Company's service area for every day of the year. Modern data is consistent with historical response patterns. This method (Kriging) allows statistically valid determination of ground-water response to ASCC loss for virtually any point on the modeled surface, as well as providing an estimate for the average depth-of-surface of ground-water for that point.

One of ASCC's most problematic laterals is 'J' lateral located north of Aberdeen (Figure 1). 'J' lateral is a sub-system of the Company's Highline canal and stretches approximately 2.3 miles with an average fall of 0.013% (8 inches per mile). This lateral not only experiences loss rates above 65%, its low flow rate is conducive to the growth of Flowering Rush, one of ASCC's most problematic aquatic weeds. The result of the high loss rates and low flow rates is difficulty delivering sufficient water to serve the acres attached to 'J' lateral, particularly the approximately 320 acres served from the end of the lateral.

ASCC proposes to construct a recovery well, as authorized by IC 42-228, at the terminal end of 'J' lateral to supplement delivery to approximately 320 acres served by ASCC Head Gates J-2-2a, J-2-3, J-2-4, J-2-6, and J-2-8. ASCC's ground-water surface model shows a strong response to bringing water into the system at this location (approximately in the NE corner of the SESENE of Section 20, Township 5 South, Range 31 E.B.M.) (Figure 2).

Steven T. Howser,
General Manager

Figure 2.
GROUND WATER LEVEL: J lateral at 42°58'30.47"W 112°50'53.5"N

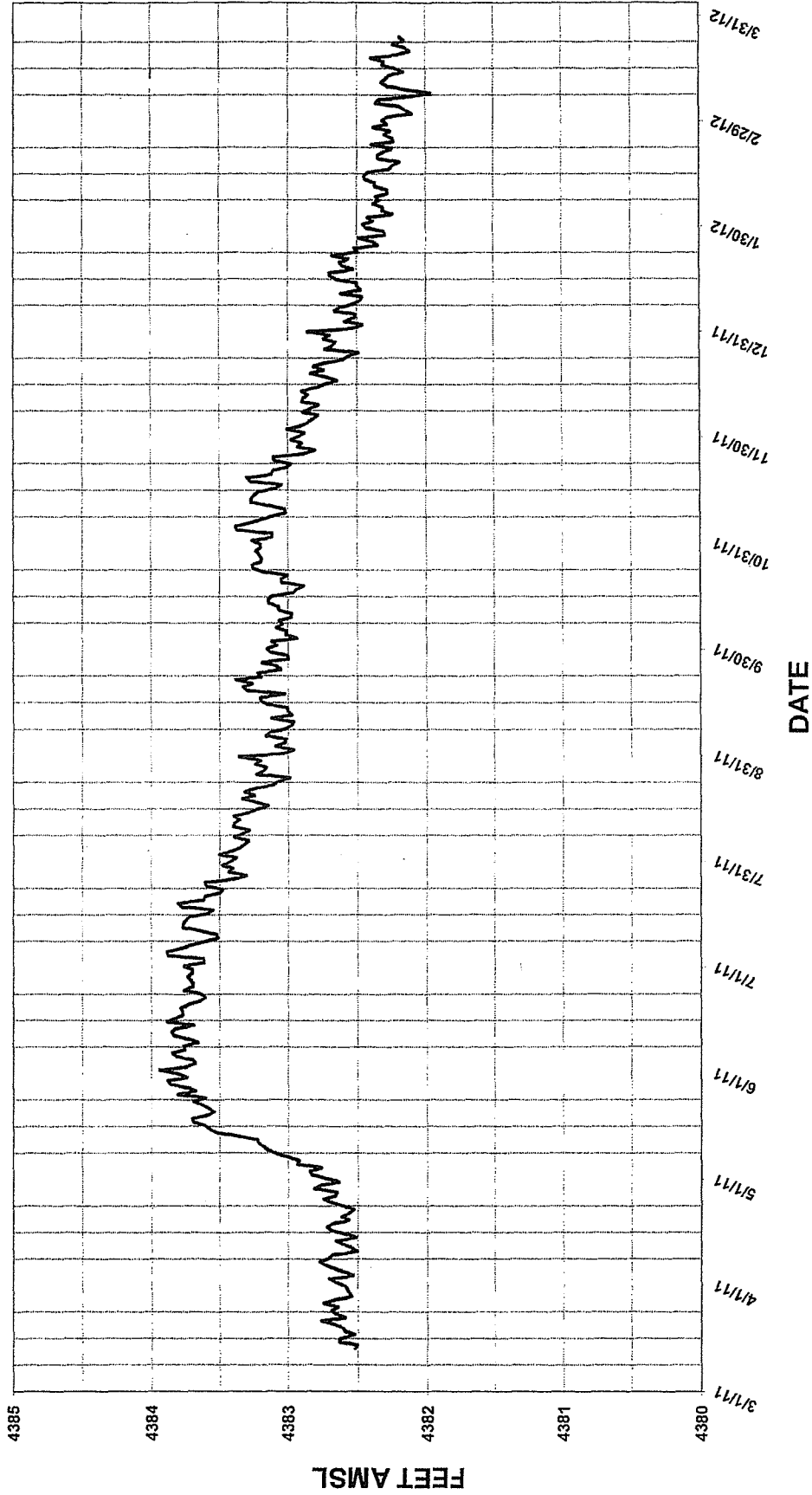


Exhibit K

Drilling Permit No.: 869326
Receipt No.: C097460

Well ID: 435516
Printed: 10/16/2013

Metal Tag No.: D0020824
Approved Date: 10/16/2013

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Well Drilling Permit**

Owner Type: Owner/Operator
Name: ABERDEEN SPRINGFIELD CANAL CO
Address: PO BOX 857
ABERDEEN, ID, 83210

Phone: (208)397-4192

Water Right No.:

Proposed Well Location: T: 05S, R: 31E, S: 20, QQQ: , QQ: SE, Q: NE
Latitude 42° 58.508' Longitude -112° 50.891'
County: BINGHAM

Street Address of Well Site: 1530 POWERLINE RD
ABERDEEN, ID

Lot: Block:
Subdivision:

Proposed Use of Well: Other

Well Construction Information:

Activity: New Well
Proposed Surface Diameter: 24 Inches
Proposed Depth: 150 Feet
Anticipated Bottom Hole Temperature: 85F and less° F

Proposed Construction Start Date: 2/1/2014
Well Drilling Company: VOLLMER WELL DRILLING (No. 383)

Applicant's Signature: see original application

Date June 14, 2013

Title: _____

Drilling Permit No.: 869326
Receipt No.: C097460

Well ID: 435516
Printed: 10/16/2013

Metal Tag No.: D0020824
Approved Date: 10/16/2013

If approved, this permit authorizes the construction or modification of a well subject to the following conditions:

- 1) Total depth of the well cannot exceed 150 ft below land surface, or extend beneath the confining layer that delineates the shallow aquifer that is responsive to seasonal irrigation deliveries from the 'J' Lateral canal from deeper regional aquifers, whichever is shallower in depth.
- 2) The well will be drilled in February or March when the static water level is at its lowest point as indicated in application for drilling permit attachment Figure 2.
- 3) Perforated casing or well screen cannot extend below the static water level encountered during drilling and cannot extend more two (2) feet above that level.
- 4) Blank casing shall extend below the perforated casing to the total depth of the well.
- 5) The bottom of the casing shall be permanently capped with a 1/4 inch steel welded plate or plugged with cement grout.
- 6) Blank casing will be installed with a minimum two-inch annular space and be sealed with approved seal material over its entire length.
- 7) Static water level in a minimum of three (3) wells within one-half mile of the recovery well will be measured weekly and reported to IDWR and the watermaster annually.
- 8) ASCC will propose for the Department's approval the wells to be monitored for static water level measurements or will drill and install wells to satisfy the monitoring requirements of this permit. Wells designated for monitoring must be completed in, and inform upon, the shallow aquifer from which recovery water will be pumped.
- 9) Diversion of ground water from the recovery well shall cease when the water levels in any well within one-half mile of the recovery well decreases below the static water level of that well as measured on April 1 of each year.
- 10) Water will be diverted from the well from May 1 to October 1 only.
- 11) The well will be equipped with a flow meter approved by the Department.
http://www.idwr.idaho.gov/WaterManagement/WaterMeasurement/PDFs/Approved_flow_meter_list.pdf
- 12) The well will be used for the sole purpose of recovering water that seeps into the shallow aquifer as a result of irrigation water deliveries by Aberdeen Springfield Canal Company in their 'J' Lateral canal as indicated in application for drilling permit attachment Figure 2
- 13) The applicant will be required to measure all water diverted into and out of the 'J' Lateral canal on a daily basis during the irrigation season. At no time can the in-season cumulative ground water diversions from the recovery well exceed the in-season cumulative seepage losses from the 'J' Lateral canal, along its entirety. Seepage losses will be defined as the 24-hour volume of water diverted into the 'J' Lateral canal at the head gate less the combined 24-hour volume of water from all irrigational diversions from the 'J' Lateral canal.

Drilling Permit No.: 869326
Receipt No.: C097460

Well ID: 435516
Printed: 10/16/2013

Metal Tag No.: D0020824
Approved Date: 10/16/2013

- 14) The applicant is required to compile an annual report summarizing diversion records into and out of the 'J' Lateral canal, estimated seepage losses from the 'J' Lateral canal, ground water levels in the monitoring well(s), ground water level model predictions, and ground water diversion records from the recovery well. The report should summarize all monitoring data and confirm that annual ground water diversions did not exceed annual estimated seepage losses and that ground water surface elevations in the monitoring well(s) were never below preseason baseline conditions when ground water diversion from the recovery well was occurring. A copy of the report shall be provided to the Department by December 31 following the end of every irrigation season.
- 15) This drilling permit is valid from February 1, 2014 through March 31, 2014 for completion of the well unless an extension has been granted.
- 16) This permit does not constitute an approval of the District Health Department or the Idaho Department of Health and Welfare, which may be required before construction of the well. All wells must be drilled a minimum distance of 100 feet from a drain field. Domestic and Public Water Supply wells must be drilled a minimum of 50 feet and 100 feet respectively from a septic tank.
- 17) The well shall be constructed by a driller currently licensed in the State of Idaho who must maintain a copy of the drilling permit and the well ID tag at the drilling site.
- 18) Approval of this drilling permit does not authorize trespass on the land of another party.
- 19) This permit does not constitute other local, county, state, or federal approvals which may be required for construction of a well.
- 20) This drilling permit does not represent a right to divert and use the water of the State of Idaho. If the well being drilled is associated with approved water right(s) use of the well must comply with conditions of said water right(s).
- 21) If a bottom hole temperature of 85°F (29.44 Degrees C) or greater is encountered, well construction shall cease and the well driller shall contact the Department immediately.
- 22) If the well is in an area known to have Low Temperature Geothermal water, bottom hole temperature must be measured and recorded on the Driller's Log, and reported on the Well Driller's Report.
- 23) Idaho Code, S 55-2201 - 55-2210 requires the applicant and/or his contractors to contact "Digline" (DigLine is a one-call center for utility notification) not less than 2 working days prior to the start of any excavation for this project. The "DigLine" Number for your area is 1-800-342-1585.
- 24) Please be advised that this drilling permit should be considered and treated as a preliminary permit. If you are in disagreement with this preliminary permit you have fourteen (14) days of the service date of this permit to petition the Idaho Department of Water Resources for reconsideration, pursuant to Section 67-5243, Idaho Code.
- 25) The stainless steel I. D. tag must be securely and permanently attached to the well casing by the Driller upon completion of the well, and prior to removing the drill rig from the drill site and must remain permanently attached above ground level for the life of the well. The well tag shall be attached by welding at least 3 sides or using four (4) stainless steel, closed-end pop rivets.

Drilling Permit No.: 869326
Receipt No.: C097460

Well ID: 435516
Printed: 10/16/2013

Metal Tag No.: D0020824
Approved Date: 10/16/2013

- 26) Any well being replaced by a new well shall be properly abandoned by the well driller prior to removing the drilling equipment, unless otherwise authorized by the department.

This permit is Approved on 10/16/2013.


Signature of Authorized Dept Representative

10/16/2013
Title

Exhibit M

John K. Simpson, ISB #4242
Travis L. Thompson, ISB #6168
Paul L. Arrington, ISB #7198
BARKER ROSHOLT & SIMPSON LLP
195 River Vista Place, Suite 204
Twin Falls, Idaho 83301-3029
Telephone: (208) 733-0700
Facsimile: (208) 735-2444

*Attorneys for A&B Irrigation District, Burley
Irrigation District, Milner Irrigation District,
North Side Canal Company, Twin Falls Canal
Company*

W. Kent Fletcher, ISB #2248
FLETCHER LAW OFFICE
P.O. Box 248
Burley, Idaho 83318
Telephone: (208) 678-3250
Facsimile: (208) 878-2548

*Attorneys for American Falls Reservoir
District #2 and Minidoka Irrigation
District*

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

**IN THE MATTER OF THE WELL
DRILLING PERMIT NO. 869326 IN THE
NAME OF ABERDEEN SPRINGFIELD
CANAL COMPANY**

PETITION FOR HEARING

COME NOW, Petitioners, A&B Irrigation District ("A&B"), American Falls Reservoir District #2 ("AFRD#2"), Burley Irrigation District ("BID"), Milner Irrigation District ("Milner"), Minidoka Irrigation District ("MID"), North Side Canal Company ("NSCC"), and Twin Falls Canal Company ("TFCC") (collectively hereafter referred to as the "Surface Water Coalition", "Coalition", or "SWC"), by and through their undersigned counsel, and hereby Petition the Director of the Idaho Department of Water Resources for a hearing regarding the Well Drilling Permit No. 869326, dated October 16, 2013, in the name of Aberdeen Springfield Canal Company ("ASCC"). This Petition is filed pursuant to Idaho Code § 42-1701A(3).

On October 16, 2013, the Director issued ASCC Well Drilling Permit No. 869326.

ASCC sought this permit for the purpose of drilling a “recovery” well pursuant to Idaho Code §

42-228. That provision provides as follows:

42-228. DRILLING AND USE OF WELLS FOR DRAINAGE OR RECOVERY PURPOSES EXCEPTED. The excavation and opening of wells and the withdrawal of water therefrom for the sole purpose of improving or preserving the utility of land by draining them shall not be forbidden or governed by this act, and, likewise, there shall be excepted from the provisions of this act the excavation and opening of wells and withdrawal of water therefrom by canal companies, irrigation districts, and other owners of irrigation works for the sole purpose of recovering ground water resulting from irrigation under such irrigation works for further use on or drainage of lands to which the established water rights of the parties constructing the wells are appurtenant; providing that the drilling of such wells shall be subject to the licensing provisions of section 42-238, Idaho Code.

The Well Drilling Permit authorizes ASCC to drill a well within its project boundaries to divert water in an apparent attempt to recapture surface water lost through its “J” Lateral due to seepage.

To the Coalition’s knowledge and understanding, this is one of the first – if not the first – such drilling permits issued pursuant to section 42-228’s recovery well exception. Since the Coalition is comprised of irrigation districts and canal companies to whom this section may be applicable, they have an interest in ensuring that the statute is carried out appropriately and effectively. Further the Coalition members hold water rights that may be affected by the proposed action.

Accordingly, the Coalition requests a hearing on the ASCC Well Drilling Permit and intends to address the following issues:


1. Whether the application meets the requirements of Idaho Code § 42-228, including, whether the statute applies to the proposed well?

2. Whether, if the application meets the requirements of Idaho Code § 42-228, the proposed conditions are appropriate and/or adequately safeguard existing water resources that supply the Coalition's water rights?

The Coalition reserves the right to amend this list of issues, or identify additional issues, that may arise during this proceeding.

DATED this 31st day of October, 2013.

BARKER ROSHOLT & SIMPSON LLP



John K. Simpson
Travis L. Thompson
Paul L. Arrington

*Attorneys for A&B Irrigation District, Burley
Irrigation District, Milner Irrigation District,
North Side Canal Company, Twin Falls Canal
Company*

FLETCHER LAW OFFICE


W. Kent Fletcher

*Attorneys for American Falls Reservoir
District #2 and Minidoka Irrigation District*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31st day of October, 2013, I served true and correct copies of the foregoing upon the following by the method indicated:

Director Gary Spackman
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098
gary.spackman@idwr.idaho.gov
deborah.gibson@idwr.idaho.gov

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

Randy Budge
T.J. Budge
Racine Olsen, Chtd.
P.O. Box 1391
Pocatello, Idaho 83204-1391
rcb@racinelaw.net
tjb@racinelaw.net

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

Counsel for ASCC


Travis L. Thompson

Exhibit L

21-Jul-1992

VERN DUFFIN
2142 S 2800 W
ABERDEEN ID 83210

RE: Application for Water Right No. 35-9002

Dear Mr. Duffin:

In response to record low streamflows and declining groundwater levels resulting from drought conditions, the Director of the Department of Water Resources has declared a moratorium on approval on certain pending and future applications to appropriate water in the Snake River Basin. The moratorium applies to both surface water and groundwater appropriations.


Department records show that you filed an application to appropriate water for irrigation which has not been approved by the Department. Unless you can demonstrate that your proposal qualifies for a narrow exemption to the moratorium, the department will hold your application, and will not process it until the moratorium is lifted.

The enclosed form requests information which will determine whether your proposed use will qualify for the supplemental irrigation exemption. IF YOU FEEL YOUR PROPOSED USE QUALIFIES AS AN EXEMPT USE, YOU MUST COMPLETE THE FORM AND RETURN IT TO THIS OFFICE. If the form is not completed and returned, your application will be held without action. If you return the form but the use does not qualify, the Department will notify you that the application will be held without further processing.

If your application is approved, it will only be good for use until November 1, 1992. The permit would terminate on that date and the well would not be authorized for use unless the drought conditions potentially persist and your surface water source is again depleted before the end of a season.

If you have any questions, please feel free to give me a call.

Sincerely,


HAROLD W. JONES
Water Right Supervisor



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, ID 83402-1718 • Phone: (208) 525-7161 FAX: (208) 525-7177

EASTERN REGION
March 15, 2002

DIRK KEMPTHORNE
Governor

KARL J. DRIEMER
Director

Deanna Curry
C/O Idaho Agricultural Credit Assoc.
P.O. Box 300
American Falls, Idaho 83211

Dear Deanna:

I received your letter of assignment referencing Richard and Iris Schelske and applications for water right # 35-9000, 35-8980 and 35-9002.

These applications are in the name of Vern Duffin and are in the Moratorium Hold file. These are not approved permits and have been held since 1992 when the Drought Moratorium was imposed.

The Schelskes will have to provide evidence of ownership of the properties listed in the assignment letter. When I receive that warranty deed I will have our office split the applications accordingly and put the Schelskes and your organization name on that portion.

Please be aware that these applications may not reach permit status any time in the near future.

If you have any questions please call me at 525-7161.

Sincerely,

Harold W. Jones
Water Resources Supervisor

Exhibit N

RECORDING REQUESTED

BY:

Baker & Harris
266 W Bridge
Blackfoot, ID 83221

Instrument # 636132

BINGHAM COUNTY, IDAHO
2012-03-07 04:25:28 PM No. of Pages: 6
Recorded for: BAKER & HARRIS
SARA J. STAUB Fee: \$25.00
Ex-Officio Recorder Deputy CRobinson
Index To: DIFT DEED
Electronically Recorded by Simplifile

space above this line for Recording use only

GIFT DEED

THIS DEED made effective the 31st day of December, 2011, by and between Richard W. Schelske and Iris Schelske, husband and wife, dba D-7 Farms, the Grantors, and Jeffrey T. Duffin and Chana Duffin, husband and wife, of PO Box 525, Aberdeen, ID 83210, the Grantees.

WITNESSETH:

That the said Grantors, for and in consideration of LOVE and AFFECTION, do by these presents give, convey and confirm unto the said Grantees, their heirs and assigns, forever, Grantors' remaining undivided one-half interest in and to the following-described real and personal property lying and being in the Counties of Bingham and Power, State of Idaho, and described as follows:

LEGAL DESCRIPTIONS

Parcel D1:

Township 7 South, Range 30 E.B.M., Power County, Idaho
Section 9: NE ¼

Parcel D2:

Township 6 South, Range 30 E.B.M., Power County, Idaho
Section 34: NE¼

EXCEPTING THEREFROM: A tract of land in the NE¼NE¼ of said section described as follows: Beginning at a point which is W. 25 feet from the NE corner of said Section 34; thence S. 0°01' E. 100 feet; thence S. 89°52' W. 150 feet; thence N. 0°01' W. 100 feet; thence N. 89°52' E. 150 feet to the point of beginning.

Parcel D3:

Township 6 South, Range 30 E.B.M., Bingham County, Idaho
Section 26: SW¼, Except the West 33 feet for road right-of-way.

Parcel D4:

Township 6 South, Range 30 E.B.M., Bingham County, Idaho
Section 26: SE¼

Parcel D5:

Township 6 South, Range 30 E.B.M., Bingham County, Idaho
Section 15: SW¼

Excepting therefrom the following described parcel: A parcel of land in the SW¼ SW¼ of Section 15, Township 6 South, Range 30 E.B.M., Bingham County, Idaho, described as follows: Commencing at the Southwest corner of said Section 15 which is monumented with a 5/8" rebar and aluminum cap stamped for corner and PELS 2341; thence South 89°59'00" East along the South line of said Section 15, a distance of 872.74 feet to the TRUE POINT OF BEGINNING. Thence N 01°57'25" West, a distance of 168.85 feet to a ½" rebar and plastic cap stamped PELS 2341; thence N 89°09'10" East, a distance of 65.26 feet to a ½" rebar and plastic cap stamped PELS 2341; thence N 00°50'00" West, a distance of 42.17 feet to a ½" rebar and plastic cap stamped PELS 2341; thence S 89°59'00" East, a distance of 156.39 feet to a ½" rebar and plastic cap stamped PELS 2341; thence S 00°01'00" West a distance of 211.90 feet to a point on the South line of said Section 15; thence N 89°59'00" West, along said South line, a distance of 215.20 feet to the TRUE POINT OF BEGINNING.

Excepting therefrom the Southerly 30.00 feet of the above described parcel for the county road right-of-way.

Together with an easement for ingress and egress over and across the Easterly 103.00 feet of the following described parcel.

A parcel of land in the SW¼SW¼ of Section 15, Township 6 South, Range 30 E.B.M., Bingham County, Idaho, described as follows: Commencing at the Southwest corner of said Section 15 which is monumented with a 5/8" rebar and aluminum cap stamped for corner and PELS 2341; thence South 89°59'00" East along the South line of said Section 15, a distance of 872.74 feet to the TRUE POINT OF BEGINNING. Thence N 01°57'25" West, a distance of 168.85 feet to a ½" rebar and plastic cap stamped PELS 2341; thence N 89°09'10" East, a distance of 65.26 feet to a ½" rebar and plastic cap stamped PELS 2341; thence N 00°50'00" West, a distance of 42.17 feet to a ½" rebar and plastic cap stamped PELS 2341; thence S 89°59'00" East, a distance of 156.39 feet to a ½" rebar and plastic cap stamped PELS 2341; thence S 00°01'00" West a distance of 211.90 feet to a point on the South line of said Section 15; thence N 89°59'00" West, along said South line, a distance of 215.20 feet to the TRUE POINT OF BEGINNING.

Parcel D6:

Township 6 South, Range 31 E.B.M., Bingham County, Idaho

Section 20: S½S½NE¼; S½SE¼NW¼; Excepting therefrom the following described parcel: A parcel of land in the S½SE¼NE¼ of Section 20, Township 6 South, Range 31 East of the Boise Meridian, Bingham County, Idaho, described as follows: Commencing at the East ¼ corner of said Section 20 which is monumented with a 5/8" rebar and aluminum cap stamped PELS 2341, said point being left of State Highway 39 center line sta. 478+76.41 a distance of 28.97 feet; thence North 89°46'28" West along the latitudinal center line of said Section 20, a distance of 32.50 feet to a point on the Westerly right-of-way line of said State Highway 39 being 61.47 feet left of State Highway 39 center line sta. 478+76.41, said point being monumented with a ½" rebar and plastic cap stamped PELS 2341, the TRUE POINT OF BEGINNING; thence North 89°46'28" West, continuing along said latitudinal centerline,

a distance of 323.15 feet to a ½" rebar and plastic cap stamped PELS 2341; thence North 00°02'12" West a distance of 505.00 feet to a ½" rebar and plastic cap stamped PELS 2341; thence South 89°46'28" East, a distance of 323.15 feet to a point on the Westerly right-of-way line of said State Highway 39, said point being left of said State Highway 39 center line sta. 483+71.42 a distance of 60.09 feet and monumented with a ½" rebar and plastic cap stamped PELS 2341; thence South 00°02'12" East along said right-of-way line, a distance of 505.00 feet to the TRUE POINT OF BEGINNING.

Parcel D7:

Township 5 South, Range 31 E.B.M., Bingham County, Idaho
Section 19: SE¼NE¼
Section 20: W½NW¼

WATER RIGHTS

Together With:

Parcel D1:

Idaho Department of Water Resources License Number 35-07068, Priority Date February 26, 1969, 2.8 cfs.

Parcel D2:

Idaho Department of Water Resources License Number 35-02296, Priority Date January 20, 1953, 2.38 cfs.

Parcel D3:

Idaho Department of Water Resources License Number 35-04022, Priority Date November 20, 1959, 2.22 cfs.

Parcel D4:

Idaho Department of Water Resources License Number 35-02385, Priority Date August 27, 1954, 2.42 cfs.

Parcel D5:

Idaho Department of Water Resources License Number 35-02485, Priority Date November 30, 1956, 2.3 cfs.

Parcel D6:

60 shares of stock, Certificate #5410 or as may be re-issued in Aberdeen-Springfield Canal Company.

Idaho Department of Water Resources License Number 35-7667, Priority Date June 11, 1992, 1.1 cfs.

Idaho Department of Water Resources Permit Number 35-9000, 0.9 cfs.

Parcel D7:

110 shares of stock, Certificate #5409 or as may be re-issued in Aberdeen Springfield Canal Company.

Idaho Department of Water Resources Permit Number 35-8980, 2.2 cfs.

Idaho Department of Water Resources Permit Number 35-9002, 3.66 cfs.

IRRIGATION EQUIPMENT

Together with all fixtures, including but not limited to the following: All pumps, motors, columns, tubes, shafts, bowls, panels and all electrical appurtenances, mainline, laterals, wheel lines, pivot/circle irrigation systems, risers, heads, couplers, end plugs, valves, valve openers, reducers, joints, tees and wyes, as well as all additions and replacements thereof, hereby declared appurtenant thereto and which are more particularly described as follows:

Parcel D1:

1 - 150hp General Electric Motor Serial #FLJ604172
1 - Berkley Turbine Pump Serial #7426074
2640 feet 8" Steel Mainline
6 - ¼ mile Thunderbird Wheel Lines

Parcel D2:

1 - 125hp US Motor Serial #1070092
1 - Layne & Bowler Turbine Pump Serial #26080
2640 feet 8" Buried Steel Mainline
6 - ¼ mile Funk Electric Wheel Lines

Parcel D3:

1 - 125hp US Motor Serial #1171897
1 - Wintroath Turbine Pump Serial #9297
100 feet 8" Buried Steel Mainline
1 - Eight Tower Model 5071 Valley Center Pivot with corner system Serial #24252

Parcel D4:

1 - 100hp A.O. Smith Motor Serial #7010
1 - Layne Turbine Pump Serial #27937
2600 feet 8" Buried Steel Mainline
6 - ¼ mile Thunderbird Wheel Lines

Parcel D5:

1 - 250hp US Motor Serial #629J0
1 - Worthington 14MI6 Pump Serial #Unknown
4600 feet 6" Steel Mainline
10 - ¼ mile Thunderbird Wheel Lines

Parcel D6:

- 1 - 50hp General Electric Motor Serial #JJJ926374
- 1 - Johnson Turbine Pump Serial #Unknown
- 3300 feet 6" Buried Steel Mainline
- 3 - ¼ mile Thunderbird Wheel Lines

Parcel D7:

- 1 - 100hp U.S. Motor Serial #11005788
- 1 - Wintroath Turbine Pump Serial #Unknown
- 2600 feet 8" Buried Transite Mainline
- 7 - ¼ mile Thunderbird Wheel Lines

FIXTURES

Parcel D2

- 2- Potato Cellars

Parcel D5

- 5- Granaries
- 1- Shed
- 2- Shops

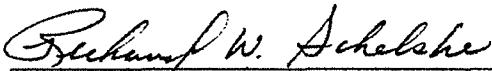
Parcel D7

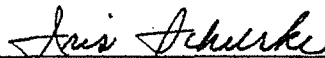
- House

SUBJECT TO a debt owing to Idaho AgCredit, FLCA, a wholly owned subsidiary of Idaho Agricultural Credit Association, a corporation, existing and operating under the Farm Credit Act of 1971, as amended, having its principal place of business at 188 W Judicial, PO Box 985, Blackfoot, Idaho 83221, one-half of which the Grantees assume and agree to pay.

TO HAVE AND TO HOLD all and singular the said premises together with the appurtenances and privileges thereto belonging unto the said Grantees, their successors and assigns, forever.

WITNESS the hand of the Grantors the day and year first above written.


Richard W. Schelske


Iris Schelske

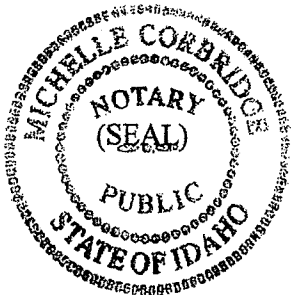
STATE OF IDAHO)

: ss.

County of Bingham)

On this 6th day of March, 2012, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared Richard W. Schelske and Iris Schelske, husband and wife, dba D-7 Farms, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

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



Michelle Corbridge
Notary Public for Idaho
Residing at: Berdeen
My Commission Expires: 08/28/2015

Exhibit O

Randall C. Budge (ISB #: 1949)
Carol Tippi Jarman (ISB#: 6371)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
P.O. Box 1391
Pocatello, Idaho 83204-1391
Telephone: (208)232-6101
Fax: (208)232-6109

Attorneys for Plaintiffs

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF POWER**

ABERDEEN-SPRINGFIELD CANAL
COMPANY, an Idaho Corporation, Jeffrey and
Chana Duffin, individual, as stockholders, and as
husband and wife,

Plaintiffs,

vs.

IDAHO DEPARTMENT OF WATER
RESOURCES, an executive department of the
State of Idaho,

Defendants,

and

A&B IRRIGATION DISTRICT, AMERICAN
FALLS RESERVOIR DISTRICT #2, BURLEY
IRRIGATION DISTRICT, MILNER
IRRIGATION DISTRICT, MINIDOKA
IRRIGATION DISTRICT, NORTH SIDE
CANAL COMPANY, and TWIN FALLS
CANAL COMPANY,

Defendant-Intervenors.

Case No. CV-2014-165

**PLAINTIFFS' SECOND
SUPPLEMENTAL RESPONSES TO
DEFENDANT-INTERVENORS'
FIRST DISCOVERY REQUESTS TO
JEFFREY AND CHANA DUFFIN**

Plaintiffs, Jeffrey Duffin and Chana Duffin, through Counsel, submit their Second

Supplemental Answers and Responses to SWC's First Discovery Requests to Plaintiffs dated

September 5, 2014 pursuant to Rules 33 and 34 of the Idaho Rules of Civil Procedure as follows:
**PLAINTIFFS' SECOND SUPPLEMENTAL ANSWERS AND RESPONSES TO SWC INTERVENOR'S
FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO
JEFFREY AND CHANA DUFFIN**

4. Mel Chappel
Treasurer of ASCC
2727 West 500 South
Aberdeen, Idaho 83210
5. Thayne Driscoll
ASCC Board Member
P.O. Box 295
American Falls, Idaho 83211
6. Ray Duffin
ASCC Board Member
3182 West 2000 South
Aberdeen, Idaho 83210
7. John Houghland
ASCC Board Member
1842 West 800 South
Pingree, Idaho 83262
8. Bob Knudsen, Jr.
ASCC Board Member
2595 Hwy 39
American Falls, Idaho 83211
9. Clarence Schroeder
ASCC Board Member
2308 Moser Road
American Falls, Idaho 83211
10. Charles Shackelford
ASCC Board Member
P.O. Box 310
Aberdeen, Idaho 83210

INTERROGATORY NO. 3: Please describe in detail all facts related to the excavation, opening, drilling, or construction of the well referenced in Paragraph VIII of your *Complaint for Declaratory Relief*.

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ANSWER TO INTERROGATORY NO. 3: Objection, vague, over broad, unduly burdensome. Subject to and without waiving these objections, see ASCC 1-1697. Plaintiffs reserve the right to supplement this answer as necessary before trial.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 3: We have no personal knowledge of the facts related to the excavation, opening, drilling, or construction of the well at issue with the exception of the transfer application we submitted to ASCC for approval.

INTERROGATORY NO. 4: Please describe in detail the “transfer application” and process for approval referenced in Paragraph VIII of your *Complaint for Declaratory Relief*.

ANSWER TO INTERROGATORY NO. 4: Objection, vague, over broad, unduly burdensome. Subject to and without waiving these objections, see ASCC 1-301 and 1694-1697. Plaintiffs reserve the right to supplement this answer as necessary before trial.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 4: The transfer application speaks for itself. The process followed by ASCC is not within our personal knowledge.

INTERROGATORY NO. 7: Please identify how much water has been pumped from the well referenced in Interrogatory No. 6, including the daily diversion rate and volume, and annual volume, for any years in which the well has been operated.

ANSWER TO INTERROGATORY NO. 7: Objection, vague, over broad, unduly burdensome and seeks irrelevant information which is not reasonably calculated to lead to admissible evidence.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 7: The delivery record for ASCC head gat JR-2-1 (the Duffin recovery head gate) is found at ASCC 2046-2052. ASCC’s recovery well input (discharging into the canal) is shown in ASCC 2036.

PLAINTIFFS’ SECOND SUPPLEMENTAL ANSWERS AND RESPONSES TO SWC INTERVENOR’S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO JEFFREY AND CHANA DUFFIN

INTERROGATORY NO. 8: Please identify how water is measured at the well referenced in Interrogatory No. 6.

ANSWER TO INTERROGATORY NO. 8: Objection, vague, over broad, unduly burdensome and seeks irrelevant information which is not reasonably calculated to lead to admissible evidence.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 8: Water was measured in all wells using a Dynasonics TFX Ultra flow meter. This head gate, like all head gates on the system, are charged for 24 hour delivery, even if they don't take water for an entire 24 hours.

INTERROGATORY NO. 9: Please describe in detail the "historical difficulty receiving our share of the water due to system capacity issues" referenced in Paragraph 4 of the *Affidavit of Jeffrey Duffin*.

ANSWER TO INTERROGATORY NO. 9: Objection, vague, over broad, unduly burdensome. Will be supplemented if necessary before trial.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 9: I have no personal knowledge before I took ownership, but my father told me that there were historical difficulties for him in receiving his share of water and that he was told it was due to system capacity issues.

INTERROGATORY NO. 10: Please identify the persons referenced as "others who were similarly situated to us also converted to wells" referenced in Paragraph 4 of the *Affidavit of Jeffrey Duffin*. Please identify when these "others" converted to wells.

ANSWER TO INTERROGATORY NO. 10: Objection, vague, over broad, unduly burdensome. Subject to and without waiving these objections, see ASCC 1-1697, particularly 1-301.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 10: The documents referenced above describe the transfer applications approved by ASCC for others who were similarly situated to us.

INTERROGATORY NO. 11: Please describe in detail the statement that the 2013 “transfer application” was “mandatorily required by ASCC” referenced in Paragraph 5 of the *Affidavit of Jeffrey Duffin*.

ANSWER TO INTERROGATORY NO. 11: Objection, vague, over broad, unduly burdensome. Subject to and without waiving these objections, see ASCC 1-301 and 1694-1697.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 11: We were advised by Steven T. Howser that ASCC would not consider assisting us with converting to the use of recovery wells without having a transfer application submitted to the Board for consideration.

INTERROGATORY NO. 13: Please describe in detail the facts regarding the drilling and operation of the “currently operating 12 recovery wells” referenced in Paragraph 7 of the *Affidavit of Jeffrey Duffin*.

ANSWER TO INTERROGATORY NO. 13: Objection, vague, over broad, unduly burdensome. Subject to and without waiving these objections, see ASCC 1-1697. Plaintiffs reserve the right to supplement this answer as necessary before trial.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 13: We lack personal knowledge to answer this interrogatory.

INTERROGATORY NO. 15: Please identify all consultants and experts who you have consulted relating to the excavation, opening, drilling, and construction of the well referenced in Interrogatory No. 6.

Exhibit P

Randall C. Budge (ISB #: 1949)
Carol Tippi Jarman (ISB#: 6371)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
P.O. Box 1391
Pocatello, Idaho 83204-1391
Telephone: (208)232-6101
Fax: (208)232-6109

Attorneys for Plaintiffs

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF POWER**

ABERDEEN-SPRINGFIELD CANAL
COMPANY, an Idaho Corporation, Jeffrey and
Chana Duffin, individual, as stockholders, and as
husband and wife,

Plaintiffs,

vs.

IDAHO DEPARTMENT OF WATER
RESOURCES, an executive department of the
State of Idaho,

Defendants,

and

A&B IRRIGATION DISTRICT, AMERICAN
FALLS RESERVOIR DISTRICT #2, BURLEY
IRRIGATION DISTRICT, MILNER
IRRIGATION DISTRICT, MINIDOKA
IRRIGATION DISTRICT, NORTH SIDE
CANAL COMPANY, and TWIN FALLS
CANAL COMPANY,

Defendant-Intervenors.

Case No. CV-2014-165

**PLAINTIFF'S SECOND
SUPPLEMENTAL RESPONSES TO
DEFENDANT-INTERVENORS'
FIRST DISCOVERY REQUESTS TO
ABERDEEN-SPRINGFIELD CANAL
COMPANY**

Plaintiff, ASCC, by and through Counsel, and submits its Second Supplemental Answers

and Responses to SWC's First Discovery Request to ASCC dated September 5, 2014 pursuant to

Rules 33 and 34 of the Idaho Rules of Civil Procedure as follows:

**PLAINTIFF ASCC'S SECOND SUPPLEMENTAL ANSWERS AND RESPONSES TO SWC
INTERVENOR'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF
DOCUMENTS TO ASCC-1**

12/19/14

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INTERROGATORIES

INTERROGATORY NO. 1: Please identify each and every individual known to you who has any knowledge of, or who claims to have knowledge of, any facts or evidence discoverable in this matter, together with a summary of each person's knowledge.

ANSWER TO INTERROGATORY NO. 1: Objection, vague, over broad, unduly burdensome, seeks information protected by attorney/client privilege. Subject to and without waiving these objections, the Plaintiff states that, at this stage, despite reasonable inquiry, it has not identified and does not have knowledge regarding all such people who have knowledge of this matter. ASCC submits that Jeffrey and Chana Duffin have knowledge. Steve Howser, General Manager of ASCC has knowledge. Existing ASCC Board Members and prior Board Members have knowledge. Prior applications for recovery wells identified in the documents attached in response to these requests have knowledge. Plaintiff reserves the right to supplement this answer as provided under the Idaho Rules of Civil Procedure.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 1: In addition to the information provided above, the following officers and members of the ASCC Board are anticipated to be called as witnesses:

1. Steven T. Howser, Manager
Aberdeen-Springfield Canal Company (hereafter "ASCC")
P.O. 857
Aberdeen, Idaho 83210
2. Val Wahlen
President of ASCC
1352 South 2700 West
Aberdeen, Idaho 83210
3. Ron Thompson
Vice President of ASCC
404 South 900 West
Aberdeen, Idaho 83221

**PLAINTIFF ASCC'S SECOND SUPPLEMENTAL ANSWERS AND RESPONSES TO SWC
INTERVENOR'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF
DOCUMENTS TO ASCC-2**

4. Mel Chappel
Treasurer of ASCC
2727 West 500 South
Aberdeen, Idaho 83210
5. Thayne Driscoll
ASCC Board Member
P.O. Box 295
American Falls, Idaho 83211
6. Ray Duffin
ASCC Board Member
3182 West 2000 South
Aberdeen, Idaho 83210
7. John Houghland
ASCC Board Member
1842 West 800 South
Pingree, Idaho 83262
8. Bob Knudsen, Jr
ASCC Board Member
2595 Hwy 39
American Falls, Idaho 83211
9. Clarence Schroeder
ASCC Board Member
2308 Moser Road
American Falls, Idaho 83211
10. Charles Shackelford
ASCC Board Member
P.O. Box 310
Aberdeen, Idaho 83210

INTERROGATORY NO. 3: Please describe in detail all facts related to the excavation, opening, drilling, or construction of the well referenced in Paragraph VIII of your *Complaint for Declaratory Relief*.

ANSWER TO INTERROGATORY NO. 3: Objection, vague, over broad, unduly burdensome. Subject to and without waiving these objections, the Plaintiff states that, at this

**PLAINTIFF ASCC'S SECOND SUPPLEMENTAL ANSWERS AND RESPONSES TO SWC
INTERVENOR'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF
DOCUMENTS TO ASCC-3**

stage, despite reasonable inquiry it has not identified and does not have knowledge regarding all facts related to the excavation, opening, drilling, or construction of the well in question. Please see the documents attached in response to these requests as ASCC 1-1697. Plaintiff reserves the right to supplement this answer as provided under the Idaho Rules of Civil Procedure.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 3: ASCC lacks personal knowledge regarding the excavation, drilling or construction of the well at issue with the exception of its knowledge that the well was transferred to ASCC to manage as a recovery well under Idaho law.

INTERROGATORY NO. 4: Please describe in detail the “transfer application” referenced in Paragraph VIII of your *Complaint for Declaratory Relief*.

ANSWER TO INTERROGATORY NO. 4: Objection, vague, over broad, unduly burdensome. Subject to and without waiving these objections, the Plaintiff refers you to the Transfer Application attached in response to these requests as ASCC 1694-1697.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 4: The transfer application speaks for itself.

INTERROGATORY NO. 5: Please describe in detail any formal policies approved by Aberdeen-Springfield Canal Company concerning the “transfer application” referenced in Paragraph VIII of your *Complaint for Declaratory Relief*.

ANSWER TO INTERROGATORY NO. 5: Objection, vague, over broad, unduly burdensome. Subject to and without waiving these objections, the Plaintiff states that, at this stage, despite reasonable inquiry, it has not identified and does not have knowledge regarding all said policies. Please see the Board Minutes attached as ASCC 1-301. Plaintiff reserves the right to supplement this answer as provided under the Idaho Rules of Civil Procedure.

PLAINTIFF ASCC'S SECOND SUPPLEMENTAL ANSWERS AND RESPONSES TO SWC INTERVENOR'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO ASCC-4

Exhibit Q

Aug 27 - 1945 Reclamation San Joaquin River

100% delivery (1941) = 39,000 miner inches = 764 cfs

125% delivery would require 49,000 " " 980 cfs

(104) Flowing 125% would deliver 42,500 to 45,500 inches depending upon mass conditions. $Rel = 68$ to 70% of above. Flow is variable in 1945 we were able for a time to deliver 48,000 inches. This was probably due to the amount of water which seeped up the irrigation. The amount of water back into the canal is also a factor. We get considerable water back into the canals for the San Joaquin area and into the Delta for pump back.

There are 4 methods we can use to increase flow deliveries to the river:

1- Build up canal system to divert more water from river. This would require construction of spandrels dykes seepage under the most water regardless of the main canal with this system delivered and being with proper on some delivered we are delivered 140% on the spandrel dykes which is the same on some other delivered

2- Put ground water into the canal flow method would provide supplementary water for the whole season of delivered and would help the flow

3- Reduce on losses by building canals with concrete reput or other materials by proving protection to the etc. also by building more flow

4- By trying to store the flow in the canals Especially for those where delivered is qualified on the that are not economic for water

Aug 27-1945 Preliminary Estimate ledger July Deliveries

100% delivery (1945)=	39,200 miners inches=	784 sec feet
125% delivery would require	49,000 "	" or 980 sec feet

1945- Diverting 1275 dec we can deliver 43,500 to 44,500 inches depending upon moss conditions- ?= 68 to 70% of diversion ? is variable- in 19443 we were able for a time to deliver 48. Or 0 inches. This was probably due to the runoff fill which sealed up the canal. The amount of waste rock into the canal is also a factor. We get considerable waste back into the lowline from the Grandview area and into the balance from pump landslide.

There are 4 methods we can use to increase July deliveries to the users-

- 1- Enlarge canal system to divert more water for rivers. This would require enlarging practically the whole system, with the most work required on the main canal with lesser amounts elsewhere, and very little work on some laterals. We are delivering 140% on the Springfield Lateral today and can do the same on some other laterals.
- 2- Pump ground water into the Lowline- This method would provide supplementary water for the whole season if deserved and would help on drainage-
- 3- Reduce on losses- by lining canals with concrete, asphalt, or other materials, by piping portions of laterals etc. Also by mossaing more of canals.
- 4- By buying a stock from lands, especially from those when delivery is wasteful or lands that are not economic farm units.

River ?- Cost \$7,000- 35cents an acre foot in Reservoir-
 20,000 af in Res- 18,550 at river headgates-
 18,550 at at 55.6% delivery= 10,314 ac ft to be delivered-
 10,314 acre feet= 257,850 miners –inches- days-
 Less 2 inches/share 126,000
 131,850 miners inches-

Pumps

Output		Days of Operation
Chapman	165 inches/day	July 20
Town	140	August 25
Parrish	110	Sept <u>10</u>
		55 days
Dirks	<u>90</u>	500 x 55= 27,500
	505 inches/day	less 10%= 24,750

Twin Falls water salable 131,850
 Pump water salable 24,750
 156,600 miners inches-
 First ??? for sale- 155,000 inches

Twin Falls Water Cost	\$7,000
Est Cost of Operating pumps	<u>\$875</u>
	\$7,875
Est Sales- 155,000@3 ½cents	<u>\$5425</u>
	\$2,450 cost of 2" allotment

12.5 miners inches delivered cost 35cents= 2.8cents/inch

Puntas - 1941

Person	KWH	KWH	Demand	Total
		Month	Charge	Bill

To Aug 26 7890 19.56 55.75 74.81

21/30/11

16 Sept 23	2470	9.88	47.88	57.76
------------	------	------	-------	-------

42.76 163.75 208.51

Less Repair	175.00
Total	475.00

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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Vehicle # 3025 - 21 - KW

1	660	2.64	960	13.28
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10/7/24	97.0	38.84	72.25	111.09
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FD 3/26	10040	Ed. 18	7775	112.41
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To 9/23	5668	27.66	62.5	85.25
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[illegible]

Sept 27/78. 87 Y5-58 = 91.03

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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Dimension Delivery and Spill - 1941 - in Acta Ficta

	May	June	July	August	September	Total
Dispersal -	63.35	73.141	65.855	48.255	32.566	283.172
Delivery -	36.644	17.188	41.588	29.256	18.460	173.736
	2376	332	377	542	1586	4983 - 1961
Spill -	3.819	15.25	382	482	1,127	7374

Cost for	42,503	49,815	41,970	39,738	19,587	181,110
----------	--------	--------	--------	--------	--------	---------

efo. 24/10/20	61%	67%	68%	67%	60%	64%
---------------	-----	-----	-----	-----	-----	-----

Day after	3.1	5.0	30%	78%	2.63
-----------	-----	-----	-----	-----	------

17 cont/cont	735	715	710	650	585
--------------	-----	-----	-----	-----	-----

Pg 78

Aug 21 - 1945 Belgium Wanted for Belgium, Belgium

100% delivery (1945) = 39,200 minus cables = 784 lbs per

155% delivery would require 49,000 " " or 980 lbs per

1945 (1945) Wanted for Belgium 43,500 to 44,500 in lbs depending upon mass conversion. We = 68 to 70% of delivery and this is variable. In 1945 we were able for a time to deliver 48,000 in lbs. This was probably due to the fact that we had up the capacity. The amount of work done into the cable is also a factor. We get considerable work done in the cable for the German wire and into the cable line from pump launch.

There are 4 methods we can use to increase delivery of the cable:

- 1- Change construction to limit some cables from some. This could mean a change of specifically the whole system, but the most work is required to be done with the cable. Some cables are better than others, but being little more, on some cables we are able to deliver 1,400% on the paper field cable, and on some other cables on some other cables.
- 2- Pump ground water into the cable. This method would provide some water for the whole system of delivery and would help in delivery.
- 3- Reduce on some. By using cables with more, exploit - other methods, by paying for some of the cables etc. Also by turning some of the cables.
- 4- By trying to work from some. Especially from those where delivery is most fast or those that are not economic from some.

Aug 27-1945 Preliminary Estimate ledger July Deliveries

100% delivery (1945)=	39,200 miners inches=	784 sec feet
125% delivery would require	49,000 "	" or 980 sec feet

1945- Diverting 1275 dec we can deliver 43,500 to 44,500 inches depending upon moss conditions- ?= 68 to 70% of diversion ? is variable- in 19443 we were able for a time to deliver 48. Or 0 inches. This was probably due to the runoff fill which sealed up the canal. The amount of waste rock into the canal is also a factor. We get considerable waste back into the lowline from the Grandview area and into the balance from pump landslide.

There are 4 methods we can use to increase July deliveries to the users-

- 1- Enlarge canal system to divert more water for rivers. This would require enlarging practically the whole system, with the most work required on the main canal with lesser amounts elsewhere, and very little work on some laterals. We are delivering 140% on the Springfield Lateral today and can do the same on some other laterals.
- 2- Pump ground water into the Lowline- This method would provide supplementary water for the whole season if deserved and would help on drainage-
- 3- Reduce on losses- by lining canals with concrete, asphalt, or other materials, by piping portions of laterals etc. Also by mossaing more of canals.
- 4- By buying a stock from lands, especially from those when delivery is wasteful or lands that are not economic farm units.

① Emergency of Corps

Required Diversion = $\frac{49,000}{72} = 1360$ or $\frac{49,000}{70} = 1400$ s.f.

Would require increasing capacity 125 feet at head or raising the water surface 0.57 feet at head end of a 1000 ft. run.

In many cases water surface at full head is being used to storage on bridges and the canal capacity is not to be obtained by enlarging, deepening, and widening of reach, rather, than by raising bridges and bents. Clearing & deepening would also prove safer than loading the water. Preliminary estimate

100 ft. @ 7250 per mile = \$725,000
40 days storage @ 300 sf/day = 12000 sf @ \$15 = 180,000
Cont. \$905,000

(800 + 125) x 1000 = 925,000
+ 125,000 = 1,050,000
- 145,000 = 905,000

② Pumping ground water

Required extra water: $49,000 - 44,000 = 5000$ inches
Given loss allowance of $\frac{5000}{3.5} = 5850$ in. 117 feet

100 feet from wells
to bottom of wells 20 feet = 1000 inches each

Cont. for battery

20 machines - 100 ft. 6 inch 800 ft. = \$2000
20 wells 12" x 100' @ 1000 each = 12000
for 100 ft. 12" x 100' = 3000
Capillary pump cost = 100 ft. @ 20 ft. = 2000
for 40 days = 100 ft. @ 20 ft. = 2000
Cost = 3000 + 1000 + 2000 = 6000
Machines 20 @ 100 ft. = 2000
for 40 days = 1000
Total = 10000

Plus cost of 100 ft. 12" x 100' = 1000
Red cost of 100 ft. 12" x 100' = 1000
Cost of 100 ft. 12" x 100' = 1000
Cost of 100 ft. 12" x 100' = 1000
Cost of 100 ft. 12" x 100' = 1000
Cost of 100 ft. 12" x 100' = 1000
Cost of 100 ft. 12" x 100' = 1000
Cost of 100 ft. 12" x 100' = 1000

Could not find a pump station and to build a pump station was not possible but attempt would be made to raise ground water level.

pg. 125

1. Enlargement of Canal

Requires Diversion= $\frac{49,000}{.72} = 1360$ or $\frac{49,000}{.70} = 1400$ s.f.

.72

.70

Would require increasing capacity 125 sec feet at head or raising the water surface 0.37 feet at head canal were ? are high-

In many cases water surface at full head is very close to stringers or bridges and increased capacity would have to be obtained by draining, widening or deepening and reuse?? Rock rather than by raising bridges old banks- Cleaning & deepening would also prove safer than ?? the water higher.

Preliminary estimate

100 miles @ \$1250 per mile= \$125,000

Res O&M

40 days storage @ 300 a.f./day- 12000 a.f. # \$15.00 = \$180,000

+ Res class or 12,000af

\$305,000

=approx. \$600 a year

2. Pumping ground water-

Required extra water 49,000-44,000 = 5,000 inches

Plus loss allowance of $\frac{5,000}{85} = 5850$ miners 117sec feet

85

120 sec feet from wells-

Batteries of wells- 20 sec feet 1,000 inches each

Cost per battery

??- 15' deep 6' Hilton 800 long=

\$2000

12 wells- 12" x 100' @ 1000 each

12000

Pumping plant installed

5000

Capitalized price Cost

For 40 days- 100HP=75KW= 1800 KW/Day

@20- 36.00 day for 40 days= \$1440 @ 4%=

\$36,000

Maintenance-operation-depreciation

-1000

12 plants= \$240,000 plus

\$56,000

??? on \$432,100 @ 4% to pay power drill

Plus ? of enlarging ???

3. Reduction of losses- some 200-400 miles can be saved by shortening laterals at a cost of \$2500-

Lining ditches ?????? Some benefits from this melted but could not save enough-

4. Couldn't save enough this way and ??? on assessable stock, but attempt should be made to return several hundred shares.

Exhibit R

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF POWER

ABERDEEN-SPRINGFIELD CANAL)	
COMPANY, an Idaho Corporation,)	
JEFFREY and CHANA DUFFIN,)	
individually, as stockholders,)	
and as husband and wife,)	
Plaintiffs,)	
vs.)	Case No. CV-2014-165
IDAHO DEPARTMENT OF WATER)	
RESOURCES, an executive)	
department of the State of)	
Idaho,)	
Defendants,)	

(Caption continued to next page)

30 (b) (6) DEPOSITION OF
ABERDEEN-SPRINGFIELD CANAL COMPANY
TESTIMONY OF STEVEN T. HOWSER
FEBRUARY 24, 2015

REPORTED BY:

CATHERINE L. PAVKOV, CSR NO. 638

Notary Public

	Page 2		Page 4
1 (Caption continued)		1 (Appearances continued)	
2 and)		2	
3 A&B IRRIGATION DISTRICT,)		3 For the Defendant Idaho Department of Water Resources:	
4 AMERICAN FALLS RESERVOIR)		4 Idaho Department of Water Resources	
5 DISTRICT #2, BURLEY IRRIGATION)		5 BY: MEGHAN CARTER and JOHN W. HOMAN	
6 DISTRICT, MILNER IRRIGATION)		6 322 East Front Street, 6th Floor	
7 DISTRICT, MINIDOKA IRRIGATION)		7 Post Office Box 83720	
8 DISTRICT, NORTH SIDE CANAL)		8 Boise, Idaho 83720-0098	
9 COMPANY, and TWIN FALLS CANAL)		9 meghan.carter@idwr.idaho.gov	
10 COMPANY,)		10	
11 Defendant-Intervenors.)		11 For the Defendants A&B Irrigation District, Burley	
12		12 Irrigation District, Milner Irrigation District, North	
13		13 Side Canal Company, and Twin Falls Canal Company:	
14		14 Barker Rosholt & Simpson, LLP	
15		15 BY: PAUL L. ARRINGTON	
16		16 195 River Vista Place, Suite 204	
17		17 Twin Falls, Idaho 83301-3029	
18		18 pla@idahowaters.com	
19		19	
20		20	
21		21	
22		22	
23		23	
24		24	
25		25 (Appearances continued to next page)	

	Page 3		Page 5
1 THE 30(b)(6) DEPOSITION OF ABERDEEN-SPRINGFIELD		1 (Appearances continued)	
2 CANAL COMPANY, TESTIMONY OF STEVEN T. HOWSER, was taken		2	
3 on behalf of the Defendants A&B Irrigation District,		3 For the Defendants American Falls Reservoir District #2	
4 Burley Irrigation District, Milner Irrigation District,		4 and Minidoka Irrigation District:	
5 North Side Canal Company, and Twin Falls Canal Company		5 Fletcher Law Office	
6 at the law offices of Racine, Olson, Nye, Budge &		6 BY: W. KENT FLETCHER	
7 Bailey, Chtd., 201 East Center, Pocatello, Idaho,		7 1200 Overland Avenue	
8 commencing at 9:42 a.m., on February 24, 2015, before		8 Post Office Box 248	
9 Catherine L. Pavkov, Certified Shorthand Reporter and		9 Burley, Idaho 83318-0248	
10 Notary Public within and for the State of Idaho, in the		10 wkf@pmt.org	
11 above-entitled matter.		11	
12		12 Also Present: JEFFREY DUFFIN	
13 A P P E A R A N C E S:		13	
14		14	
15 For the Plaintiffs:		15	
16 Racine, Olson, Nye, Budge & Bailey, Chtd.		16	
17 BY: RANDALL C. BUDGE		17	
18 201 East Center		18	
19 Post Office Box 1391		19	
20 Pocatello, Idaho 83204-1391		20	
21 rcb@racinelaw.net		21	
22		22	
23 (Appearances continued to next page)		23	
24		24	
25		25	

		Page 6
1	I N D E X	
2		
3	TESTIMONY OF STEVEN T. HOWSER:	PAGE
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15	1 Corrected First Affidavit of Steve	8
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20	Aberdeen-Springfield Canal Company, April 3,	
21	1995, ASCC_01948 through ASCC_01954	
22	4 ASCC Recovery Wells and Head Gates	106
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Page 7

1 STEVEN T. HOWSER,
2 first duly sworn to tell the truth relating to said
3 cause, testified as follows:
4
5 EXAMINATION
6 QUESTIONS BY MR. ARRINGTON:
7 Q. Thank you. I get to go first today.
8 A. Okay.
9 Q. Can you just, for the record, just state
10 and spell -- state your name and spell your last name,
11 please?
12 A. My name is Steven Thomas Howser. Last
13 name is spelled H-o-w-s-e-r.
14 Q. Have you had your deposition taken before?
15 A. I have.
16 Q. And you're familiar with the rules. I'll
17 do my best to speak clearly. You do your best to speak
18 clearly. Make sure you speak your answers, don't nod or
19 wave because this is being recorded.
20 We did chat. We all have some questions
21 we want to ask, so we've kind of divided up some areas
22 to make sure we're not duplicating and keep this as
23 efficient as possible. So I'm going to ask some
24 questions, they'll have some questions, and we'll go
25 from there.

Page 8

1 Before we get started, did you bring any
2 additional documents with you today?
3 A. I didn't.
4 Q. I do have a few things that -- two
5 documents that I want to refer to today. I'm going to
6 hand you this document. Can you -- are you familiar
7 with that document? Take a minute to look at it and
8 make sure it's complete.
9 I think, as I'm looking in there, I left a
10 couple of sticky tabs on there. Those can come off.
11 Those were for a different purpose.
12 A. Okay. The document you handed me, it
13 appears to be a copy of my corrected first affidavit in
14 this case.
15 Q. Is it complete?
16 A. It appears to be complete.
17 Q. Let's mark that as Exhibit No. 1. And
18 then I handed you this one as well, if you'll look at
19 that.
20 (Exhibit 1 marked.)
21 THE WITNESS: It's been a while since I've
22 looked at this. This appears to be a copy of my
23 corrected second affidavit in this case, and it appears
24 to be complete.
25 Q. (BY MR. ARRINGTON) Thank you. Let's mark

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1 that as Exhibit No. 2.
2 (Exhibit 2 marked.)
3 Q. (BY MR. ARRINGTON) So we're conducting
4 your deposition today under Rule 30(b)(6) of the Civil
5 Rules of Procedure. In essence, that means you've been
6 designated by Aberdeen-Springfield Canal Company as a
7 representative to come and be deposed and provide some
8 testimony in regards to this matter.
9 Explain to me a little bit about your
10 relationship with Aberdeen. How long have you been
11 there? I may call them ASCC or Aberdeen. But how long
12 have you been there?
13 A. I began my employment at
14 Aberdeen-Springfield Canal Company in March of 1998. In
15 October of 1998, I was hired as the general manager for
16 the Company. And then, subsequently, in, I believe it
17 was October of 2003, I was appointed as the corporate
18 secretary, in addition to being general manager. Do you
19 need more?
20 Q. No.
21 A. Okay.
22 Q. And you've been there --
23 A. For 17 years.
24 Q. You're still employed there?
25 A. I'm still currently employed as general

Page 10

Page 12

1 manager and secretary, watermaster of
2 Aberdeen-Springfield Canal Company.
3 Q. What, in a nutshell, I guess, I know that
4 we could spend all day answering this question, but in a
5 nutshell, what are your responsibilities as the manager
6 of Aberdeen?

7 A. Probably most succinctly put, I'm
8 responsible for the daily operations of the corporation
9 and responsible for all of the property of the
10 corporation. Those responsibilities primarily entail
11 operation and maintenance of the canal delivery system
12 and company wells, as well as company vehicles and
13 equipment.

14 And I'm the supervisor of approximately 20
15 employees; 18 full time, two temporaries. I'm also
16 responsible as secretary for maintenance of all
17 corporate records, including share certificates and
18 legal property descriptions. I think that's broad
19 enough.

20 Q. That's in a nutshell.

21 A. Everything.

22 Q. So if you could have your affidavits in
23 front of you, I'm going to use those as some references.
24 There's figures and pictures in there that I want to
25 point to. If you'll take me to -- if you'll go to

1 river?

2 A. That's the Company's only river diversion
3 point.

4 Q. And if I look in the upper right corner,
5 there's a blue line that kind of stretches over the
6 whole picture and it starts in the upper right corner of
7 that picture. Is that Rose?

8 A. That is correct. This photograph is
9 oriented with north toward the top of the page. And,
10 obviously, east to the right-hand side of the page. So
11 the blue line extending from the northeast corner to the
12 southwest corner is Aberdeen-Springfield Canal's open
13 canal system. And the northeastern-most point of that
14 blue line indicates our point of diversion on the Snake
15 River.

16 Q. Okay. And, now, these blue lines that are
17 depicted throughout, are those canals, are those
18 laterals? What are those?

19 A. The blue lines depicted and indicated in
20 the legend as canal open plus are all of the Company's
21 main canals, laterals, sublaterals. And the reason it
22 says plus is there are a couple of spots in there that
23 you can just see with red that indicate where a portion
24 of a lateral has been piped.

25 Q. And so this is your entire system?

Page 11

Page 13

1 Paragraph 2 of your first affidavit. You list in here
2 the Company's water rights. Is this all of the
3 Company's water rights?

4 A. That appears to be a complete list of
5 Aberdeen-Springfield Canal Company's water rights.

6 Q. And does the Company ever get water from
7 any other source, like rentals or things like that?

8 A. The Company has, on occasion, in drought
9 years rented water from the Water District 1 rental
10 pool.

11 Q. And why have you done that in some years
12 and others not?

13 A. In drought years, when the reservoir fill,
14 particularly in Palisades Reservoir, is short, the
15 Aberdeen-Springfield Canal Company has rented and, I
16 should add, we have also made private rentals through
17 the water district pool for water, to supplement our
18 storage supply.

19 Q. Okay. Now I'm going to go to the second
20 affidavit. Sorry.

21 A. That's all right.

22 Q. There's an aerial photo in here. It is on
23 Page 5, Figure 1. Is this -- you speak of a diversion
24 from the river, from the Snake River at Rose. Is that
25 the only point of diversion for the Company out of the

1 A. Yes.

2 Q. And I guess going on the direct, the
3 southwest corner, the bottom left, is that where your
4 system then dumps back into the river?

5 A. That is one of many points at which
6 Aberdeen-Springfield Canal Company returns some of its
7 flow to the Snake River.

8 Q. Okay. Do you know about how many points
9 there are?

10 A. I don't have a precise number. But it's,
11 including drains, probably more than 30 points.

12 Q. Okay. And are all of -- I'm formulating
13 my question in my mind. Are all of those points on
14 company-owned facilities? Is that -- are they all
15 points where you're diverting from your system back into
16 the river or are some of those points off of like
17 shareholders' private ditches or things like that?

18 A. No, the points that I'm referring to don't
19 include individual shareholder return flows. Those are
20 drains and Company-operated spill facilities.

21 Q. And so in Paragraph -- I'm trying to
22 remember, it's in -- I think it may be in both of your
23 affidavits. Paragraph 4 of your first affidavit, I
24 think this is in both of them. But I'm going to refer
25 to the first affidavit.

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Page 16

1 A. All right.
2 Q. Towards the end of the paragraph, you talk
3 about average return spill, I am about two-thirds of the
4 way down, there's a paragraph -- a sentence that starts,
5 for the years 1989 to 2013.
6 A. I see it.
7 Q. Do you see that?
8 A. Yes.
9 Q. I'll just read it. Aberdeen's average
10 annual diversion was 319,953 acre feet, average delivery
11 to stockholders was 102,478 acre feet, average return
12 spill was 44,634 acre feet. Is that -- if you take all
13 of those 30 points and add up the cumulative return to
14 the river, is that where that number comes from?
15 A. No. We are currently in the process of
16 cooperating with the Department of Water Resources to
17 construct measurement devices on drains. This 44,634
18 acre feet indicated as average return spill is from
19 Company-operated spill structures directly from the
20 canal or lateral.
21 Q. So, in truth, you're actually spilling
22 more than the 44,000 back?
23 A. Well, I think we would have to have a more
24 precise definition of spill. Spill for
25 Aberdeen-Springfield Canal Company is water that we

1 often in the vernacular expressed as our guaranteed
2 minimum. Obviously, no surface water delivery system
3 dependent upon natural river flows and reservoir
4 contents can guarantee water delivery. Nonetheless, the
5 initial -- our bylaws envision that the Company will
6 endeavor to deliver five-eighths of a miner's inch per
7 acre minimum.
8 Q. At what point? The shareholder headgate?
9 A. To the shareholder headgate.
10 Q. Okay. And so are there times in the
11 season when you deliver more than that to the headgate?
12 A. Certainly.
13 Q. And then are there times when you deliver
14 less?
15 A. We'll start with the more.
16 Q. Uh-huh.
17 A. Aberdeen-Springfield Canal Company shares
18 authorize diversion from the river of 100 inches per
19 share.
20 Q. Okay.
21 A. As long as that natural-flow water is
22 available.
23 Q. Uh-huh.
24 A. In addition, Aberdeen-Springfield Canal
25 Company allocates proportionally its storage water to

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Page 17

1 release from the system at the ends of laterals and the
2 end of the Highline Canal and the bottom end of the
3 Lowline Canal --
4 Q. Okay.
5 A. -- that is released through Company
6 measurement structures.
7 Additional water is released through
8 drains. And I'm sure we're going to talk about drains
9 more later.
10 Q. And you don't -- at this point in time, do
11 you quantify the amount of water that is spilled through
12 the drains?
13 A. Not entirely.
14 Q. Okay. What do you mean not entirely?
15 A. As I mentioned, we are in the process of
16 constructing measuring devices on the ends of our larger
17 drains in cooperation with the State. I think we have
18 two or three of those in place --
19 Q. Okay.
20 A. -- at this point. And I haven't
21 quantified the data as yet.
22 Q. Okay. Do you have a per share -- does the
23 Company have a per-share delivery rate that it sets for
24 each share?
25 A. We have a delivery minimum. And what is

1 its shareholders, which certainly varies year to year.
2 In some years, depending upon crop
3 rotation and cropping patterns, some crops may receive
4 more than one inch per acre. One inch per acre is what
5 we often consider as our standard delivery.
6 In the cases of water-intensive crops,
7 beets, alfalfa, the occasional corn crop, we often see
8 diversions of one and a half to two inches per acre or,
9 more accurately, one and a half to two acre feet per
10 acre per season. On average -- I'm sorry, two and a
11 half to three acre feet per acre per season. On
12 average, we deliver 1.9 to 2.1 acre feet per acre over
13 the entire system.
14 Q. Okay. Did I hear you correctly, your
15 water rights allow 100 inches per share at the river
16 headgate? Was it inches per share?
17 A. 100 inches per share.
18 Q. At the headgate?
19 A. At the river.
20 Q. At the river? That's what I meant.
21 Sorry.
22 A. Yes.
23 Q. Thank you. So how do you go about the
24 process then as the season progresses of regulating
25 those diversions from the -- we start at the upper end

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Page 20

1 and, as the supplies may diminish, get to the lower end
2 of your range?
3 A. Where to start. Aberdeen-Springfield
4 Canal Company accomplishes all deliveries to its
5 shareholders only via Company-operated headgates with
6 measuring devices. Those headgates are operated by
7 ditch riders.

8 At the beginning of each season,
9 shareholders are allocated natural-flow water. And once
10 storage allocations are published by Water District 1,
11 we then allocate a portion of that entire allocation to
12 each individual shareholder. Consequently, each
13 shareholder has a total allocation of water that they
14 may draw upon for a season.

15 In addition, the Company allows
16 shareholder-to-shareholder temporary one-year water
17 transfers, which may allow a shareholder to rent water
18 not being used by -- I'm sorry, and that's only for
19 storage water, water not being used by one shareholder
20 to be used by another shareholder. Obviously, it's only
21 contingent upon the requirement that the lands upon
22 which that rented water is used must have
23 Aberdeen-Springfield Canal Company shares appurtenant
24 and assessments must be fully paid. The same conditions
25 we place on any water delivery. Does that answer your

1 mid-July, typically July 11 to July 17. Within a couple
2 of days of that priority starting to be cut, it's cut
3 entirely. And then we typically proceed through the
4 most of the remainder of the system drawing only storage
5 water from our three storage space holder contracts.

6 Occasionally, our natural-flow water
7 rights will return in early to mid-October. And in a
8 couple of cases, I've seen them return as early as
9 mid-September. Much of that, of course, depends upon
10 water-use patterns upstream of us and how our priority
11 date comes back.

12 So while an allocation is made of
13 natural-flow water, there's only been one instance in
14 the history of the Company that I know of where that
15 allocation of natural-flow water has limited delivery.
16 And that was the year that we had an entire season of
17 natural flow. And water use was up that year. And we
18 had a few shareholders that ran out of the storage -- or
19 ran out of natural-flow allocation.

20 But, typically, an allocation is made of
21 natural-flow water that is almost twice as much as
22 what's normally available.

23 The storage water is allocated based on
24 the direct allocation or the allocation information that
25 we're given by Water District No. 1. They give me the

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Page 21

1 question?

2 Q. I want to make sure I understand, to make
3 sure I heard correctly. So at the beginning of the
4 year, you figure out basically how much water you're
5 going to have and say per shareholder that's X amount of
6 water, this is how much you get over the season?

7 A. That's correct.

8 Q. And so I'm just trying to separate the
9 questions in my mind. I have a few questions. Have you
10 ever had a situation where during the year your
11 pre-season estimates turned out to not be correct?

12 A. No.

13 Q. That's fantastic.

14 A. The reason for that is that we --that
15 natural flow is a -- the total allocation of natural
16 flow is made based on 100 inches per share. But the
17 contingent is, it's only so long as natural flow lasts.

18 For Aberdeen-Springfield Canal Company,
19 since the completion of the upper Snake River reservoir
20 system, has only had one year, to my knowledge, where we
21 have drawn natural flow for essentially the entire
22 season.

23 Most commonly, Aberdeen, I would even say
24 normally, Aberdeen-Springfield Canal Company's 1895
25 natural flow priority date goes out of priority in

1 total number of acre feet that's available for
2 Aberdeen-Springfield Canal Company shares or for
3 Aberdeen-Springfield Canal Company space in Jackson,
4 Palisades and American Falls Reservoir, and that water
5 is then divided by the number of shares. I missed a
6 step. First, that water is -- first the Company's
7 projected loss for the season is deducted from that
8 allocation. And the remainder is allocated based
9 proportionately on the number of shares in the Company.

10 In addition, shareholders have access to
11 American Falls Reservoir District water. The water
12 district informs me of allocations of American Falls
13 Reservoir District space. And then I allocate that
14 water to the American Falls Reservoir District shares
15 that are appurtenant to lands within our company. And
16 so then that allocation is provided to the shareholders
17 that own those lands.

18 Q. And so from that allotment -- well, at
19 what point do you make a determination of whether you're
20 delivering an inch or three-quarters or five-eighths of
21 an inch?

22 A. Well, typically, we don't regulate the
23 daily diversion from a headgate.

24 In most years, except for 'extreme
25 droughts, in most years we allow a water user to take

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1 whatever flow they require or whatever flow they ordered
2 on a daily basis out of their headgate. That delivery
3 is accounted for by Company personnel. And in the last
4 five years has been deducted automatically from that
5 individual's allotment or count, if you will. And then,
6 of course, if that allotment runs out, no more water is
7 delivered to those lands.

8 Q. And so what happens then?

9 A. Then the shareholder has the option of
10 either not doing -- not putting any more water on their
11 land or going out and finding a shareholder who would
12 rent them sufficient water to finish their season.

13 Q. Does the Company keep the water user -- or
14 how is the water user kept apprised of how much of their
15 allotment they've used?

16 A. Ditch riders are given weekly balance
17 sheets throughout the storage season.

18 Q. Okay.

19 A. And then, typically, if we're in a
20 water-tight year, not necessarily a short year, in a
21 water-tight year, we'll send water balance notifications
22 to every shareholder weekly. In less-tight years, it's
23 biweekly. And in -- and when we have more than
24 sufficient supply, it's typically those -- those
25 notifications are typically sent out monthly.

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1 Q. And if a water user uses up his or her
2 allotment and doesn't rent any more, does the Company
3 lock the headgate? Or what does the Company do?

4 A. The headgate is closed and locked. All
5 headgates are locked on the Company. At least that's my
6 directive. Ditch riders don't always listen to me.

7 Q. You're the only person in the world that
8 has that problem, I'm sure.

9 A. Yeah.

10 Q. Let's go back to Paragraph 4. I just have
11 a few questions about some statements in Paragraph 4 of
12 the first affidavit.

13 A. All right.

14 Q. Again, I think this paragraph is almost
15 exactly in the second affidavit. But if I go down to --
16 this is about a third of the way down, it says, prior to
17 my tenure with Aberdeen-Springfield Canal Company. Do
18 you see that sentence?

19 A. I do.

20 Q. I'll read it again. This data was
21 handwritten and I began using computers to record and
22 calculate these amounts. I'll just stop there for a
23 second. The previous sentence, if you look up just a
24 little bit, talks about transmission loss has two
25 components, evaporation, which is estimated to be less

1 than two percent, and loss to the aquifer. And this
2 sentence is referring to that. And it says,
3 incorporated historical, continuing on, handwritten data
4 back to 1989 and anecdotal data from the general
5 manager's annual report to stockholders back to 1922.
6 What is the anecdotal data?

7 A. Anecdotal data is in the general manager's
8 report when the -- when the general managers at the time
9 said, for example, our loss this year was 58 percent.
10 Lacking direct data, right, and only having a statement
11 in a general manager's report, that's what I refer to as
12 anecdotal data.

13 Q. I'm going to let you read this time. Can
14 you read the next -- let me see, starting at the next
15 sentence, which is for the first 60 years?

16 A. Certainly.

17 Q. And read just the next two sentences.

18 A. All right. For the first 60 years of
19 operation, ASCC's percentage loss ranged between
20 30 percent and 40 percent of total diversion. Beginning
21 in the early 1970s loss rates began to increase and
22 since the mid-1980s have stabilized, ranging between
23 55 percent and 62 percent.

24 Q. So what I'm trying to figure out is what's
25 the reason for that increase?

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1 A. Paul, that is a huge question. If --
2 you're really asking me for some opinion here. I want
3 to make that clear.

4 Q. Okay.

5 A. I think that there are probably multiple
6 reasons for seeing an increase in our transmission loss.

7 Probably first and foremost, simplest, is
8 that when the canal was constructed in the late 1800s,
9 early 1900s, but it's my firm belief that the engineer
10 that built the system put a bottom in it. Used native
11 soils to cover rocks and to place the bottom just as
12 they built the banks. I think over the years, that
13 bottom washed away, exposing the underlying gravels and
14 basalt rocks in much of the area. And, of course, much
15 of the canal was constructed over fractured basalt and
16 gravel originally. I think that's a large part of the
17 reason for seeing an increase in loss.

18 I think there might be other underlying
19 hydrological reasons as well. But I really don't have
20 any data to support this.

21 Should I? Give you conjecture? I mean,
22 it really is. This is just my gut of why -- of some of
23 the reasons that we've seen an increase in loss over the
24 years.

25 Q. What would you think?

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1 A. I think in addition, as ground water use
2 in the area increased, that we actually saw an increased
3 rate of infiltration of loss from the canal because not
4 as much as the previous year's loss was remaining in the
5 underlying ground water table. And, consequently, we
6 saw an initially increased rate of loss from the canal.
7 And then in the early part of the season, filling that
8 hole, as it were. And then once ground water use
9 stabilized in the area, our loss rates stabilized again.

10 So that's really pure conjecture. I don't
11 have any data to -- well, that's not correct. I
12 wouldn't say that I don't have any data that would
13 address that. More precisely, we haven't done that
14 analysis on the data we have as yet.

15 Q. Okay.

16 A. But certainly there's no bottom in that
17 canal.

18 Q. There's no bottom. And it just seeps out.
19 Okay. Let's turn to -- again, in your first affidavit,
20 you have a couple of exhibits.

21 Exhibit 2 is the Application to Change or
22 Add Point of Delivery. We're going to get into that
23 here in just a little bit.

24 But I want to turn to something that's
25 attached to that. It's a colored figure. It looks --

1 and then wells Kriging.

2 Q. Uh-huh.

3 A. Next a GKRND17wRose17w65b, those are
4 references to the wells that are used to produce this
5 data.

6 Q. Okay.

7 A. Some more numbers and letters, 113hmwmd
8 and then 053012, that's May 30, 2012.

9 Q. Okay.

10 A. And then Cb113hmMinuswmd040112, that's
11 April 1, 2012.

12 Q. Okay.

13 A. And what that long string of numbers and
14 letters means is that this graphic represents the result
15 of subtracting ground water levels present -- or ground
16 water levels as modeled by the Kriging process on
17 April 1, 2012 from ground water levels on May 30, 2012.

18 Q. And so what does it show me?

19 A. It shows changes in ground water levels as
20 modeled by the Kriging process using the well data that
21 we collect in cooperation with the Idaho Department of
22 Water Resources through NC2 data logger water
23 transducers inserted in I believe this is 12 different
24 wells. But there might be 13 in this particular model.
25 In 2012, I think we only had 12 wells.

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1 that's it right there. Trying to figure out how to --
2 it's just the attachment to the Exhibit 2 application.

3 A. Yes.

4 Q. I want you to walk me through this and
5 help me see what -- help me understand what I'm looking
6 at here. Because I think -- just keep your thumb on
7 that. I want to look just -- if I look in your second
8 affidavit on Page 12, Figure 4, I think these are both
9 similar figures, maybe showing different time periods,
10 but they're showing the same kind of data; is that
11 correct?

12 A. They are showing the same kind of data.
13 And let me -- they are, essentially, the same data, but
14 they're two different time periods.

15 Q. So let's stick with the bigger one. And
16 walk me through this. First of all, what's the time
17 period?

18 A. The time period for the attachment to
19 Exhibit 2 of my first affidavit, the first corrected
20 affidavit, was produced using ArcGIS. It covers the
21 time period from April 1, 2012 through May 30, 2012.

22 Q. Is that -- is there a way to figure those
23 dates out?

24 A. Yes, there is. If you'll look at the top,
25 you'll see the word legend followed by a line with canal

1 So this, essentially, produces the -- the
2 Kriging process, essentially, produces a contour map
3 through time of ground-water elevations within the
4 defined statistical area of highest probability that our
5 model can attain. So, in other words, I can't look at
6 ground-water levels too far away from where my wells
7 are.

8 So this just depicts the 95-percent
9 confidence interval of ground-water Kriging results
10 based on the wells that we had transducers in in
11 cooperation with the State in 2012.

12 In particular, this map is color coded.
13 And you'll see that on the left side of the page, where
14 it says differences in ground-water elevation in feet,
15 the color codes indicate positive or negative changes in
16 ground-water elevations over the period of April 1, 2012
17 through May 30, 2012.

18 The darker the color, the greater the
19 change in that period of time. And then the lighter
20 colors, beginning with yellow and working down to red,
21 indicate where our model shows a decrease in water
22 levels. I could expound on that, if you would like.

23 Q. Well, we might get there. Let me ask you
24 a few questions. You said these transducers are in 12,
25 maybe 13 wells in the system?

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1 A. Yes.
2 Q. Did you put them in? Who put them in and
3 how were those wells selected?
4 A. The wells were selected cooperatively
5 between the Department of Water Resources and
6 Aberdeen-Springfield Canal Company. We were interested
7 in collecting data in as many of the wells that we had
8 historical data for as possible. In addition, the
9 Department of Water Resources had sites where I presume
10 that they had holes in their data. And they wanted to
11 collect some data. So the location of all these wells
12 was decided cooperatively.

13 I think 10 of them are wells that we
14 historically had transducers in -- or not transducers
15 in. But we had historical data for. And I believe now,
16 we actually currently have 17 of these wells. Although,
17 the additional wells have been suggested by us. And
18 then, of course, someone else required permission to put
19 transducers in.

20 Idaho Department of Water Resources has
21 provided the transducers, the equipment, or most of the
22 equipment. I think we purchased roughly half of the
23 transducers over the years, as their budgets ran low.

24 And then a Canal Company employee collects
25 that data monthly and then transmits it to the

1 Q. Do you have transducers in that well too?
2 A. No, we don't.
3 Q. Okay.
4 A. I'd also like to point out on both of
5 these that when I produced this map, there are two wells
6 marked on this. The underlying base map I used for
7 this, which shows the location of all the wells that
8 have transducers in them. Also had two locations, the
9 Pratt unused well and the Pratt well that -- and this is
10 just a mistake. At that particular time, we were
11 seeking to identify those wells with the State hoping to
12 gain access to one or both of them to put transducers
13 in. And so the Pratt unused well and the Pratt well
14 have nothing really whatsoever to do with any of this.

15 Q. Okay.
16 A. And quite honestly, I didn't notice it
17 until I was putting this together. And I was just
18 hoping that I would have a chance to explain what those
19 are.

20 And we haven't yet been able to put
21 transducers in there. But we're hoping for one this
22 year.

23 Q. There's also a J Well identified.

24 A. J Well is the well that
25 Aberdeen-Springfield Canal Company began constructing

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1 Department of Water Resources. And then, of course, we
2 save copy on our service as well.

3 Q. So does the model that produced this
4 image, is that something you -- the Company put together
5 or the Department put together?

6 A. That's the Company's model.

7 Q. Okay. Did you develop that model or where
8 did that model come from?

9 A. Well, the word development, when you're
10 talking about GIS, is really a loaded word. The Kriging
11 process by which we built this model is the industry
12 standard for interpolating data between spatial points.

13 I believe, although I'm not certain, that
14 we're the first to use this particular process to look
15 at losses from canals. Although, it's also been used to
16 look at aquifer changes in Colorado and Wyoming and I
17 believe Montana and maybe one California study. But
18 certainly this model was developed to custom fit our
19 data and our system using off-the-shelf software.

20 Q. Okay. So let me look at this picture. I
21 see some wells that are specifically identified. Some
22 of them are kind of hard to see, that's my copy. I see
23 the Jeff Duffin well. Is that -- what well -- is that
24 the well that's kind of the focus of this?

25 A. That is.

1 under their -- under our recovery well permit.

2 Q. Okay.

3 A. And, I'm sorry, I don't have those
4 numbers. But the well wasn't completed. But we stopped
5 drilling shortly after we hit water prior to the
6 irrigation season 2013. And for a myriad of reasons
7 that we really don't need to talk about. Construction
8 stopped and we placed a transducer in that well for the
9 2014 -- I'm a year off. The well was first drilled in
10 2014. And we didn't complete it. And we did drop a
11 transducer in there for the 2014 irrigation season.
12 That data is not included in this model.

13 Q. How deep did you get that well before you
14 stopped?

15 A. It's 63 feet deep when we stopped.

16 Q. 63 feet deep? And why did you stop,
17 again?

18 A. The conditions that the well driller
19 encountered during an initial pilot hole drilling of six
20 inches under supervision of the Department of Water
21 Resources didn't match the anticipated geologic
22 conditions in the permit. And the Department of Water
23 Resources indicated that since we didn't find the
24 conditions that were anticipated, he suspected that they
25 might need to revisit the water-right-like conditions

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1 that were placed on the well drilling permit initially.
2 And that upon that reconsideration, he would allow us to
3 resume drilling.

4 Q. That plants a lot of questions in my mind.
5 I may come back to that. But let's get back to this.

6 A. It's the vagaries of drilling a well.

7 Q. Exactly. I just want to make sure I'm
8 reading this right. And I'm going to use the Jeff
9 Duffin well as an example. If I look at -- again, this
10 is the one that's attached to your first affidavit.

11 That dot looks like, to me, and tell me if I'm reading
12 this correctly, it looks like it's straddling a line
13 between a loss of a half a foot or a gain of a half a
14 foot. Am I --

15 A. Well, the dot is certainly straddling that
16 line.

17 Q. Okay.

18 A. That dot is about a 75 or 80-acre area.
19 The actual location of -- the point location of the well
20 in question marked as Jeff Duffin well on there is in
21 the light blue, which indicates that within the first
22 60 days of the irrigation season -- now, mind you this
23 isn't of 60 days of water in the canal. I believe I
24 turned water into the canal in 2012 the second week of
25 April. Water probably arrived at this point 10 days

1 A. And then there are two other wells most
2 closely associated with this location. If you look
3 upstream or north on the canal, you'll see another dot
4 in the yellow that you can read W2, that actually says
5 W24. And then down and to the right of W17, also in the
6 yellow dot, you'll see W74. These three wells are
7 irrigation wells and are pumped during the irrigation
8 season. They have ground water irrigation rights on
9 them, I assume. That's not my purview to release that.
10 But, consequently, these wells, when they're being
11 pumped, they're drawing down the immediate vicinity
12 ground water and it recovers.

13 We spent quite a bit of time trying to
14 come up with the statistically valid method to filter
15 out the draw-down effects from the pump. But, quite
16 frankly, by the time we got to a statistically viable
17 situation, it was a sixth-order polynomial, which any
18 statistician would tell you that you should not be
19 comfortable with, even if the numbers say that you can
20 be. Consequently, we used the raw data for the model,
21 uncorrected.

22 So in those wells where we see a draw down
23 because of pumping in that well, the model looks at that
24 as a decrease in ground-water levels. And then
25 interpolation of that decrease in ground-water level

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1 later. And so this -- but regardless, within the first
2 60 days of putting water in the canal, we saw ground
3 water response. And that's what this indicates. And
4 the Jeff Duffin well is located in an area of increased
5 ground-water response.

6 Now, what I didn't include in this is
7 these iterations throughout the season, throughout a
8 season. And there are some other technicalities about
9 this particular location in our model. But because it's
10 on the edge of our 95-percent confidence interval, that
11 leads me to believe that that increase is likely
12 substantially more than the model indicates. One of
13 those reasons being is the closest well that we have a
14 transducer in to this particular location is in fact an
15 irrigation well.

16 Q. Is that one identified on this?

17 A. That is identified as W17. Do you see
18 that? It's just south of the dot that says Jeff Duffin
19 well. And, actually, what you can see is W1.

20 Q. Okay.

21 A. The seven is on the --

22 Q. Can you mark it on that map, just so when
23 we're going back and looking at this, we'll --

24 A. Sure. W17 is marked with a blue circle.

25 Q. Uh-huh.

1 with the most adjacent -- or with all of the other
2 wells. Kriging is a complicated process. But it
3 interpolates changes between spatial points. And you
4 can have multiple spatial points. So if you have wells
5 that have a local draw down, right, the model interprets
6 that as a draw down in the ground-water table and then
7 interpolates that between others. So without corrected
8 data, you would tend to see what appeared to be a
9 decrease in ground-water level over the range of
10 contours. Is that clear?

11 Q. As clear as it can be. When I have
12 statistical questions, I go to Kent. He's our
13 statistician.

14 A. Okay.

15 Q. So how many of these 12 or maybe 13 wells
16 are also irrigation wells?

17 A. Just these three. And, actually, I
18 misspoke. W17 is actually a domestic well. The other
19 two are irrigation wells.

20 Q. How many, I guess, of the 12 -- or we'll
21 say 13, just for the sake of brevity, are these the only
22 three of those 13 that are used --

23 A. Yes.

24 Q. So the others --

25 A. The others are observation wells or

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1 abandoned wells.

2 Q. Okay. How did -- and this is going back a
3 little bit to that J Well. How did you determine that
4 that was the location you were going to put the J Well?

5 A. That location was determined -- oh, how
6 did I determine that location for the J Well?

7 Q. Yeah.

8 A. It's directly adjacent and within the
9 Canal Company's right-of-way at the terminal end of the
10 Company's J lateral. It was also very convenient
11 because there was power located less than 100 yards
12 away.

13 Q. Okay. So I think I understand this. Let
14 me just -- there are a number of wells on here, a lot of
15 them labeled W and a number, and then some are labeled
16 with a name.

17 A. Yes.

18 Q. What's the distinction or is there a
19 distinction?

20 A. Well, there's no distinction in the --
21 well, the distinction in the naming conventions are the
22 names, Stecklein, Crumley, Taylor, I think there might
23 be another one in there. And up at the top, and this
24 really turned out dark, black --

25 Q. It did.

1 Q. Okay.

2 A. This was all of the wells that had
3 transducers in them that were present in 2012. If I had
4 a clearer map, I could count them for you.

5 Oh, and something else, the numbering
6 convention actually originated with the
7 Aberdeen-Springfield Canal Company's historical data
8 where we had all of the observation wells numbered from
9 1 through I think it was 83.

10 Q. Okay. I think I've belabored that.

11 A. They just got carried away --

12 Q. I think I've belabored that as much as I
13 want to.

14 A. You also asked me about the J Well.

15 Q. Oh, yeah. How did you choose that
16 location?

17 A. And that was just it, it was the point on
18 the lateral where we most needed to add water at the
19 terminal end and it was close to power and within our
20 right-of-way.

21 Q. Okay. So what has -- going back. I'm not
22 going to -- we don't need to turn there. But
23 Paragraph 4 of your first affidavit speaks a lot to
24 these conveyance losses and basically the losses in the
25 system. Actually, let's do turn there to Paragraph 4

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1 A. Up in the very northeast corner, there are
2 two up there, one says Blackfoot Airport and one says
3 Blackfoot Park. They're on the other side of the river
4 from my system. One is directly adjacent to the
5 Blackfoot Airport. And the other one is nearby Jensen
6 Grove.

7 Q. Okay.

8 A. Those wells were part of the original
9 seven that the Department of Water Resources placed in
10 existing observation wells when Aberdeen-Springfield
11 Canal Company participated in a recharge pilot
12 experiment, I think in 2008 maybe, where the Canal
13 Company diverted some water prior to April 1st. And the
14 Department of Water Resources had put transducers and
15 wells on the upper end of the system to look at response
16 times from loss from the upper reach of the canal to the
17 ground.

18 Q. Okay.

19 A. And then so those wells were identified.
20 We carried those naming conventions into the current MOA
21 with the Department where we just started using the
22 numbered designation for the wells.

23 Q. So I'm just counting quickly here. I
24 think there's more than 13 wells identified.

25 A. There might be.

1 because there was another question I had about it.
2 About five lines down, a sentence starts, transmission
3 loss.

4 A. Okay.

5 Q. Can you read that sentence for me?

6 A. Transmission loss has two components,
7 evaporation, which is estimated to be less than two
8 percent of the total, and the loss to the underlying
9 Eastern Snake Plain Aquifer, ESPA.

10 Q. How did you determine that evaporation is
11 estimated to be less than two percent of the total?

12 A. That's based on estimates from
13 evapotranspiration loss data from the Aberdeen
14 experiment station compiled by the Barnett agency and
15 communicated -- I'm pretty sure it's in that -- in the
16 study from Barnett that I included in our discovery.

17 Q. Okay.

18 A. But Barnett estimated that two percent of
19 the total loss is estimated as evaporation. And we know
20 certainly that some years it's more than that, some
21 years it's less than that. Conditions pertain based on
22 the ET numbers from Aberdeen.

23 Q. Okay. What has the Company done
24 throughout the years to address this conveyance --

25 A. I'm sorry. I misspoke. It's two percent

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1 of the total diversion. Not two percent of the total
2 loss.

3 Q. I think that's -- okay.

4 A. Okay? Right. Because --

5 Q. It says, transmission loss has two
6 components, evaporation, which is estimated to be less
7 than two percent of the total. And that should be
8 two percent of the total diversion?

9 A. Right. Because you don't get evaporative
10 loss from water that seeps out the bottom. Evaporative
11 loss was calculated based on the estimated surface area
12 of the canal when we're running full. And then
13 correlated with the ET numbers from the Aberdeen spatial
14 station.

15 Q. Okay. So what has the Company done to
16 address these conveyance-loss issues?

17 A. Well, beginning in the '20s, when they
18 first started looking at the conveyance losses, the
19 Canal Company started addressing the occasional
20 sink-hole issues. Those sink-hole issues have increased
21 in frequency over the years.

22 In a few instances, in very small scale,
23 the Canal Company has lined sections of the Lowline
24 Canal, a section of the Lowline Canal, a small section
25 of U, as in Ulysses, Lateral, and a small section of S,

1 there are just so many of them. And we -- and every
2 year, we address the five or ten largest or most --
3 well, we prioritize the ones that are in the bank or
4 close to the bank. And then lowest priority are ones
5 that are in the middle of the canal, where they don't
6 tend to threaten structured bank.

7 So we prioritize the repair of sink holes
8 that are close to the inside toe of the bank or actually
9 within the bank. And we hit five to ten every year.

10 Q. So there's some lining, some piping?

11 A. The last three years, we've -- for the
12 ones located in the bank, we've started using some --
13 just a landscaping fabric. So we excavate back to the
14 bedrock, place landscaping fabric, and then place -- and
15 then replace the bank fill on top of the -- it's not --
16 it's a water-permeable liner. The intent is to catch
17 the silt. We've had marginal success with that. Well,
18 not marginal. I'd say we're at 50/50 on those.

19 We're finding that the ones where we put
20 the liner in over a longer distance, as much as a
21 hundred feet upstream and a hundred feet downstream of
22 the actual hole, those seem to be holding a little
23 better. The ones where we were just covering it with
24 20 to 40 feet of fabric, the hole just moves to the end
25 of the fabric.

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1 as in Sam, Lateral. Those lining projects -- I'm sorry,
2 the Lowline lining project and the S Lateral lining
3 project were done as cost share with shareholders. The
4 U Lateral, U1 -- I'm sorry, U1 Lateral lining project
5 was a Company project only.

6 Every year, since I began work with the
7 Canal Company and, to my knowledge, every year prior for
8 as many as 50 or 60 years, part of our normal fall and
9 spring maintenance efforts are to repair and refill sink
10 holes in the main canal; also, in the occasional lateral
11 where they show up. Lots of methods have been used to
12 address this, from hay bales to manure to cars,
13 concrete. These days, we use a much more modern and
14 accepted method of sink hole repair. Interestingly,
15 those methods only provide us with one or, at most, two
16 seasons of success with a particular sink hole.

17 At one time, in 2001, I believe it was, in
18 a three-mile stretch of the main canal, I GPS'd a
19 location of sink holes present in the fall that were
20 greater than 12 inches in diameter. And I think I
21 identified 30 or 40 of those at that time.

22 Q. In how long of a distance?

23 A. Three miles. And at that point, I decided
24 that -- I understood now why previous canal managers
25 didn't make much effort to identify sink holes because

1 Q. Has the Company ever enlarged or relocated
2 any of its facilities to address some of these issues?

3 A. I don't know. I mean, I'm not really sure
4 what you're asking.

5 Q. Well, if you've got a really -- let's just
6 say a leaky lateral that's in Point A, has it ever
7 relocated some or a portion or all of the lateral to
8 Point B hoping that -- because it might be less leaky?

9 A. In one instance I know of, a portion of
10 the Company's V, as in Victor, 4, the number 4,
11 lateral -- I'm sorry, V3, not V4. We have a lot of
12 laterals. At one time, I believe in the late '50s,
13 maybe early '60s, and maybe as late as the late '60s, a
14 portion of V -- of that V sublateral, V3 or V4, was
15 removed because of its leakiness. And that's the only
16 part -- only facility I know of that was changed to
17 address loss.

18 Q. Okay. Now, in your affidavit, you also
19 speak of capacity limitations --

20 A. Yes.

21 Q. -- in the system. And I want to speak to
22 the J lateral because that's kind of the focus of this
23 matter. Although, perhaps the issue is elsewhere as
24 well. But let's focus on the J lateral. Describe to me
25 what you mean by capacity issues on the J lateral.

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1 A. Right. Obviously, all surface water
2 delivery systems have a capacity, all right, that
3 determine the maximum flow that can be transported
4 through any given reach of a surface water canal.
5 J lateral is -- at one time, was one of
6 the longer laterals in Aberdeen-Springfield Canal
7 Company. But it also has very little elevation drop.
8 Consequently, without that gravity to push
9 it along, the canal had to be larger to accommodate the
10 same flows or -- well, not the -- it was larger in an
11 attempt to accommodate the required flows to deliver
12 water out of the headgates at the terminal end of
13 J lateral.
14 Long flat laterals present problems to
15 surface-water delivery. The capacity issue -- the
16 capacity issue can only be addressed by increasing the
17 physical size of the lateral. And within the
18 constraints of construction, when they built the
19 lateral, and then the established right-of-way once the
20 lateral was built, you can only get so large.
21 Deliveries on the terminal end of
22 J lateral, apparently, had been in long-time historical
23 difficulty for the Company. It's one of the couple of
24 laterals that show up over and over again through
25 minutes and manager's reports as having difficulty to

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1 deliver to the end of it.
2 In my tenure, the capacity limitations to
3 the lateral have been exacerbated by an invasive weed
4 known as Flowering Rush. In fact, this lateral is the
5 poster child of Flowering Rush infestation in the
6 Pacific Northwest.
7 Flowering Rush impedes flow, despite our
8 best efforts at control, which are limited since there
9 are no known chemical applications that can be applied
10 in flowing irrigation waters that have any substantial
11 effect.
12 In addition, mechanical removal is our
13 only option. And, technically, it's -- since Flowering
14 Rush is a noxious weed, every time we mechanically
15 remove it, we're violating the noxious weed rules for
16 transport.
17 So anyways, it's a very difficult weed to
18 control. We've had it since the late '50s, maybe early
19 '60s.
20 Prior to that, capacity limitations were
21 -- primarily occurred on J lateral in the peak
22 irrigation season, first of June to the end of July,
23 sometimes middle of August when water demand on the
24 system was highest. Certainly, those capacity
25 limitations were greater when we were gravity

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1 irrigating. However, most of the system started
2 converting to sprinkler in the late '50s, early '60s.
3 And currently, we're 99.5 percent sprinkler irrigation
4 on the system.
5 Q. Turn with me, if you will, let's go to the
6 first affidavit, Paragraph 5. I want to make sure I
7 read something correctly. Because it sounds different
8 than what I think you just told me.
9 A. It's not different. There's just more to
10 the story.
11 Q. Well, why don't you read -- there's a
12 sentence -- we can read the whole thing. I want to
13 really focus on the sentence that says, this was a
14 somewhat common occurrence, through the end of that
15 paragraph.
16 A. Certainly. But that's not what you asked
17 me in the first question.
18 Q. No, I understand. No, I understand.
19 A. Okay.
20 Q. But what I think I just heard you to say
21 was the demand on the system lessened somewhat as people
22 converted from flood to sprinkler irrigation.
23 A. Yes.
24 Q. And I'm thinking -- I'm not sure I'm
25 reading this correctly. Because I think when I read --

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1 I'll just read the sentence. It says, this was a
2 somewhat common, do you see that sentence?
3 A. Yes.
4 Q. This was a somewhat common occurrence in
5 the '60s and '70s as conversion to sprinklers advanced
6 across our system. Maybe we do need to go back for some
7 context. The first sentence speaks to, Jeffrey and
8 Chana Duffin's property served by Aberdeen-Springfield
9 is located at the end of ASCC's J lateral, and had
10 historical difficulty receiving their share of the water
11 due to system capacity issues, sometime in the early
12 1970s a well was excavated on the property to supplement
13 surface water deliveries. And then, this was a common
14 occurrence in the 1960s and '70s as conversion to
15 sprinklers advanced across our system.
16 A. Okay.
17 Q. So, I guess, what is that sentence telling
18 me? What was a common occurrence as sprinklers advanced
19 across the system?
20 A. Okay. Let me add a little context. The
21 first question you asked me was specifically about
22 system capacity issues in J lateral.
23 Q. Exactly.
24 A. Right. Paragraph 5 in my affidavit talks
25 about a particular shareholder and what their solution

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1 was to the Canal Company's system capacity issues.
2 Q. Correct.
3 A. As conversion to sprinklers advanced
4 across our system, and this -- let me back up a little
5 bit. The difference between supplying water by gravity
6 and supplying water to a pump out of the canal is that
7 when you're supplying water by gravity, it's possible to
8 deal with system capacity issues by delivering less
9 water on a daily basis per headgate over the entire
10 system. For example, if your demand is 25 percent
11 greater than your capacity, then you could limit
12 deliveries by 25 percent to all headgates across the
13 system. And that would result -- and that would result
14 in individuals that were using gravity irrigation to
15 take longer to make their sets, to get all the way
16 across their fields.
17 As we started converting to irrigation
18 pumps, right, that became a less and less viable option
19 for equitable distribution of the available water
20 limited by system capacity. You can't -- you can't
21 deliver 75 percent of the water required for a pump. If
22 the pump needs 100 inches, it won't work on 75 inches.
23 So what we saw was that the shift in our ability to deal
24 with our system capacity issues by decreasing the
25 maximum daily delivery provided to each headgate.

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1 There was also -- and I'm not really sure
2 how this worked, but there was also different percentage
3 deliveries on different parts of the system based on
4 what the reaches capacity was.
5 So by saying a 25 percent over the entire
6 system, that's probably not entirely accurate. It may
7 have been 75 percent on one subset of laterals, it may
8 have been 85 percent on another subset of laterals,
9 determined by the manager as capacity issues changed.
10 But as we started converting to sprinklers
11 and started providing water to pumps, then the system
12 capacity issues were actually worse. Right? Because no
13 longer do we have the ability to decrease the amount of
14 water we're delivering to the shareholders, the demand
15 stays the same. And in order to meet that demand, our
16 capacity could never meet that demand. Consequently,
17 some shareholders started putting in supplemental wells,
18 wells that would allow them to supplement their surface
19 water supplies in those times when there was
20 insufficient capacity in the system to provide the
21 required amount of water for a pump or to irrigate
22 particular lands with sprinklers.
23 Q. Does the Company require water users who
24 convert to sprinkler to install a pond on their property
25 as well?

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1 A. They do now.
2 Q. They do now?
3 A. But that policy wasn't finalized until --
4 THE WITNESS: Do you remember, Kent? Late
5 '90s? '96? Just before I came to work for the Canal
6 Company. '96 or '97 is when the policy for continuous
7 flow, requirement took place upon, was established by
8 the Company. Prior to that, there was no standing
9 policy.
10 Q. (BY MR. ARRINGTON) And so have all of the
11 shareholders gone to using a pond or --
12 A. No. There were a number of delivery
13 points, headgates, and I don't have the number off the
14 top of my head, that were grandfathered in that were
15 directly connected to the canal. The majority of
16 turnouts comply with what we refer to as our continuous
17 flow policy.
18 And the continuous flow policy only
19 requires that your entire delivery that you've ordered
20 be taken through the headgate for 24 hours. Since we
21 make changes to headgates on a daily basis, the Canal
22 Company requires that if you order water, you have to
23 take that water for 24 hours.
24 Now, the shareholder has the option of how
25 they care to deal with that 24-hour delivery. They can

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1 either construct a pond and capture their water in a
2 pond. If a pond is constructed, there are requirements
3 for an overflow. So, you know -- or some method to move
4 the water out of the pond in case it's full. And they
5 still have to take their 24-hour delivery.
6 In a few cases, much more rare, pumps have
7 a -- or pump boxes have a spill directly off of them, so
8 if the pump shuts off, the water just continues to flow
9 through the headgate, hence their continuous-flow
10 application.
11 Q. You mentioned that a number of water users
12 drilled supplement wells. Do you know how many of those
13 wells were drilled within the boundaries of the Company?
14 A. Well, I can tell you that during the SRBA,
15 Aberdeen-Springfield Canal Company protested, I believe
16 it was 127 ground-water rights. The way those
17 ground-water rights were identified was that each of the
18 directors' recommendations for those ground-water rights
19 had notes, I believe in the supplemental notes at the
20 end, that water from that well was -- I believe the
21 terminology was supplemental.
22 THE WITNESS: Do you remember, Kent? I'm
23 not sure --
24 MR. FLETCHER: I can't answer questions.
25 THE WITNESS: But it was combined -- in

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1 conjunction --

2 MR. FLETCHER: For the record, that
3 language is in here somewhere.

4 THE WITNESS: It was combined with or in
5 conjunction with or supplemental to Aberdeen-Springfield
6 Canal Company water. And so it was that note on the
7 ground-water right that prompted -- or that directed the
8 protest. And that was, to my knowledge, the only
9 accounting of the number of wells that -- that were
10 issued ground-water rights on lands that also had Canal
11 Company shares appurtenant.

12 To my knowledge, no effort was ever made
13 by the State to actually map whether or not -- or map
14 the actual place of -- or point of use of those wells or
15 intersect with Aberdeen-Springfield Canal Company. The
16 Canal Company did make a small effort to that effect.
17 But since at that time we hadn't finalized our SRBA
18 boundary map, we just never really pursued that to see
19 if, in fact, all of those wells that we protested were
20 irrigating lands that had Canal Company shares on it.

21 Is that clear?

22 Q. (BY MR. ARRINGTON) Yes.

23 A. So let's call it 127 wells that we
24 protested, that we identified as potentially using
25 Aberdeen-Springfield Canal Company loss.

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1 Q. So aside from that, the protests that were
2 filed in the SRBA, has the Company made any record or
3 documentation of supplemental wells or wells in general
4 that are drilled within the boundary?

5 A. The location of wells that have
6 ground-water rights in the Canal Company's service area
7 boundary is determined -- we use the Department of Water
8 Resources' point of diversion and place of use GIS layer
9 to locate the possible location of wells.

10 We use that method to try to identify
11 wells that were historically measured by
12 Aberdeen-Springfield Canal Company. But we made no
13 direct effort to map acreage of those places of uses or
14 direct coincidence with Aberdeen-Springfield Canal
15 Company shares.

16 Q. Do you have any -- or does the Company
17 have any record of which wells have water rights and
18 which ones may not?

19 A. Not privately-owned wells, no.

20 Q. Not privately-owned wells? Okay. Do you
21 know of any wells within the system privately-owned
22 wells that do not have water rights?

23 A. Yes. Specifically, what comes to mind
24 immediately -- well, what comes to mind immediately are
25 the Jeff Duffin well that the Canal Company has

1 designated as recovery headgate. And also an abandoned
2 well that we've referred to as recovery headgate, I
3 think it's RR-2-3 maybe, that we've never utilized.
4 It's a hole in the ground that a shareholder applied for
5 an application to use as a recovery headgate and then
6 abandoned his application.

7 Q. So in addition to --

8 A. And those two private wells, right, that
9 were -- that -- are the only two that I know of that
10 are -- that don't have a ground-water right on them.

11 Q. So your affidavit speaks to in addition to
12 the Duffin well in 2013, there was a well by Funk and a
13 KVC --

14 A. That's Koompin.

15 Q. Those two wells were also used as recovery
16 wells?

17 A. Well, they were identified as recovery
18 wells. They were not used as recovery wells. Well, the
19 Koompin well was used that season. But the Funk --

20 Q. The Funk --

21 A. The Funk well and the Northern Ag II wells
22 were never used as recovery wells. The Company leased a
23 portion of its ground-water rights for those wells for
24 that season.

25 Q. The Koompin and the North --

1 A. No, the Northern Ag II and the Funk well.

2 Q. And the Funk well --

3 A. And the Koompin well was just pumped for
4 that one season.

5 Q. As a recovery well?

6 A. As a recovery well. We hooked to a main
7 line that went to the Highline Canal and we dumped that
8 water right into the canal.

9 Q. Does the Koompin well, do you know, have a
10 separate water right?

11 A. It does not.

12 Q. It does not either?

13 A. It does not either.

14 Q. Okay. How about the Funk well?

15 A. The Funk well, I don't know what the
16 status of the ground-water right is on that well.

17 Q. And how about the Northern Ag --

18 A. The Northern Ag II wells do have
19 ground-water rights associated with them.

20 Q. So as water users began to use these
21 supplemental wells, did they continue taking their
22 surface water from the Company?

23 A. Some did. Some didn't.

24 Q. Let's talk about those who didn't.

25 A. Those who didn't, the best estimate -- I

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1 think this is where -- I hate to anticipate what you're
2 asking me. But rather than -- see, Randy warned me not
3 to anticipate your questions. But let me see if I can
4 answer it really quickly.

5 MR. FLETCHER: You've ignored all the
6 stuff Randy told you.

7 THE WITNESS: Through the SRBA process, in
8 cooperation with the Department of Water Resources, we
9 made an effort to try to determine the number of acres
10 within our system that are being irrigated -- or acres
11 that have had canal shares appurtenant that are being
12 irrigated exclusively from ground-water rights. Is that
13 what you'd like me to address?

14 Q. (BY MR. ARRINGTON) So what I'm wondering
15 is, you stated that there are some people who drilled
16 supplemental wells and they, at some point in time,
17 stopped taking delivery of Company surface water?

18 A. Yes.

19 Q. And at that point in time, they just used
20 their ground water for their acres?

21 A. That's what we believe, yes.

22 Q. And so did they continue paying their
23 assessments?

24 A. Yes.

25 Q. Were the headgates left on the canals?

1 Q. Steve, before we left, we were chatting
2 about water users who -- shareholders who had pumped or
3 installed supplemental wells, and that some of them had
4 discontinued using the surface deliveries from the
5 Company and just were irrigating solely. Was the Duffin
6 property a property that discontinued surface
7 deliveries? This -- well, answer that question. And
8 maybe I need to be more specific.

9 A. Yes. The Duffin property, a portion of
10 the parcel being irrigated out of what we designate as
11 the recovery headgate JR2-1 discontinued delivery from
12 the canal.

13 Q. And so let's turn quick to exhibit --
14 let's turn to Exhibit 2 again, to your first affidavit.

15 A. Okay.

16 Q. And this is the Application to Change or
17 Add Point of Delivery. It appears to be filed -- the
18 shareholder information identifies it as Jeffrey T. and
19 Chana Duffin. I'm looking in particular at
20 Question 5, e., which is on Page 2 of that application.

21 A. All right.

22 Q. So it says, describe the reason for the
23 new point of delivery required. Do you see that? Can
24 you read that answer for me?

25 A. The answer is, J lateral to our farm was

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1 A. Yes. Over the years, in some cases,
2 headgates did get removed.

3 Q. They got removed?

4 A. In some cases. Very few.

5 Q. Were the Duffin headgates removed?

6 A. No.

7 Q. Koompin, were the Koompin headgates
8 removed?

9 A. No. The Koompin land was irrigated from
10 the canal.

11 Q. Okay.

12 A. I don't know the history. But at some
13 point, the ground-water right was removed from the
14 Koompin well and that particular acreage began being
15 irrigated from the canal again. And I think that was in
16 the mid '90s. But I'm not sure of the timing of that.

17 MR. BUDGE: Can we just take a five-minute
18 break for the benefit of the reporter and those who need
19 a --

20 MR. ARRINGTON: That's fine with me.

21 (Recess taken.)

22 MR. ARRINGTON: We're back on the record.

23 Q. (BY MR. ARRINGTON) Is it all right if I
24 call you Steve?

25 A. Sure.

1 removed years ago, we need our canal water because the
2 State said we can't use our well.

3 Q. So I want to focus just on that first
4 phrase, J lateral to our farm was removed years ago. Do
5 you know what that is in reference to?

6 A. Sure. A portion of the end of J lateral
7 was removed probably in the '50s or '60s. I don't know
8 how much of the lateral was removed.

9 Q. And so did it still get to the Duffin
10 property or --

11 A. No. The property owners on the portion of
12 the lateral that was -- that were removed changed their
13 point of delivery to a headgate on J lateral that was
14 upstream of where it had previously been.

15 Q. So they transferred to a new point of
16 diversion for deliveries on the system?

17 A. Well, to a different physical location on
18 J lateral.

19 Q. Okay. And is that headgate still in
20 place?

21 A. Yes.

22 Q. So what did the Company do, as you had
23 these shareholders who no longer took surface
24 deliveries, what happened to the water that would
25 otherwise go to them?

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1 A. Well, in some instances, I suspect that it
2 was just not used. So it was either not drawn from
3 storage or it was not diverted. The diversion for that
4 water may or may not have been required.

5 In other instances, it may have been
6 rented. Or it may have been used on other lands that
7 the shareholder owns that are using canal water, which I
8 suspect is the most common result of taking exclusive
9 delivery of water through a well, rather than a
10 headgate.

11 Q. Okay. And did the Company make -- well,
12 how am I going to ask this question? Was there any
13 expectation that these water users would just stay on
14 ground water forever or would they come back? Did the
15 Company have any expectation on that?

16 A. I don't believe that there was -- I don't
17 recall ever seeing any discussion of the expectation
18 that those ground-water diversions would become
19 permanent or that they were temporary. I just don't
20 think it was discussed.

21 Q. Was there any discussion about what would
22 happen if they came back on the system?

23 A. Recently, yes. The board set a policy
24 in -- I'd have to look at the date, but it's in the --
25 it's one of the exhibits in --

1 Q. So the agreement was -- did you say thrown
2 out? I just want to use the same term.

3 A. Yeah.

4 Q. Thrown out.

5 A. I don't know if that's actually the proper
6 term for what he did.

7 Q. The agreement was thrown out. Those
8 ground-water rights were still decreed?

9 A. Yes.

10 Q. With the -- if I remember correctly,
11 there's that condition that Kent tried to tell you about
12 that --

13 A. Well, it changed in the -- when we dropped
14 our protest and the State reissued the director's
15 recommendations. I think the language now is combined.

16 Q. Combined?

17 A. With Aberdeen-Springfield Canal Company
18 water.

19 Q. And so they still had the ground-water
20 rights. Why, then, did this decision from the Court --
21 why was there a concern that this decision would prompt
22 people to come back?

23 A. Well, because we'd had -- we had a
24 request, a call for water, on a piece of ground that had
25 been -- that had a ground-water right appurtenant, as

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1 Q. In Exhibit 1?

2 A. I think so. Yeah, in Exhibit 1 in my
3 Corrected First Affidavit. In December of 2012, the
4 board set a policy to directly address the issue that
5 you've asked me about. The board had concerns that as
6 individuals who were irrigating parcels of their
7 property exclusively from wells began to call for their
8 water from the surface system, that that increase in
9 demand on the system would cause us to revisit our
10 capacity issues that we had in the '60s and '70s. And,
11 consequently, set a policy addressing that situation.

12 Q. So why in -- why was it 2012 that this
13 discussion came in up?

14 A. Because in September of 2012, the SRBA
15 Court, what's the proper term, threw out a settlement
16 agreement that had been entered into between
17 Aberdeen-Springfield Canal Company and the State of
18 Idaho, the Idaho Department of Water Resources, that
19 provided for mitigation for ground-water rights that
20 were being used to irrigate lands that had
21 Aberdeen-Springfield Canal Company shares appurtenant.

22 Q. Are those ground-water rights the ones you
23 were speaking of that you filed the protest -- or the
24 objection to in the SRBA?

25 A. They are.

1 well as Canal Company shares. The board recognized that
2 the rules and laws of the State were such that
3 individuals that had these ground-water rights were free
4 to sell, transfer, or do whatever they can legally do
5 with those ground-water rights.

6 And since it seemed -- the board was
7 concerned that shareholders, the head ground-water
8 rights, they were irrigating lands that also had shares
9 appurtenant, would transfer those ground-water rights
10 elsewhere and then demand their water from the canal.

11 And at some point, as lands came back
12 under the surface-water portion of the system, the
13 surface canals, that at some point we would start to see
14 capacity issues to meet demand at peak irrigation times.
15 And as a delayed decision might present equability
16 issues with concern to how shareholders are treated, the
17 board set this policy before there was any -- well, in
18 anticipation of those requests.

19 Q. Okay. So if we're looking at Exhibit 1 of
20 your affidavit, First Corrected Affidavit --

21 A. Okay.

22 Q. Is this the policy that the board created?

23 A. This is -- the resolution that's mentioned
24 in the minutes of the regular board meeting,
25 December 2012 for Aberdeen-Springfield Canal Company,

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1 beginning with, on the first page of that copy of the
2 minutes, there's a motion by Ray Duffin, seconded by
3 John Houghland, to adopt in the Company's policies and
4 procedures the following resolution regarding recovery
5 headgates.

6 Q. And the policy begins with that -- the
7 policy starts with the first whereas?

8 A. That's correct.

9 Q. And continues --

10 A. Through be it further resolved on the
11 second page.

12 Q. The second be it further resolved?

13 A. The second be it further resolved. Thank
14 you.

15 Q. And that concludes -- does it conclude at
16 the bolded motion passed?

17 A. That's correct.

18 Q. So who developed the language of this
19 policy?

20 A. I did.

21 Q. Okay. I'm going to go to page --

22 A. Not solely. You know, there were -- we
23 developed the language during the board meeting. And so
24 I would take responsibility for most of the language.
25 But that was my interpretation of what the board wanted

1 onto lands which have previously -- or which have been
2 previously irrigated exclusively from a well will be
3 required to take delivery through a recovery headgate
4 and that this headgate will be the existing well serving
5 the property.

6 Q. What is that paragraph telling me?

7 A. That paragraph means that if you call for
8 your water and previously the parcel of land that you're
9 calling for your water on was irrigated exclusively from
10 a well, that the Company would require you to take your
11 canal delivery through that existing well.

12 Q. So under the language of this paragraph,
13 could that water user, who was exclusively irrigating
14 from the well, resume surface deliveries from a surface
15 headgate?

16 A. No. This language says that if you call
17 for water onto lands which have previously been
18 irrigated exclusively from a well, all right, that you
19 are required to take that delivery -- or your canal
20 water delivery from that well.

21 Q. Any exception to that?

22 A. Not as yet. Although, I suspect that we
23 might -- at some point, I'm sure somebody is going to
24 ask for an exception to that policy. But we haven't
25 seen a request for an exception to that policy yet.

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1 in the resolution. And then, of course, the language
2 was settled on before the resolution, before the motion
3 was -- after the motion was made, before the motion was
4 passed.

5 Q. Okay. So let's go to the second page, the
6 first whereas. If you'll read just that first whereas
7 for me.

8 A. Whereas the loss of mitigation for ground
9 water rights irrigating lands within
10 Aberdeen-Springfield Canal Company's -- I'm sorry. Let
11 me start over. Whereas the loss of mitigation for
12 ground water rights irrigating lands with
13 Aberdeen-Springfield Canal Company shares appurtenant is
14 likely to result in the increased demand for delivery
15 from the Company's surface water system.

16 Q. Does this paragraph speak to the issue we
17 were just talking about?

18 A. Yes.

19 Q. The SRBA Court decision --

20 A. Yes.

21 Q. Okay. Let's continue.

22 A. Would you like me to continue reading?

23 Q. Please.

24 A. Therefore, be it resolved that any call
25 for delivery from the Company's surface water system

1 Q. I want to come back -- we'll come back and
2 ask a few more questions. I'll just read the last two
3 paragraphs. Be it further resolved that the landowner
4 will be required to surrender control of the well to the
5 Company and will be required to pay for a
6 Company-approved measuring device to be installed on the
7 headgate. Be it further resolved that maintenance of
8 the well and associated equipment (pump, motor, etc.)
9 will be the responsibility of the landowner.

10 The well is transferred to the ownership
11 of the Company, but the landowner still pays everything
12 associated to the well, am I reading that correctly?

13 A. No. Ownership is not transferred.
14 Control.

15 Q. Control.

16 A. Control is transferred.

17 Q. Okay. What does that mean? From the
18 Company's perspective, what does that mean?

19 A. Well, the Company doesn't own headgates.
20 The shareholders own the headgates.

21 Q. Okay.

22 A. So shareholders are required to pay for
23 installation and construction of headgates. Or if they
24 choose -- or if they apply to have a headgate moved, all
25 right, they have to pay for that cost. But the

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1 headgates are under Company control. They're measured
2 daily, locked, and only changed by Company personnel,
3 ditch riders or the field foreman or myself.

4 So the intent was to treat these wells in
5 the same manner that we treat all other headgates on the
6 system, with one important difference. The Canal
7 Company provides maintenance on headgates for the life
8 of the headgate. That means we replace the measuring
9 devices as they need to be replaced. We, you know,
10 maintain the concrete structure. If a new section of
11 pipe from the headgate to outside the bank is required,
12 we perform that maintenance. It's important to
13 understand that the primary reason for that is that, you
14 know, we want to measure everything. We don't want to
15 lose water. And no one can cut into the bank and do
16 those kinds of repairs, except for us.

17 But with that policy, with the board's --
18 with the Company policy that we maintain headgates, the
19 board added the additional language to separate the idea
20 of a recovery headgate, maintenance responsibility of
21 the Company, from canal headgate maintenance
22 responsibility of the Company. The Canal Company -- or
23 the board of directors did not desire to be interpreted
24 as having maintenance responsibility on any of the
25 associated pumping equipment or actually on the efficacy

1 Subsequently, we installed a -- oh, see,
2 you asked me earlier. I knew there was -- you asked me
3 earlier if any exceptions had been granted to this
4 policy. And, actually, yes, for the Northern Ag II and
5 the Funk property, the Canal Company installed a
6 headgate, the landowner built a pond, and we're now
7 delivering to those lands out of the canal.

8 Q. And so they no longer pump, they don't use
9 the recovery headgates?

10 A. They don't use the recovery headgates.
11 We're delivering to them out of --

12 Q. They get surface --

13 A. Yeah. And that exception was granted --
14 well, it wasn't an exception granted formally in the
15 board meeting. But we installed the headgate. And
16 shareholder agreed to pay for automation on that lateral
17 which would allow us to deal with the issues that were a
18 little different on that particular lateral than the
19 capacity issues we talked about previously.

20 Q. And is that the Northern Ag?

21 A. That's the Northern Ag II and Funk well.

22 Q. Okay. Let's go to your second affidavit.

23 I just want to, while we're on this topic, ask a
24 question about some language. Paragraph 16 on Page 14
25 of the Corrected Second Affidavit.

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1 or use of that hole in the ground as a well. Is that
2 clear?

3 Q. I think so.

4 A. The pump and the mainline is your
5 responsibility, just like any other headgate. But if
6 the well, for example, collapses, the Canal Company will
7 not pay to redrill that well.

8 Q. Okay.

9 A. The intent being the shareholder would
10 have to pay to redrill the well.

11 Q. Okay. So how many shareholders take
12 advantage of this policy?

13 A. We've had five applications, only one of
14 which -- yeah, only one of which has actually delivered
15 water -- or canal water for a season.

16 Q. And that one is?

17 A. The Duffin well.

18 Q. Who were the other five -- or four?

19 A. Well, the others were via the two Northern
20 Ag II wells, the Funk well, and the Koompin well. The
21 Koompin well was pumped directly into the canal, so it
22 wasn't applied to individual shareholders' lands. The
23 Funk and Northern Ag II wells were the -- the board
24 leased a portion of its ground-water rights for use on
25 those lands.

1 A. All right.

2 Q. The second sentence starts at the end of
3 the third line, some of these.

4 A. Yes.

5 Q. Can you read that, just that second
6 sentence?

7 A. It says, some of these shareholders were
8 allowed to connect to the surface delivery system if
9 there was sufficient capacity and it would not recreate
10 problems delivering water to other shareholders.

11 Q. Let's read the next sentence too.

12 A. Where reconnection would present water
13 delivery problems, shareholders were required to
14 relinquish control of the well to the Company to own and
15 operate as a recovery headgate -- oh, I had the word own
16 in there -- to take delivery of the water represented by
17 their ASCC shares.

18 Q. So this sounds a little different than
19 what the policy we read states. In fact, it -- explain
20 to me these two sentences and how that's consistent with
21 that second paragraph of the resolution that says they
22 would be required to irrigate from the well.

23 A. Well, I don't know where to start.

24 Obviously, in my Second Corrected Affidavit, using the
25 word to own is not consistent with the policy.

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1 Q. Okay.

2 A. So that's a typo or a mistake on my part
3 when writing this affidavit.

4 The first sentence that I read, some of
5 these shareholders were allowed to connect to the
6 surface delivery system if there was sufficient capacity
7 and it would not recreate problems delivering water to
8 other shareholders, that was the exception we made for
9 the Northern Ag II and the Funk property. The issues
10 for delivery to that property out of the Company's R
11 lateral were about spill capacity below their point of
12 delivery, rather than capacity limitations to that
13 headgate.

14 Q. Okay. And so they were able to get back
15 on the system once you built that pond, as you
16 mentioned?

17 A. Pond and automated structure, yeah.

18 Q. And then -- well, when I read these
19 sentences, I almost see that there's an either/or,
20 there's some shareholders that would be allowed to
21 connect, others would be required to use a recovery
22 well.

23 A. Some of these shareholders refers to
24 Northern Ag II and Funk.

25 Q. Okay. What kind of information does the

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1 standard or quality standard, or otherwise, to be
2 considered a recovery headgate?

3 A. No.

4 Q. Do you determine whether there are any
5 non -- let me rephrase that. Do you determine whether
6 there are any private water rights also diverted from
7 that well?

8 A. Only insomuch as required by the question
9 contained within the application to change the point of
10 delivery.

11 Q. What does the Company -- does the Company
12 treat an application differently if there are private
13 water rights?

14 A. No.

15 Q. How does the Company monitor the
16 diversions from the recovery headgate?

17 A. Well, it's intended that diversions from
18 the recovery headgate be recorded by a data logger and a
19 measuring device installed on the mainline of the well,
20 a Company-approved measuring device.

21 Q. And then who gathers the information from
22 those?

23 A. Ditch rider or my field data manager, one
24 of the two.

25 Q. And then they take that information?

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1 Company take on these applications with respect to the
2 wells themselves, the pumps and the wells themselves.
3 So let's go to the Duffin well, for example.

4 A. All right.

5 Q. What kind of information did you get, did
6 the Company require about the well?

7 A. Well, we -- the only requirement is what's
8 listed on the application for changing point of delivery
9 itself. Was that Exhibit 2?

10 Q. Exhibit 2 of your first --

11 A. Of the First Corrected Affidavit. So the
12 only information required by the Company is -- only
13 physical information required by the Company is the
14 location of the well.

15 Q. Do you gather information about the
16 capacity?

17 A. No.

18 Q. Or the depth to water?

19 A. No.

20 Q. Or the depth of the well at all?

21 A. Not by -- not by policy.

22 Q. Do you gather any historical records like
23 pump records or anything like that on the wells?

24 A. No.

25 Q. Do your wells have to meet any certain

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1 A. And they treat it the same as any other
2 headgate delivery information. That means it's entered
3 into the Company's water accounting software and those
4 amounts are deducted from that individual shareholder's
5 allocation for the year.

6 Q. And then what happens when the shareholder
7 gets to that allocation point?

8 A. Then that's when the control of the well
9 part comes in and we would shut the well off. Just like
10 we would any headgate that ran out of water.

11 Q. Okay. You know, let me have you look at
12 Exhibit 2 really quick. This Exhibit 2 was provided to
13 us -- I'm sorry, Exhibit 2 to the First Corrected
14 Affidavit is the Application to Change or Add Point of
15 Delivery. The application has three pages. And then
16 attached to that, at least in the affidavit, is the Krig
17 map that we talked about earlier?

18 A. Yes.

19 Q. And an invoice for \$50. Were the Krig map
20 and the invoice included with the application or are
21 those separate additions?

22 A. The invoice is a separate addition.

23 That's an invoice for Duffin paying the application fee.

24 Q. Okay.

25 A. And the Krig map is what I used for my

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1 determination that Canal Company recovery water was
2 available that location. And it's the information that
3 I presented to the board of directors during their
4 consideration of approval or consideration of the
5 application.
6 Q. Was this the only -- is it Krig or creek?
7 A. Krig.
8 Q. Spelled k-r-i-g?
9 A. That's correct.
10 Q. Was this the only Krig map that you looked
11 at?
12 A. No.
13 Q. Or provided to the board, I guess I should
14 say?
15 A. It -- this is the map that I presented to
16 the board. It's not the only -- I looked at the entire
17 season of 2012. Today, 2012 is our most complete data
18 set. We're getting better every year.
19 So I used our most complete data set with
20 our most current model to determine if loss from the
21 canal was present at the location of the well that the
22 Application to Change or Add Point of Delivery was
23 found.
24 Q. And this, just refreshing my mind, this
25 particular map shows that at this time, or April 1st to

1 Affidavit. Question 2, e., it says, existing company
2 headgate numbers J-2-8, J-2-10.
3 A. Yes.
4 Q. Are those the surface delivery points?
5 A. Those are the surface delivery points on
6 J lateral.
7 Q. Are those still in existence?
8 A. They are.
9 Q. How long has it been since this property
10 received water through the surface shares?
11 A. I really don't know exactly. I can give
12 you a broad estimate. Since the '70s.
13 Q. Okay.
14 A. But part of the parcel received water
15 after -- it appears or at least my recollection is that
16 at first one of the parcels stopped taking delivery from
17 the canal. And then at a later date, the second part
18 stopped taking delivery from the canal, the second
19 parcel.
20 Q. Okay. And then at that point, it was
21 all -- was it all from the supplemental well?
22 A. Yeah. We assumed that all of the
23 irrigation that occurred after that point was from the
24 well.
25 Q. Okay. Do you know when the well -- so let

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1 May 30th period of time of 2012, there was an increase
2 of approximately up to a half a foot?
3 A. Yes.
4 Q. At that --
5 A. That's correct.
6 Q. Did you develop this application? Did
7 you -- where did this application come from, the form of
8 it?
9 A. The application? It's based on a form
10 that has been intermittently used by the Company over
11 the years to move the headgate or to add a headgate.
12 I added language to the application to
13 incorporate what the board intended with respect to
14 recovery headgates. And I believe I had our attorney
15 review this. But I don't remember precisely.
16 The board -- and I don't believe I
17 included that in any of the affidavits, although it may
18 be in my discovery, where the board approved the form of
19 this application, probably in early 2013. I'm not sure.
20 Q. Okay.
21 A. The policy came first, application came
22 second. And then in 2013, April or May -- no, March is
23 when we saw the first applications come in.
24 Q. Okay. Let's look at that Duffin
25 application, again Exhibit 2 to the First Corrected

1 me go back to Question No. 4 on that application. Is
2 that the location of what we're referring to as the
3 Duffin well?
4 A. That's correct.
5 Q. Do you know when that well was drilled?
6 A. Only what I've been told. And -- or what
7 I've heard. I don't even know who told me. But I
8 believe it was early '70s is when the well was drilled.
9 Q. Did the Company drill the well or did --
10 A. No, the Company did not drill the well.
11 Q. Do you know if a well driller's permit was
12 acquired for the drilling of the well?
13 A. I don't know.
14 Q. This application is dated 2013. In what
15 seasons was the Duffin well used as a recovery headgate?
16 A. In the 2013 irrigation season.
17 Q. Only?
18 A. Yes. For the 2014 irrigation season, the
19 Canal Company transferred a portion of its ground water.
20 Pending outcome of this litigation.
21 Q. So how did the land get water during 2014?
22 A. Through the well.
23 Q. Through the well?
24 A. Yes.
25 Q. Did they -- how did they get a right to

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1 divert from the well for 2014?

2 A. The Canal Company leased a portion of its
3 ground-water rights to be used from that location to
4 irrigate those lands.

5 Q. Okay. Sorry. I think you already told me
6 that.

7 A. I did.

8 Q. Sorry. I could tell from the tone of your
9 voice. And I remember now too.

10 So in 2013, they received a -- they
11 received water from the recovery headgate. In 2014,
12 they didn't because of the action that was started with
13 the Department. What was the Company's involvement in
14 that notice of violation process?

15 A. The Company was made aware of the notice
16 of violation by Jeff Duffin. The board instructed me to
17 contact the attorney and start procedures -- or do what
18 was necessary to show the Department of Water Resources
19 that we were operating that well as a recovery headgate
20 as a company.

21 I don't recall if I wrote a letter to the
22 Department. I don't believe I wrote a letter to the
23 Department. I think the board just told me to turn it
24 over to the attorney at that point.

25 And I could talk about what I recall of

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1 the subsequent legal procedures, but that could be off.

2 Q. No. That's all right.

3 A. Okay.

4 Q. Look, see, I'm getting really close. I do
5 have a question for you, another document I want to --

6 A. Was this graph --

7 Q. That graph goes immediately before the
8 invoice. Let me ask you another question really quick
9 before I go to this. I'm going to shift gears just a
10 little bit because I want to make sure in my mind I'm
11 closing the loop. When the Company filed objections to
12 the ground-water rights in the SRBA, is it the Company's
13 position that when the wells are diverting ground water,
14 they're actually diverting seepage from the canals?

15 A. Correct. If you would look at the
16 protests that we filed to those ground-water rights, the
17 protest was based on the source of the water right. And
18 it was the Company's contention at that time, prior to
19 that, and still, that those wells are pumping Canal
20 Company water.

21 Q. Okay. Make sure I don't have another
22 question. But I'm trying to find the -- I'm going to
23 hand you this.

24 You know, I think I'm done for a while on
25 those corrected first and second affidavits. So we can

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1 set those aside.

2 A. Okay.

3 Q. I'll give you that. Do you recognize --

4 A. This appears to be a copy of the minutes
5 of the board of directors meeting of
6 Aberdeen-Springfield Canal Company from April 3, 1995.
7 And I see it contains the Bates stamp from the discovery
8 requests.

9 Q. And so for everyone, I did copies on the
10 front and back, so they're not going to notice. But you
11 will notice that there's blank pages. That's how it was
12 provided to us, so I just kept those blank pages in
13 there.

14 A. I assumed that was to show that there was
15 nothing on the back side of the pages.

16 Q. All right.

17 A. Or they put the pile in the copier and hit
18 the number.

19 Q. A lot of them were done that way. But for
20 whatever reason, I just wanted to -- I just provided the
21 full document.

22 MR. ARRINGTON: Let's mark this as
23 Exhibit 3.

24 (Exhibit 3 marked.)

25 Q. (BY MR. ARRINGTON) We're going to turn to

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1 the page that's marked at the bottom ASCC_01950. You'll
2 notice I've kind of marked a paragraph, that's where
3 we're going to focus our discussions for a few minutes
4 here. Will you read the first sentence of that to me?

5 A. I'm sorry, the -- what you marked?

6 Q. I'm sorry, the mark that begins, a letter
7 (attached).

8 A. Okay. A letter (attached) from Attorney
9 Ling expressing his opinions of the recovery wells as a
10 point of diversion for ASCC water by shareholders was
11 discussed.

12 Q. One more sentence.

13 A. Discussion was also held regarding the
14 motion made on 2/7/95 which instructed the Company to
15 apply for a recovery well permit and definition of
16 related costs.

17 Q. So do you have, in your Company records,
18 the minutes from the 2/7/95 board meeting?

19 A. Yes.

20 Q. Those were not provided. Can we get a
21 copy of those?

22 A. Sure. Really, they didn't get in there
23 somewhere?

24 Q. No. It was one of those redacted pages, I
25 think. I'm assuming it was just an oversight.

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1 THE WITNESS: Would you make a note of
2 that.
3 Q. (BY MR. ARRINGTON) There's a couple of
4 things that --
5 A. February 7, 1995 minutes.
6 Q. Was that well -- was that -- it speaks to
7 the Company -- instructing the Company to apply for a
8 recovery well permit. Was that permit application ever
9 filed?
10 A. I don't know.
11 Q. Do you know if a well -- if a well was
12 ever drilled?
13 A. I don't believe so. I have to preface
14 this. I'm not even sure that a motion was passed. This
15 passage doesn't indicate that a motion was passed.
16 Q. Correct. And maybe when we get the
17 February 7 minutes that will --
18 A. Clarify that.
19 Q. -- illuminate it a little bit. But you
20 don't know if an application was filed or a well was
21 ever drilled?
22 A. Not in -- not to my knowledge.
23 Q. If you'll continue reading at that point.
24 A. Discussion was also held regarding what
25 the policy of the Company would be if more shareholders

1 list of rules (policy) to be applied. This will be
2 ready to implement at the May board meeting.
3 Q. Do you know if that policy was ever
4 created?
5 A. I don't.
6 Q. Do you have those May board meeting
7 minutes in your records?
8 A. Yes. I'm sure we do.
9 Q. We need a copy of those too. Those were
10 also on one of the redacted pages, I think.
11 A. Okay.
12 Q. Are you aware of any other discussions
13 with the board, other than this 1995 discussion and the
14 2012 discussion we just went through, are you aware of
15 any other discussions with the board about the use of
16 recovery wells or policies or contracts or any of those
17 things regarding recovery wells in the system?
18 A. Certainly. Discussion has been made by
19 the board of directors and shareholders since the late
20 1920s about using recovery wells for the purpose of
21 irrigation of adjoining lands. The continuation -- or
22 the discussion of wells for the use of recovery of Canal
23 Company water, both for pumping directly into the canal
24 system and for use on individual shareholders' lands,
25 has been discussed continually and repeatedly over the

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1 were allowed the privilege of using their Company water
2 rights from a recovery well.
3 Q. We'll just keep going for a little bit.
4 A. Manager Yost was asked to read from 42-238
5 of the Idaho Code which indicated that well drillers
6 needed to be licensed by Water Resources but did not
7 indicate whether they needed a permit to drill a well.
8 Q. And we'll keep going just a little bit
9 further.
10 A. Motion by Behrend, B-e-h-r-e-n-d, seconded
11 by Duffin, D-u-f-f-i-n, to ask the Company attorney to
12 draw up a contract between the Company and shareholders
13 agreeing that shareholders can use recovery water as
14 their canal water point of diversion, and that a \$25
15 application fee be charged each shareholder desiring to
16 do so.
17 Q. We'll stop there. Was that contract ever
18 created?
19 A. I don't know.
20 Q. Okay. Continue to the end then, please,
21 just to the end of that paragraph.
22 A. I forgot where I stopped. Desiring to do
23 so, is that where I stopped?
24 Q. Correct.
25 A. The attorney will also be asked to draft a

1 last, what, 70 years, 80 years.
2 Q. Other than the 2012 policy, which we know,
3 and, potentially, 1995, which you don't know for sure,
4 but we'll get those minutes, has there ever been any
5 other formal policy adopted by the board?
6 A. Not to my knowledge.
7 Q. Any other contracts or anything like that
8 between shareholders regarding --
9 A. I know of a single contract that I've been
10 able to find in the Company's archives allowing an
11 individual shareholder access to use one of the
12 Company's wells for irrigation on his individual parcel.
13 Other than Mr. Duffin and the Northern Ag II wells and
14 the Koompin and --
15 Q. Who was that water user?
16 A. Well, I don't know the gentleman -- or the
17 property owner's first name. We've referred to it as
18 the Slaugh well.
19 Q. How do you spell that?
20 A. S-l-a-u-g-h. The Slaughs, several Slaughs
21 were landowners. On the contract -- I believe I do
22 remember the individual's first name on the contract,
23 which I recall was dated 1964, between the Canal Company
24 and Ted Slaugh, that authorized him to take his water
25 out of the Company well.

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1 Q. Did you provide that in discovery, do you
2 remember?

3 A. I think I did. If I didn't supply the
4 actual contract, which -- I know there's multiple
5 references to that particular well throughout the
6 minutes that I provided in discovery.

7 Q. Uh-huh.

8 A. Some of the -- well, all of the minutes,
9 the manager's reports, the written documentation in my
10 discovery, I read through all of that. A couple of the
11 larger files, the drain well file and there might have
12 been another file that I didn't go through word for
13 word, the contract may have been in there. If it's not,
14 I'm sure we can produce a copy of that contract.

15 Q. Okay. I'll look. You said it was about
16 1964?

17 A. I think so.

18 Q. Roughly?

19 A. '64, '68. That strikes me of when I saw
20 those discussions in the minutes.

21 And now that I think about it, I'm not
22 sure that I've actually ever seen the contract. You
23 know, it's -- when I took over as manager, you know,
24 that was one of the things my predecessor told me about,
25 this is the Slauch well, the assessments must be paid

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1 before that pump can be turned on.

2 Q. Well, I'll look for it.

3 A. Well, I'll put my staff on it.

4 Q. If I don't find it, I'll pester Randy.

5 MR. BUDGE: Did you get this marked --

6 MR. ARRINGTON: Exhibit No. 3, did we mark
7 that? Yes, it's Exhibit 3. Thank you.

8 MR. BUDGE: Thank you.

9 Q. (BY MR. ARRINGTON) Has the Company
10 considered drilling any other recovery wells similar to
11 the -- well, in the Krig map it's identified as the J
12 well, the one that you started.

13 A. Yes.

14 Q. Has the Company considered drilling any
15 other wells, applying for permits and drilling any other
16 recovery wells?

17 A. Yes. Currently, we have -- I guess I
18 should say I, as the general manager, have three other
19 potential recovery well locations on my wish list. But
20 the board has not considered those -- I've not presented
21 them to the board for consideration as yet. Although
22 the board is aware that I have a list of potential
23 recovery well sites.

24 Q. Are they in a particular location or
25 throughout the system?

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1 A. Well, they're roughly throughout the
2 system. They're in locations that as general manager
3 and watermaster I've determined that we most require
4 supplemental supplies to the surface system where
5 capacity issues -- either capacity or subwater problems
6 may be an issue.

7 Q. Are any on the J lateral?

8 A. No. That well is the only one considered
9 for the J lateral supplemental delivery.

10 Q. One last question, and then I'm going to
11 turn it over to them. And it's really just to make sure
12 I understand. Going back to that discussion on the
13 J lateral. The permit was issued, you began drilling
14 the well, you got about 68 feet, give or take?

15 A. Well, 63, 68. I don't remember exactly.

16 Q. And then what was the problem, again?

17 A. Well, I'm not entirely sure. The problem,
18 from my point of view, was that the representative from
19 the Department of Water Resources said stop drilling and
20 pulled off. As he explained it, he thought that there
21 were differences in the conditions we found when we were
22 drilling than the conditions that were anticipated in
23 the drilling permit and maybe the drilling permit wasn't
24 correct.

25 Q. So the drilling permit that was issued had

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1 a number of conditions placed on it?

2 A. Many conditions placed on it.

3 Q. Many conditions?

4 A. Yes.

5 Q. Did Aberdeen challenge those conditions
6 or --

7 A. Yes. We -- I don't know the -- we entered
8 a -- I think, a late protest on the conditions. But
9 there was -- the other protests that were filed. And
10 through the course of the hearing on those protests, you
11 know, we raised concerns about some of those conditions.

12 But at the time, I was -- we were
13 primarily interested in getting that hole drilled and
14 supplementing the shareholders that were taking water
15 off the end of that lateral.

16 Q. So through the hearing process, were any
17 of the conditions changed?

18 A. No.

19 Q. And so was a final well driller permit
20 issued?

21 A. Well, I mean, the initial well drilling
22 permit is what we began drilling the well under.

23 MR. ARRINGTON: Okay. I'm going to stop
24 for now. I may have a few more questions later.

25 MR. FLETCHER: I just have a few things to

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1 clear up. And that way, I think it will be better if I
2 go, since we're on the -- representing --

3 MS. CARTER: Yes.

4 EXAMINATION

5 QUESTIONS BY MR. FLETCHER:

6 Q. You were answering some questions about
7 the capacity problems, and I think you were specifically
8 talking about the J canal and how the canal was
9 established and that I think you were implying, and I
10 may be incorrect, that at some point, once it was
11 established, you thought you could not go back in and
12 enlarge the canal?

13 A. I didn't say that, no.

14 Q. Okay. Well, you'd mentioned something
15 about the easement being defined. And I was just
16 wondering -- I guess my first question is, are your
17 easements in your Canal Company actually described or
18 defined somewhere?

19 A. No.

20 Q. So --

21 A. There may be some contained within
22 individual deeds. But we're not aware of those.

23 Q. Okay. Do you know of any prohibition that
24 if you felt as the manager of the district or the
25

1 Q. And so since the '70s, how has water --
2 has that parcel been irrigated?

3 A. I believe so.

4 Q. And what is the source of the irrigation
5 water?

6 A. Well, I believe they were pumping out of
7 that well.

8 Q. Okay. But did that well have a water
9 right?

10 A. I don't know.

11 Q. You don't know if it has a water right?

12 A. Well, I -- well, I don't know if it had a
13 water right in the time period you were asking me of. I
14 believe, and I've been told currently, that there is no
15 water right on that particular hole in the ground.

16 Q. Again, I'm just asking you what you know.
17 So, to your knowledge, has that well ever had a water
18 right?

19 A. No. No, it's never had a water right, to
20 my knowledge.

21 Q. Okay. So that parcel, the 175 acres that
22 we're talking about in this litigation, has been
23 irrigated since the 1970s without a water right?

24 A. That's incorrect.

25 Q. Okay. So what water right has it been

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1 directors felt, the Canal Company directors felt that it
2 was -- that a facility needed to be enlarged for
3 capacity purposes that would prevent you from doing
4 that?

5 A. No.

6 Q. Okay. On the Duffin property, you'd
7 mentioned earlier the language in the application that
8 talked about, I think, the J canal had been removed long
9 ago. Then you went on to testify that a different point
10 of diversion on the J canal was established for that
11 property.

12 A. Yes.

13 Q. To your knowledge, was water ever
14 delivered to that property through that alternative or
15 the second point of diversion?

16 A. Well, I guess I would have to say, to my
17 knowledge, my personal knowledge, no. But that's
18 different than was water ever delivered to that property
19 from that particular --

20 Q. Yeah, I'm just asking you what you know.

21 A. Okay. In my tenure, we've not delivered
22 water to that parcel from that headgate.

23 Q. Okay. So I assume -- and this all
24 occurred in the '70s, correct?

25 A. I believe so.

1 irrigated with?

2 A. That parcel, the two parcels comprising
3 190 shares, has had shares appurtenant to that ground
4 since probably the late 1910s. And the assessments have
5 always been paid. So any irrigation of that property,
6 with the assessments being paid, it's the Canal
7 Company's intention that that was irrigated with Canal
8 Company water.

9 Q. Okay. Even though the Company was not --
10 or diversion was not taking place from a Company
11 facility during that time?

12 A. Correct. Although, we're not in
13 litigation about what happened prior to 2013.

14 Q. No, I understand. I'm just looking for
15 history.

16 A. Our contention is is that every well that
17 pumps water on to land that has Aberdeen-Springfield
18 Canal Company shares appurtenant is in fact pumping loss
19 from the canal, regardless of a status of any other
20 water right.

21 Q. Who actually owns the well, the Duffin
22 well that we're talking about?

23 A. Jeffrey and Chana Duffin.

24 Q. So that well is not owned by
25 Aberdeen-Springfield Canal Company?

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1 A. No. Nor is any other headgate in
2 Aberdeen-Springfield Canal Company. All headgates are
3 owned by the shareholders.
4 Q. Okay. You talked about the policy that
5 was established, I think it was in 2013 or '14, and -- I
6 guess, first of all, what is the current assessment for
7 Aberdeen-Springfield Canal Company?
8 A. This year, the assessment was \$33 per
9 share.
10 Q. Okay. And do you know how much out of
11 your budget is targeted for canal maintenance and
12 repair?
13 A. Operations and maintenance -- well, it's a
14 pretty complicated question. Would you like me to count
15 labor in that as well?
16 Q. Just whatever amount of money that you
17 spend --
18 A. Roughly 70 percent of our budget is spent
19 on operations and maintenance activities.
20 Q. And what is your total budget?
21 A. This year, my budget is roughly
22 2.1 million dollars.
23 Q. Okay. When someone like the Duffins are
24 diverting from a well instead of from a surface water
25 conveyance system, is their assessment adjusted?

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1 A. No.
2 Q. So they pay the full assessment for
3 operation --
4 A. Yes.
5 Q. -- and maintenance of the entire system?
6 A. Yes.
7 Q. And then on top of that, they're required
8 to pay for the measuring device that's installed?
9 A. Yes.
10 Q. And on top of that, they're required to
11 pay the maintenance of the well pump and motor and
12 electrical system?
13 A. Yes.
14 Q. Now, your policy didn't mention power or
15 electricity to the actual pump. Does the district pay
16 those costs?
17 A. We're not a district. We're a canal
18 company.
19 Q. I'm sorry. Does the Canal Company pay
20 those costs?
21 A. No, we do not.
22 Q. So I assume the landowner is obligated to
23 pay that as well, any power furnished to the pump?
24 A. Yes. No different than any other headgate
25 on the system.

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1 Q. Have the water users pushed back on this
2 policy of requiring these extra expenses, even though
3 they're paying for full assessment?
4 A. Well, no, because they aren't extra
5 expenses. They're the same expenses borne by every
6 shareholder on every headgate, with a single difference.
7 That we will not -- we're not responsible for the
8 maintenance of the hole in the ground itself.
9 But every shareholder pays for their
10 headgate, which includes the initial measuring device.
11 Every shareholder pays for their pump and their
12 plumbing. Every shareholder pays for their power. We
13 provide none of those to any shareholder.
14 I assume, although we haven't been to this
15 point yet, but if the measuring device that we approve
16 and place and require a shareholder to pay for, I
17 suspect that that would be included in our maintenance
18 schedule just as any measuring device on any headgate.
19 But we haven't approached that point yet.
20 Q. Okay. The vote on this policy wasn't
21 recorded. Was your board unanimous?
22 A. Yes.
23 Q. This policy was a unanimous vote?
24 A. Well, as I recall, it was unanimous.
25 Unless a voice vote is called for, the chairman

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1 determines whether or not the motion passes or doesn't.
2 Q. Attached to the application, which was
3 Exhibit 2 of your first affidavit, was an invoice and it
4 shows \$50. And on there, it shows 110 shares of water.
5 Do you see that?
6 A. Yes.
7 Q. Now, does your district have a rule of
8 thumb of how many shares are required to adequately
9 provide irrigation water to one acre?
10 A. Well, I don't see the 110 number. I see
11 190 on Page 1.
12 Q. No, I'm looking at the actual --
13 A. Application to Change --
14 Q. The invoice.
15 A. The invoice? Well, the invoice only
16 indicates one of the two parcels that the application is
17 for.
18 Q. Oh, I see. So there's a different --
19 A. I would call that a clerical error. If
20 you'll notice on the application, two parcels are
21 identified on the first page.
22 Q. Okay.
23 A. With 190 shares.
24 Q. Okay. So 190 shares is involved in this
25 application, not 110?

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1 A. Yes.
2 Q. And getting back to my question. I
3 assume, and this is a pure assumption, and I want you to
4 correct me, you know, I believe most canal companies
5 attribute one share to one acre as a rough --
6 A. Oh, we didn't get to your question.
7 Q. Yeah.
8 A. The rule of thumb is one share per acre.
9 Q. Okay. So in this case, they actually have
10 15 shares more than one share per acre?
11 A. Yes.
12 Q. Okay. And the only other thing I really
13 wanted to cover with you is there was a disclosure of
14 lay and expert witnesses in this case. Are you familiar
15 with that document? Did you help prepare it?
16 A. I suspect that, yeah, I did. Was that --
17 not the one produced by you, right? The one produced by
18 us?
19 Q. Yeah, the one that Aberdeen-Springfield
20 produced?
21 A. Yes.
22 Q. And I just want you to briefly tell me, if
23 you don't mind, I'm just trying to figure out what all
24 these various people you expect will testify about in
25 this case. And the first one listed is you. And the

1 time, correct?
2 A. Yes.
3 Q. So he's been there for most of the current
4 history dealing with this recovery well issue?
5 A. Yes. Seven of the -- eight of the board
6 members listed there -- no, I'm sorry. We have two
7 relatively new board members.
8 Q. Okay.
9 A. But the other seven have been there longer
10 than I have been there.
11 Q. Can you just -- reading that list quickly,
12 can you read those names into the record, the ones that
13 have been there longer than you?
14 MR. BUDGE: You have to die to get off.
15 THE WITNESS: Yeah, pretty much.
16 MR. FLETCHER: That's not unusual.
17 THE WITNESS: Val Wahlen, current
18 president, has been on the board for longer than I've
19 been with the Company. Ron Thompson is a relatively
20 recent board member who was elected to replace Alan
21 DeGiulio who died. Mel Chappel, current treasurer, has
22 been on the board longer than I've been with the
23 Company. Thayne Driscoll is a relatively -- well, I
24 think he's been on the board seven or eight years now,
25 but he was to replace a previous long-term board member.

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1 next one is Mr. Duffin. So let's move down to the next
2 one, which is Val Wahlen.
3 A. The remainder of the names on that list
4 are members of the board of directors of
5 Aberdeen-Springfield Canal Company.
6 Q. Okay. And do you have any idea why
7 they're listed as potential witnesses?
8 A. The establishment of board policy, history
9 of the recovery well use on the system.
10 Q. The types of things you've been talking
11 about here today?
12 A. Yes.
13 Q. To your knowledge, do any of these people
14 know more about this issue than you do?
15 A. No. Although, they can speak better to
16 their intent than I can.
17 Q. One thing I did notice in a lot of your
18 minutes, Mr. Ray Duffin, who, I assume, is Jeff's
19 father; is that correct?
20 A. No.
21 MR. DUFFIN: First cousin.
22 Q. (BY MR. FLETCHER) And is he still on the
23 board?
24 A. He is still on the board.
25 Q. And he's been on the board for a long

1 Ray Duffin has been on the board longer than I've been
2 an employee. John Houghland also has been on the board
3 longer than I've been an employee. Bob Knudsen, Junior,
4 has been on the board longer than I've been an employee.
5 Clarence Schroeder has been on the board longer than
6 I've been an employee and probably longer than you've
7 been alive. Charles Shackelford, same thing, has been
8 on the board for many years longer than I've been
9 employed with the Company.
10 Q. (BY MR. FLETCHER) Okay. Do you know who
11 owned the Jeff Duffin property that we're talking about
12 prior to Jeff Duffin owning it?
13 A. Well, just prior, it was a Duffin. I
14 don't recall a first name. And I'm unsure of the
15 relationship.
16 Q. Okay.
17 A. And I think -- boy --
18 Q. Okay. Well, we can ask Mr. Duffin these
19 questions.
20 A. Yeah.
21 MR. FLETCHER: That's all I have. Thanks.
22 Might want to take a short break.
23 MS. CARTER: Yeah.
24 (Recess taken.)
25

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EXAMINATION

QUESTIONS BY MS. CARTER:

Q. I'm going to hand you this. Do you recognize that?

A. This appears to be a map that I prepared in June of 2013 that indicates the location of the Aberdeen-Springfield Canal Company recovery wells and headgates.

MR. BUDGE: Do you want to mark that Exhibit 4?

MS. CARTER: Yes.

(Exhibit 4 marked.)

Q. (BY MS. CARTER) So in your Second Corrected Affidavit, in Paragraph 6, you talk about how Aberdeen-Springfield operates eight wells that can be pumped directly into the canals or laterals and five wells it has identified as recovery headgates that can be used to deliver directly to individual parcels.

A. Yes.

Q. Could you help me identify among this list of 13 wells which is which?

A. Probably.

Q. You know, I know that you also say in this affidavit, and I don't have that identified, that for sure the Koompin well.

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that third well, those three have been identified as recovery headgates. None of which, to date, have delivered water to an individual shareholder.

The next well up the line is Rowe, R-o-w-e. That well is pumped directly into the canal.

The next well upstream from that is Schroeder, S-c-h-r-o-e-d-e-r. That well can be pumped directly into the canal, but hasn't been pumped into the canal since -- since 2013. Is that the last year of the big drought? Or '04. '03 or '04. And that well was what we call a gear head, which meant it was driven by a diesel motor. And the diesel motor broke and we haven't replaced it as yet.

Next up, we see two wells, the southern most labeled as the Toevs, T-o-e-v-s, well and the Catholic Church. Those two wells are pumped directly into the canal. The Catholic Church well is also referred to as the town site well on occasion through the -- in some of the discovery responses that we put out.

Next north is the Slaugh well. This is the company-owned well that we spoke about earlier in the deposition. That there's a contract with the -- that was entered into with -- did I say Ted? With Mr. Slaugh sometime in the '60s that allowed him to take

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A. Okay. Well, we can start at the lower end of the system.

Q. Okay.

A. The southern end of the system, the lower end of the system. The Koompin well is -- well, last time it was pumped, it was pumped directly into the canal, even though it had an application to be used as a headgate. But it has not been used as a recovery headgate.

The next well north is the Simms well. That well is company owned, company drilled and pumps directly into the Highline canal.

And then there's kind of a mess there.

There are three wells, one of them is legible, that says Northern Ag II No. 1. The other one of those is Northern Ag II No. 2.

Q. Uh-huh.

A. And, actually, the third one there is what we've been referring to as the Funk well.

Q. Okay.

A. But I believe the name that is on this is -- it might be Janke, J-a-n-k-e, because that was the previous owner of the property.

Q. Okay.

A. So the Northern Ag II No. 1 and No. 2, and

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his delivery directly from that well.

And next up is Duffin headgate JR-2-1. That's variously referred to as the Jeff Duffin well, the Duffin well or ASCC recovery headgate JR-2-1.

Next north is the Mann well. The Mann well pumps directly into the canal.

Next up is the Line well, L-i-n-e. That well also pumps directly into the canal.

Q. Let's go back to the Slaugh well real quick. Is that still being used as a recovery well?

A. Yes. And, actually, that well has the capability of being pumped directly into the canal. It's located directly adjacent to a lateral. The mainline that comes off of that well has a large valve. And at my discretion, that well is either pumped into the canal or provided to the shareholder through the mainline. In the instances when that water is being pumped into the canal, the Canal Company assumes responsibility to pay the power costs associated with that pumping.

Q. Okay. So I've been digging through the discovery and have been having problems identifying which wells belong to which within some of the documents. So I thought maybe we could quickly go through and see if you know the dates any of these wells

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1 were drilled?
2 A. I -- no.
3 Q. Okay.
4 A. Only one of these wells has been drilled
5 since I've been with the Company, and that's the Simms
6 well.
7 Q. The Simms well. And that's the one that
8 you've referred to as being drilled in 2004?
9 A. No. Was it 2004? I thought it was
10 earlier than that. It might have been 2004.
11 Q. Okay. But that's the only one that's been
12 drilled since you were here?
13 A. Yes. And the J lateral well, which is not
14 completed.
15 Q. Correct. Okay. Do you know if Mr. Slaugh
16 drilled that well himself or was that a company-drilled
17 well?
18 A. That was a company-drilled well. That was
19 one of the drought wells.
20 Q. Okay. And so are all the company-owned
21 wells drilled by the Company, were all those --
22 A. I don't know.
23 Q. Okay.
24 A. In the '30s, you know -- well, prior to
25 1984, '84, '81, a license to drill a well wasn't

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1 required. So in my discovery, I included every drilling
2 record that we have possession of, who paid for that.
3 And I -- I assume if we have the drilling record, we did
4 the drilling.
5 Q. Okay. I think that covers all of the
6 specifics on the wells.
7 A. Okay.
8 Q. So we've had some discussion about
9 supplemental rights. Does Aberdeen-Springfield
10 differentiate for recovery purposes water from
11 supplemental rights versus water from the canal?
12 A. Well, Aberdeen-Springfield Canal Company
13 takes no responsibility for diversions occurring under
14 ground-water rights issued by the State of Idaho. We
15 don't consider them. We don't measure them. That's not
16 our job.
17 Q. So you don't differentiate them when
18 you're calculating where recovery water or where you
19 could possibly recover water --
20 A. I guess I'm not sure what you're asking
21 me.
22 Q. So you have -- we'll give you a
23 hypothetical. You've got a parcel that has shares from
24 the Canal Company and a supplemental water right,
25 they're both applied to the same area. Do you

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1 differentiate the amount of water coming from the
2 supplemental rights from the amount of water coming from
3 the shares when you're determining whether or not or how
4 much you could recover from that area?
5 A. No, we don't monitor or measure diversions
6 occurring under ground-water rights issued by the State
7 of Idaho.
8 Q. Okay.
9 A. Okay? We only measure what we deliver.
10 Q. All right. And just to make sure that I'm
11 clear with the terminology here. A recovery headgate is
12 something that is specific to an individual property
13 controlling the flow of water from your system to their
14 property?
15 A. Yes, that's the differentiation. A
16 recovery well pumps directly into the canal. A recovery
17 headgate supplies recovery water to an individual
18 parcel.
19 Q. And there's been a lot of -- there's a lot
20 of mention within the discovery documents of drainage
21 wells and recovery wells and some of that seems
22 interchangeable. What is the distinction for
23 Aberdeen-Springfield?
24 A. Well, the distinction between a drainage
25 well and a recovery well is purely semantic.

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1 Q. Okay.
2 A. I guess I could go into more detail. Some
3 wells that were drilled early on as drainage wells were
4 subsequently pumped into a canal or, in some cases,
5 applied directly to shareholders' lands. So drain wells
6 became recovery wells. They're both covered in the same
7 statute. But so much of this occurred prior to there
8 being any statute whatsoever.
9 MS. CARTER: I think that covers my
10 questions. Unless you have any more.
11 MR. HOMAN: Just one.
12
13 EXAMINATION
14 QUESTIONS BY MR. HOMAN:
15 Q. The Simms well, which was drilled while
16 you were there, is there any drilling permits or well
17 logs for that particular well?
18 A. I don't believe I have a copy of the well
19 logs. But we drilled it under a recovery drill permit
20 issued by the Department of Water Resources.
21 MR. HOMAN: That's all.
22 MS. CARTER: I think that's all we have.
23 Thank you.
24 THE WITNESS: Sure.
25

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FURTHER EXAMINATION

QUESTIONS BY MR. ARRINGTON:

Q. And I have just a few questions on that Simms well. Did you -- did the Company file an application similar -- let me take a step back. In 2013, the Company filed for that J well that we were talking about earlier. Was it a similar application that you filed back in 2004, or whatever it was?

A. I seem to recall that it wasn't the same application process. But it seems to me that there was less paperwork involved for the Simms well.

Q. Was it conditioned the same as the J well?

A. No. It had a depth limitation of 200 feet, I believe.

MR. ARRINGTON: I don't have any other questions.

FURTHER EXAMINATION

QUESTIONS BY MR. FLETCHER:

Q. I just would like to clarify a few of these things to make sure I understood, Steve, what you're saying. On Koompin, the district drilled that well?

A. No.

Q. Okay.

1 wells.

2 Q. So when you call them a drought well, do
3 you have any idea --

4 A. I'm sorry. Drought wells were what we
5 called the wells that were drilled in the '30s in
6 response to the great drought. Apparently -- or there
7 appeared to be some federal cost share. What we see is
8 that we believe that the federal government supplied the
9 pumps. Because there were requisitions to recover those
10 pumps during World War II.

11 Q. Now, those types of pumps that were put in
12 at the toe of the -- or at the base of the canal --

13 A. Yes.

14 Q. -- those are pumping from a pretty shallow
15 level?

16 A. The ones that we've measured depths on
17 typically range from 100 to 150 feet. The ones that
18 we've -- the historical data shows that ground water
19 tables in those areas for the drought wells were
20 typically in the 50 to -- as deep as 50 to 60 feet,
21 shallow as five to 10 feet.

22 Q. Okay. And on Toevs and Church, were those
23 drilled by the Company?

24 A. The Toevs well was drilled by the Company.
25 The Church well was initially drilled by the Aberdeen

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1 A. Canal Company. We're not a district.

2 Q. I'm sorry. Canal Company. So a private
3 water user drilled that well?

4 A. I'm assuming, yes.

5 Q. And on Rowe, I missed what you said about
6 Rowe. Is it being used?

7 A. It's -- yes, it pumps directly into the
8 canal. And it's used occasionally.

9 Q. Okay.

10 A. Wells on the lower end of the system are
11 used to supplement until I can move water from the river
12 down to that location.

13 Q. Okay. And was that drilled by the
14 Company?

15 A. We believe so. It's within the quarter
16 corner that's identified as the location as one of the
17 drought wells.

18 Q. Okay. Do you monitor pumping levels on
19 these various wells?

20 A. No.

21 Q. On Schroeder, was that drilled by the
22 Company?

23 A. Yes, that was a drought well. The ones
24 that are, you know, right next to the toe of the bank on
25 the canal and are plumbed into the canal are the drought

1 Town Site Development Company, which, in fact, was the
2 Company, just a different division. And, subsequently,
3 the -- and we call it the Catholic Church well because
4 it's right next to the Catholic Church. But,
5 technically, it's the town site well. And at some time,
6 and it's in the discovery, the information is in there,
7 that well was acceded to the Canal Company for operation
8 purposes. And that well, if I recall correctly, is
9 130 feet deep. And typical depth of surface in April is
10 about 35 feet, and it comes up about 15 feet after we
11 bring water in the canal.

12 Q. So the actual well is 130 feet, but the
13 pumping level is around 35?

14 A. Yes.

15 Q. And then the Mann well, was that drilled
16 by the Company?

17 A. The Mann well was drilled by the Company.
18 That well is -- we sounded it and we came up with
19 160 feet. Although the water levels in that well are
20 very close to the surface. More often than not, that
21 well is used to decrease sub when it appears on adjacent
22 lands. Typical operation is the farmer will call the
23 ditch rider and say, I've got sub in my field. The
24 ditch rider will turn the well on for two or three days,
25 the sub goes away, and then the well gets shut off for a

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1 couple of weeks until it comes back. In the drought
2 years, we used that to supplement flows to the Lowline
3 Canal.
4 Q. And how about the Line?
5 A. The Line well is in the Springfield area.
6 Depth of well there is a little deceiving. We believe
7 it's 230 feet. But the casing that is located 20 feet
8 above the canal. Typical water pumping levels in there,
9 when we use it, are 50 to 70 feet depth of surface. And
10 of all of our wells, that one probably gets used the
11 least.
12 Q. Was that drilled by the Company?
13 A. I believe it's one of the drought wells.
14 Q. So it was drilled by the Company?
15 A. I believe so, yes.
16 Q. And when you say it's used the least, is
17 there some reason for that?
18 A. Just its location. It's a small-capacity
19 well. I can only get about two, two and a half cfs out
20 of it. And it supplies water to the main canal, you
21 know, above the bifurcation of the Highline and Lowline,
22 where I probably have 700 or 800 cfs capacity. So
23 it's -- it doesn't -- it doesn't add a lot to the mix in
24 its location.
25 Q. Okay.

1 A. No.
2 MR. FLETCHER: Okay. I think that's all I
3 have.
4 MS. CARTER: I thought of one more
5 question. I apologize.
6
7 FURTHER EXAMINATION
8 QUESTIONS BY MS. CARTER:
9 Q. The two recovery wells which also have
10 water rights on them --
11 A. The recovery headgates or the recovery
12 wells?
13 Q. I don't think I know -- mentioned in
14 Paragraph 2, I do believe -- no. Of your first
15 affidavit --
16 MR. FLETCHER: It's Paragraph 4. It is in
17 the second one.
18 THE WITNESS: In the second one?
19 Q. (BY MS. CARTER) Yeah, Paragraph 4 in the
20 second affidavit. You mention Water Right No. 35-2542
21 and 35-4246, which provides ground water for the two
22 Company-owned wells.
23 A. Yes, those two wells, in addition to being
24 recovery wells, also have ground-water rights associated
25 with them.

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1 A. And so we've only used it in the drought
2 years.
3 Q. So on Exhibit 4, are these all of the
4 recovery wells, other than the J well which we've talked
5 about and --
6 A. Those are -- that's -- with the exception
7 of the J lateral well, which isn't on this, this is the
8 list of wells that are being used by the Company as
9 recovery wells, so far as we know.
10 Q. Okay.
11 A. There may be more.
12 Q. Now, when you say there may be more, what
13 does that mean?
14 A. Well, there are so many references to
15 recovery wells and drain wells with the -- over the
16 course of the history of the Company. We haven't made a
17 full effort to map the locations of all of those wells.
18 So it's possible that there are other wells that were
19 drilled by the Company that are being used for lands
20 that have shares appurtenant that we're not aware of.
21 Q. Okay. Does your company draw any
22 distinction on these recovery wells between who drilled
23 the well or who owns the well?
24 A. No.
25 Q. Makes no difference?

1 Q. And how do you distinguish the use between
2 those? I mean, how often do you use the water rights
3 versus use it as a recovery well?
4 A. We don't make that distinction.
5 Q. Okay.
6 A. As I understand it, the Water District 120
7 is responsible for the periodic measurement and
8 calibration of those wells. I know they contact me once
9 a year and we arrange to have those pumps turned on so
10 that they can calibrate the power cost coefficient at --
11 we just don't make the distinction between whether we're
12 using a ground-water right or a recovery right.
13 Q. Okay. And those are the -- I think I
14 probably got a little bit confused. But those two
15 rights come out of the Northern Ag wells?
16 A. No. We temporarily transferred a portion
17 of our nine cfs ground-water rights to those Northern
18 Ag II and the Funk well for the 2013 irrigation season.
19 And then while we discussed with the landowner and
20 myself installing a headgate and a delivery system from
21 the canal, and then a -- and then, of course, those
22 ground-water rights reverted to the Company. And then
23 in 2014, we transferred the required portion of that
24 nine cfs to the Duffin well to cover use from that well
25 for the 2014 irrigation season.

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1 Q. So are those two wells for those two water
2 rights then listed in these 13 wells?
3 A. They are. They're the Toevs well and the
4 Mann well.
5 MS. CARTER: Okay. Thank you. That is
6 all I have. Thanks.
7 THE WITNESS: I would like to add one
8 thing.
9 MS. CARTER: Uh-huh.
10 THE WITNESS: If you'll look through the
11 discovery, you'll see that those wells were drilled
12 years prior to the application for water rights on them.
13 The decision to file on those wells' water rights was
14 made by the board at some later date. If I recall
15 correctly, the -- I think the priority date on the Toevs
16 well is like 1938. And the Mann well, I think, is early
17 '50s, maybe late '50s. But the wells were in place for
18 many years before the ground-water rights were applied
19 for.
20 MR. ARRINGTON: I don't have anything
21 else.
22 MR. FLETCHER: I'm done.
23 MS. CARTER: I think we're done.
24 (Deposition concluded at 12:59 p.m.)
25 (Signature requested.)

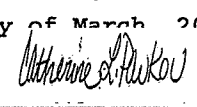
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1 CERTIFICATE OF WITNESS
2 I, STEVEN T. HOWSER, being first duly sworn, depose and
3 say:
4 That I am the witness named in the foregoing
5 deposition consisting of Pages 6 through 122; that I
6 have read said deposition and know the contents thereof;
7 that the questions contained therein were propounded to
8 me; and that the answers contained therein are true and
9 correct except for any changes that I may have listed on
10 the Change Sheet attached hereto.
11 DATED this ____ day of _____, 2015.
12
13
14 STEVEN T. HOWSER
15 SUBSCRIBED AND SWORN to before me this ____ day
16 of _____, 2015.
17
18
19
20 NAME OF NOTARY PUBLIC
21 NOTARY PUBLIC FOR _____
22 RESIDING AT _____
23 MY COMMISSION EXPIRES _____
24
25

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

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1 REPORTER'S CERTIFICATE
2 I, CATHERINE L. PAVKOV, CSR No. 638,
3 Certified Shorthand Reporter, certify:
4 That the foregoing proceedings were taken
5 before me at the time and place therein set forth,
6 at which time the witness was put under oath by me:
7 That the testimony and all objections made
8 were recorded stenographically by me and were
9 thereafter transcribed by me, or under my
10 direction.
11 That the foregoing is a true and correct
12 record of all testimony given, to the best of my
13 ability.
14 I further certify that I am not a relative
15 or employee of any attorney or party, nor am I
16 financially interested in the action.
17 IN WITNESS WHEREOF, I have set my hand and
18 seal this 2nd day of March 2015.
19 
20
21 CATHERINE L. PAVKOV, CSR NO. 638
22 Notary Public
23 Post Office Box 2636
24 Boise, Idaho 83701-2636
25 My commission expires June 24, 2015.

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Exhibit S

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF POWER

ABERDEEN-SPRINGFIELD CANAL)	
COMPANY, an Idaho Corporation,)	
JEFFREY and CHANA DUFFIN,)	
individually, as stockholders,)	
and as husband and wife,)	
Plaintiffs,)	
vs.)	Case No. CV-2014-165
IDAHO DEPARTMENT OF WATER)	
RESOURCES, an executive)	
department of the State of)	
Idaho,)	
Defendants,)	

(Caption continued to next page)

DEPOSITION OF JEFFREY T. DUFFIN

FEBRUARY 24, 2015

REPORTED BY:

CATHERINE L. PAVKOV, CSR NO. 638

Notary Public

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1	(Caption continued)	1	(Appearances continued)
2	and)	2	
3	A&B IRRIGATION DISTRICT,)	3	For the Defendants A&B Irrigation District, Burley
4	AMERICAN FALLS RESERVOIR)	4	Irrigation District, Milner Irrigation District, North
5	DISTRICT #2, BURLEY IRRIGATION)	5	Side Canal Company, and Twin Falls Canal Company:
6	DISTRICT, MILNER IRRIGATION)	6	Barker Rosholt & Simpson, LLP
7	DISTRICT, MINIDOKA IRRIGATION)	7	BY: PAUL L. ARRINGTON
8	DISTRICT, NORTH SIDE CANAL)	8	195 River Vista Place, Suite 204
9	COMPANY, and TWIN FALLS CANAL)	9	Twin Falls, Idaho 83301-3029
10	COMPANY,)	10	pla@idahowaters.com
11	Defendant-Intervenors.)	11	
12		12	For the Defendants American Falls Reservoir District #2
13		13	and Minidoka Irrigation District:
14		14	Fletcher Law Office
15		15	BY: W. KENT FLETCHER
16		16	1200 Overland Avenue
17		17	Post Office Box 248
18		18	Burley, Idaho 83318-0248
19		19	wkf@pmt.org
20		20	
21		21	Also Present: STEVEN T. HOWSER
22		22	
23		23	
24		24	
25		25	
Page 3		Page 5	
1	THE DEPOSITION OF JEFFREY T. DUFFIN was taken on	1	I N D E X
2	behalf of the Defendants A&B Irrigation District, Burley	2	
3	Irrigation District, Milner Irrigation District, North	3	TESTIMONY OF JEFFREY T. DUFFIN: PAGE
4	Side Canal Company, and Twin Falls Canal Company at the	4	Examination by Mr. Arrington 6
5	law offices of Racine, Olson, Nye, Budge & Bailey,	5	Examination by Mr. Fletcher 30
6	Chtd., 201 East Center, Pocatello, Idaho, commencing at	6	Examination by Ms. Carter 36
7	2:10 p.m., on February 24, 2015, before Catherine L.	7	Further Examination by Mr. Fletcher 37
8	Pavkov, Certified Shorthand Reporter and Notary Public	8	
9	within and for the State of Idaho, in the above-entitled	9	E X H I B I T S
10	matter.	10	5 Corrected Affidavit of Jeffrey Duffin 8
11	A P P E A R A N C E S:	11	6 Application to Change or Add Point of 8
12	For the Plaintiffs:	12	Delivery
13	Racine, Olson, Nye, Budge & Bailey, Chtd.	13	7 Corrected Affidavit of Jeffrey Duffin 19
14	BY: RANDALL C. BUDGE	14	with attachments
15	201 East Center	15	8 May 1, 2014 letter to Mr. and Mrs. Duffin, 27
16	Post Office Box 1391	16	from State of Idaho Department of Water
17	Pocatello, Idaho 83204-1391	17	Resources, Notice of Violation No. E2014-498,
18	rcb@racinelaw.net	18	Order to Cease and Desist Unauthorized Irrigation
19	For the Defendant Idaho Department of Water Resources:	19	9 May 28, 2014 letter from State of Idaho 27
20	Idaho Department of Water Resources	20	Department of Water Resources, Notice of
21	BY: MEGHAN CARTER and JOHN W. HOMAN	21	Violation No. E2014-498; Notice to Cease
22	322 East Front Street, 6th Floor	22	and Desist Unauthorized Irrigation; Curtailment
23	Post Office Box 83720	23	of Ground Water Use by Water District 120
24	Boise, Idaho 83720-0098	24	Watermaster
25	meghan.carter@idwr.idaho.gov	25	

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Page 8

1 JEFFREY T. DUFFIN,
2 first duly sworn to tell the truth relating to said
3 cause, testified as follows:

4
5 EXAMINATION

6 QUESTIONS BY MR. ARRINGTON:

7 Q. Good morning, Mr. Duffin. Could you
8 please state your full name and spell your last name for
9 the record?

10 A. Jeffrey Thornton Duffin, D-u-f-f-i-n.

11 Q. Thank you. My name is Paul Arrington. I
12 represent some of the canal companies and irrigation
13 districts that comprise what we often call the Surface
14 Water Coalition or the Coalition.

15 I'll be asking you some questions today.
16 Kent Fletcher represents other members of the Coalition
17 as well.

18 Have you had your deposition taken before?

19 A. I have.

20 Q. Good. You know the rules of the game?

21 A. Yes.

22 Q. I'll do my best not to talk over you. And
23 make sure you are clear in your answers so that she
24 can -- we can get this recorded.

25 We're here today for depositions on a

1 A. Yes.

2 Q. Let's go back to this document again real
3 fast that I just handed to you. Are you familiar with
4 that document? Take a look at it and make sure.

5 A. Yeah, I think it's the same one that I was
6 given this morning.

7 Q. All right. Let's mark that as --

8 MR. FLETCHER: Should we just continue the
9 numbering?

10 MR. ARRINGTON: We'll just continue it.

11 This will be Exhibit No. 5.

12 (Exhibit 5 marked.)

13 Q. (BY MR. ARRINGTON) So this is the
14 Corrected Affidavit of Jeffrey Duffin. We'll refer to
15 this a few times today. And while I'm at it, let me
16 hand you this as well. Can you please take a look at
17 that and identify that document for me?

18 A. It appears to be the application for the
19 change of point of delivery on the well at hand.

20 MR. ARRINGTON: We'll mark that as
21 Exhibit 6.

22 (Exhibit 6 marked.)

23 Q. (BY MR. ARRINGTON) So you acquired the
24 property in December of 2011. Who did you acquire that
25 from?

Page 7

Page 9

1 lawsuit involving yourself and your wife and
2 Aberdeen-Springfield against the Department of Water
3 Resources regarding a well that's located on property
4 that I believe is owned by you. You were here earlier
5 with Mr. Howser's deposition, and we referred to it as
6 the Duffin well. Are you familiar with that well?

7 A. Yes.

8 Q. Is that on property that you own?

9 A. Yes.

10 Q. How long have you owned that property?

11 A. Since two-thousand -- January -- well --

12 Q. You know what, I'm going to stop you for a
13 second. Because I see you're looking at probably -- I
14 brought these. And we'll use these just for -- take a
15 look at this and tell me if you recognize that. I have
16 a feeling it might be exactly what you're looking at.

17 A. I think it is. This one has some
18 attachments, so it has the actual deed when it got
19 transferred over to myself and my wife. So it was
20 recorded on March 7, 2012. It was dated as of
21 December 31, 2011.

22 Q. So you bought the property in December of
23 2011?

24 A. Yes. It was gifted over to us.

25 Q. Gifted to you?

1 A. Richard and Iris Schelske, who are my
2 in-laws.

3 Q. They're your in-laws?

4 A. My wife's parents.

5 Q. Do you know who owned the property before
6 them?

7 A. My father and mother, Vern R. Duffin and
8 Marilyn Duffin.

9 Q. I've seen the name Vern before in the
10 record. That's your dad?

11 A. That's my dad.

12 Q. So did you grow up on this property?

13 A. Yep, I moved pipe on this property. I was
14 born in 1969, and that well is what's been there my
15 whole life.

16 Q. So you grew up. And then did you move
17 away?

18 A. No. Well, I went to college for a couple
19 of years and then came back to Aberdeen.

20 Q. Have you been farming? Or what have you
21 done since then?

22 A. Farmed for a couple of years back in the
23 late '80s, early '90s. And then when -- and we built a
24 potato fresh pack plant, then called Duffin Potato,
25 currently called Sun River of Idaho, and I've been

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Page 12

1 managing that.

2 Q. Do you still manage that?

3 A. Yes.

4 Q. And now you own this -- you own this
5 property, it's about 175 acres, this particular
6 property?

7 A. 175, including the 80 that is actually
8 owned by LaVerda Barron and Fae Baker. Part of the
9 parcel that we rent as --

10 Q. Okay. Let me make sure I'm correct.
11 We've talked a lot about 175 acres to which 190 shares
12 are tied.

13 A. Right.

14 Q. And I know Mr. Howser mentioned there's
15 two parcels. One parcel is owned by you, correct?

16 A. Correct.

17 Q. And how big is that parcel?

18 A. I guess it would be approximately a
19 hundred and -- I guess it would be around 100 acres,
20 give or take.

21 Q. Okay. And then there's a separate parcel
22 owned by who?

23 A. LaVerda Barron and Fae Baker. I believe
24 they've both passed away now. So it's in a trust.

25 Q. And that's approximately --

1 Q. Do you know if he owned the property when
2 the well was drilled?

3 A. I believe so.

4 Q. Do you know how deep the well is?

5 A. I guess I'd say somewhere between 100 and
6 200 feet, is the depth of the actual hole.

7 Q. You don't know actually how far down it
8 goes though?

9 A. No.

10 Q. Do you know how far to water, what the
11 depth to water is?

12 A. Yeah, I've had the impression that -- I
13 haven't looked at any recent documents or anything that
14 would tell me that. But I'd say it's, you know,
15 somewhere around 75 to 100 feet.

16 Q. Have you ever measured it?

17 A. No.

18 Q. So when you were a child, did you
19 participate in or did you witness your dad -- was the
20 well used?

21 A. Yes.

22 Q. As you were growing up?

23 A. Yes.

24 Q. Was it always used?

25 A. Yes.

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Page 13

1 A. Approximately 80 acres.

2 Q. Okay. And together, your property -- when
3 we talk about the 175 acres, we're talking about your
4 property and the Baker property?

5 A. Correct.

6 Q. Okay. So let me get back to that. You
7 now own the hundred acres. Do you farm the property?
8 What do you do with the property?

9 A. Currently, we just rent it out.

10 Q. You rent it out?

11 A. Yes.

12 Q. Does the same person rent yours and the
13 Baker property?

14 A. Yes.

15 Q. Okay. So let's talk for a few minutes
16 about the well, the Duffin well as we've been calling
17 it. You said that that's been there basically your
18 whole life. Do you know when it was drilled?

19 A. In visiting with my dad, with all of this
20 taking place, and he just said the early '70s.

21 Q. Do you know who drilled it?

22 A. I'm not sure.

23 Q. Do you know if your dad -- when did your
24 dad buy the property?

25 A. I'm not sure on that, on the date of that.

1 Q. Did the property ever receive water from
2 the Aberdeen-Springfield Canal Company?

3 A. I don't think so. But, I mean, you know,
4 you're talking -- some of those early years would have
5 been when I was five or six years old up to being
6 twelve. So as far as I know, no. But, you know, in
7 some of those years, could it have been, I can't say
8 that I was particularly paying attention at that age.

9 Q. How old were you when you left to go to
10 college -- or when you left the property, I should say?

11 A. Probably around 18.

12 Q. Okay. When your in-laws took over the
13 property, did you have any involvement with the property
14 after that, the farming or anything on the property
15 after that?

16 A. I just helped my father-in-law rent it
17 out.

18 Q. Do you know if they continued to divert
19 water from the well during that time?

20 A. Yes, I believe it's been watered out of
21 that well the whole time that he was in possession of
22 the land.

23 Q. And then since you've acquired the
24 property, have you continually used that well?

25 A. Yes.

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1 Q. Do you know if there's a water right
2 attached to that well?

3 A. Yeah, you know, I have been under the
4 impression there was a water right the whole time.

5 And then in the gift, you can go back to
6 it, there -- this refers to the parcel. It lists the
7 farms that we got. And under the Parcel D7, which is
8 that field, it lists the canal shares and it has two
9 permit numbers. And I also know that we've paid ground
10 water dues on those permit numbers for that well for the
11 last, you know, I don't know, 20-plus years.

12 Q. What are those permit numbers? Can you
13 read them to me?

14 A. Permit No. 35-8980 for 2.2 cfs. And
15 Permit No. 35-9002 for 3.66 cfs.

16 Q. Does it give priority dates on there, by
17 chance?

18 A. Not on this document.

19 Q. So when you acquired the property, these
20 rights were listed in a deed, and you've been paying
21 dues or assessments to which ground water district?

22 A. That would be the American Falls Aberdeen
23 Ground Water District. And, you know, in visiting with
24 my father-in-law, and my father before that, they
25 paid -- there's been dues paid on the canal shares and

Page 15

1 these permit numbers the whole time that both of them
2 were involved with the land also.

3 Q. And so did I understand you correctly, you
4 thought that since you were paying the dues, that there
5 was a water right tied to the land?

6 A. Yeah. Since there was water permit
7 numbers and we were paying the dues, I was under the
8 impression that we had, basically, a dual right, was
9 what I believed.

10 Q. Did you ever research that any further
11 with the Department of Water Resources?

12 A. Yeah. You know, I believe it was sometime
13 in the spring of 2013, I became interested in -- I was
14 discussing with some people dual water rights and what
15 they could do with them or what they couldn't do with
16 them. And, you know, some guys were looking into
17 actually leasing out the ground water rights and just
18 using their canal shares on their land. And so I was
19 just interested in how that worked.

20 And I -- near as I can remember, I went in
21 to talk to Steve about it. Because I -- I've learned
22 more in the last year about ground water rights than I
23 knew in the whole previous 44 years of my life. I
24 didn't really know a whole lot about how it worked and
25 didn't really delve into that.

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1 And it was at that time that we pulled up
2 those permit numbers that it showed they were there.
3 But I can't remember the exact term that was beside
4 them. But it might have -- I think -- if I recall
5 right, it said pending, you know. Instead of being like
6 all the other permit numbers, just a permit number, it
7 had a pending beside it.

8 Which then, you know, I visited with my
9 father about it and said, hey, you know, how did this
10 all play out? And when he had originally drilled the
11 well, as was discussed in Steve's deposition, there was
12 issues with water being delivered to that land back in
13 the early '70s. And so he had worked with whoever back
14 then, and they decided the best way to do it was to
15 drill a well and just recover the water.

16 Well, in around 1990, give or take, when
17 they did the adjudication, my dad hired an attorney, Ben
18 Cavaness, to go through all his water rights and get
19 everything straightened around through the adjudication.
20 And it was at that time that they applied for these
21 permits.

22 Q. Okay. So they filed both of those in the
23 early '90s?

24 A. I believe so.

25 Q. Okay. Exhibit 6 there, this is the one

Page 17

1 that's identified as the Application to Change or Add
2 Point of Delivery.

3 A. Uh-huh.

4 Q. And if you look at Paragraph 5, a., it
5 says, ground water right number, if any. Do you see
6 that at the bottom of the first page there?

7 A. Yes.

8 Q. 5, a.?

9 A. Yes.

10 Q. And the answer is, none. So how did you
11 get from thinking you had the water rights to putting
12 that there were none on this application? What
13 happened?

14 A. You know, I -- my first impression of
15 reading that was I would say that that was an oversight;
16 that we just didn't write those permit numbers down in
17 there at the time.

18 Q. So you're saying you should have put those
19 two numbers there?

20 A. That's my first impression.

21 Q. Instead of putting none?

22 A. Yes.

23 Q. Okay. Do you have any knowledge about the
24 application that your dad filed, these applications that
25 your dad filed in the early '90s?

Page 18

Page 20

1 A. No. You know, I've become aware of all of
2 this since this started transpiring, I started asking
3 questions and tried to figure out what happened.

4 Q. Do you know if both of them identify the
5 Duffin well as the point of diversion?

6 A. You know, I -- I believe that -- these two
7 permit numbers?

8 Q. Yes.

9 A. I believe that they are, yes, tied to that
10 well.

11 Q. Is there another well on the property that
12 they could be tied to?

13 A. No.

14 Q. Have you ever, since you owned the
15 property, received surface water from the Company to
16 your property?

17 A. No.

18 Q. Is there any reason you couldn't receive
19 surface water today from the Company?

20 A. No.

21 Q. The headgates are still there?

22 A. Yes, there's a headgate there.

23 Q. There's a headgate?

24 A. We'd just have to put in a pond.

25 Q. When you filled out that application

1 Q. Look on the signature date, on when you
2 signed that one. Go back one more page.

3 A. 10th day of June 2014.

4 Q. Okay. And so we were referring earlier --
5 you referred to a deed that identified those two water
6 permits. Were you looking at a deed that was attached
7 to that affidavit?

8 A. Yes.

9 Q. Okay. Now, if you wouldn't mind pulling
10 out Exhibit No. 5, which was previously marked, and that
11 is also identified as the Corrected Affidavit of Jeffrey
12 Duffin. What's the date of that affidavit?

13 A. November 17, 2014.

14 Q. And this is also an affidavit you prepared
15 in this matter?

16 A. Appears to be.

17 Q. Okay. So a little confusion, but there's
18 a June 2014 corrected affidavit and a November 2014
19 corrected affidavit. We'll just refer to them as their
20 exhibit numbers to try and keep that straight, to the
21 best we can.

22 A. Okay.

23 Q. So let me ask you -- I'm going to go back
24 to these two ground water permits. Are you still,
25 today, diverting water under those permits?

Page 19

Page 21

1 that's Exhibit 6, did you provide any other information
2 to Aberdeen-Springfield, aside from the answers that you
3 gave in that application?

4 A. I can't remember.

5 Q. Any well records or pump tests or anything
6 that may have been associated with that well?

7 A. I don't remember either way.

8 Q. So you filed the application -- I want to
9 look at some statements in your affidavit, Exhibit 5,
10 the corrected affidavit. Let's go to Paragraph 5.

11 MR. FLETCHER: Off the record.

12 (Discussion held off the record.)

13 (Exhibit 7 marked.)

14 Q. (BY MR. ARRINGTON) All right. We're back
15 on the record. We were off the record because we were
16 trying to discuss some confusion in some affidavits and
17 attachments. And I think we've figured it out. What we
18 did, while we were off the record, Mr. Duffin, is
19 identify an Exhibit 7. Do you have that Exhibit 7 in
20 front of you?

21 A. Yes.

22 Q. And what is that document?

23 A. Corrected affidavit.

24 Q. Do you have the date that that --

25 A. It would be this date?

1 A. Currently, we're working with the Canal
2 Company. And they're using the well as our headgate and
3 they're providing us with the water.

4 Q. Do you mean as far as recovery, under the
5 recovery of surface water or --

6 A. Yes.

7 Q. Let me clarify my question then. You
8 indicate -- I asked previously, did you have water
9 rights to this well, and you said, yeah, we thought we
10 did because the deed identified a couple of rights. And
11 you, and as you discussed with your predecessors, they
12 had paid for assessments for those ground water rights.
13 Are you still being assessed for those permits?

14 A. Yes.

15 Q. You're still paying assessments for them?

16 A. Yes.

17 Q. Did you pay for --

18 MR. BUDGE: Excuse me, Paul. I think we
19 may not be talking the right assessments. There's two
20 different assessments. There are canal company
21 assessments on the shares. And we've also talked
22 about -- he mentioned earlier, he paid assessments to
23 American Falls Aberdeen Ground Water District, which
24 would -- he happened to be on their assessment roll. So
25 there's two different assessments. You might clarify

Page 22

1 which one --

2 Q. (BY MR. ARRINGTON) I apologize. I'm
3 referring to the ground water district assessments.

4 A. Yes, until there's further clarification,
5 we felt like we should continue to pay the dues, the
6 assessments.

7 Q. Have you continued to divert the water,
8 the ground water? Not the recovery water or the
9 Aberdeen-Springfield water. But the ground water?

10 A. No, we're working with the Canal Company.
11 We -- I'm under the impression we are operating through
12 the Canal Company currently.

13 Q. When did you stop diverting ground water
14 under those permits?

15 A. I believe in 2013, crop year 2013 when we
16 were working with the Canal Company.

17 Q. Okay. So let's -- we were looking at
18 Exhibit 6, which was the Application to Change or Add
19 Point of Delivery. What prompted you to file this
20 application with the Canal Company?

21 A. As best I can remember, I -- this came
22 from when I was researching the dual permit, thinking I
23 had ground water permit and Springfield, you know, Canal
24 shares also. And it was at that time, visiting with
25 Steve, you know, that I became aware that there was an

Page 23

1 issue. So at that time, that's when we did this.

2 Q. The issue being --

3 A. That there may be a concern with the
4 ground water permits. And so I took action as -- I
5 mean, that was the first time I had any indication that
6 I thought there was any problem with those ground water
7 permits.

8 Q. Okay. Now, let me go back and ask one
9 more question. Back on the assessments question, the
10 Aberdeen-Springfield assessments, have you continued to
11 pay Aberdeen-Springfield assessments even though you've
12 not -- you've been diverting ground water?

13 A. Yes.

14 Q. Do you know if your in-laws paid the
15 assessments?

16 A. They did.

17 Q. Do you know if your parents, when they
18 owned it --

19 A. They did.

20 Q. So as far as you know, the assessments for
21 the Aberdeen have always been paid and kept up to date?

22 A. Yeah. I'm under the impression that
23 there's been assessments paid for the canal shares all
24 the way through and for the ground water all the way
25 through, for both. I had the impression that it had

Page 24

1 both.

2 Q. Okay. So when you filed this application
3 with the Company, did you have any discussion with the
4 Company about taking surface water or did you have any
5 discussion about opening your headgate and delivering
6 surface water to your property?

7 A. You know, I believe there had to be
8 discussion on how we were going to get the water at the
9 time. And I just remember that it was determined that
10 they would use the well as the headgate.

11 Q. Do you remember how that was determined?

12 A. I don't specifically remember that.

13 Q. And so you identified -- in Paragraph 4 on
14 Exhibit 6, it says, describe -- or Item No. 4, I should
15 say, it says, describe the location of the new point of
16 delivery. Is that your well, the Duffin well?

17 A. I'm not super proficient on -- I would --
18 without reviewing that, I would say yes.

19 Q. Did anybody from Aberdeen-Springfield come
20 out and check out the well and do an inspection of any
21 sort on the well?

22 A. I believe they did. I wasn't specifically
23 with them, I don't believe. But I'm under the
24 impression that they did go out and inspect the well.

25 Q. Do you know what they were looking for or

Page 25

1 what they found?

2 A. I can't remember specifically.

3 Q. But at the end of the day, the application
4 was approved, correct?

5 A. I believe so.

6 Q. And so for the 2013 irrigation season, you
7 diverted from the well, correct?

8 A. Correct.

9 Q. And paid assessments?

10 A. Yes.

11 Q. Was it treated as a recovery, let me make
12 sure I have the terms correct, a recovery headgate?

13 A. I'm not super knowledgeable on all the
14 appropriate terms and how they operate their side of the
15 business. I just know that I worked with the Canal
16 Company and they were recovering the water.

17 Q. Did you install a measuring device on the
18 well?

19 A. I'm not sure what the Canal Company did
20 for sure.

21 Q. Did you see -- did the Canal Company come
22 in and inspect it or take measurements throughout the
23 year?

24 A. I believe they did.

25 Q. When did you become aware that the

Page 26

Page 28

1 Department had concerns with your use of the well in
2 irrigating the property?
3 A. I believe the first that I had any idea
4 that they had an official concern was when I got the --
5 a notice from them. I can't remember the specific date
6 of it. But that was the first time I became aware of
7 that.
8 Q. And what did the notice tell you?
9 A. I can't remember specifically.
10 Q. I forgot to make a copy of the notice.
11 A. Is there a copy of that so I can refresh
12 my memory?
13 MR. FLETCHER: It's on Steve's affidavit.
14 MR. ARRINGTON: Is it on Steve's
15 affidavit? No. It's on the complaint.
16 MR. FLETCHER: On the complaint.
17 MR. ARRINGTON: I forgot to make a copy of
18 it. I meant to.
19 MR. FLETCHER: That's what I was thinking,
20 was the complaint.
21 MR. ARRINGTON: It's May 1st of 2014?
22 MR. BUDGE: May 28 of 2014.
23 MR. ARRINGTON: That would be the second.
24 May 28 is the second one.
25 MR. BUDGE: Here's the first one then.

1 So I'll refer to the first letter as the May 1st letter,
2 the second letter as the May 28th letter.
3 Let's look at the May 1st letter. When
4 you received this letter in the mail, I think what you
5 said is this was the first time you had known that the
6 Department had any concerns about your use of the well;
7 is that correct?
8 A. I believe so.
9 Q. Had you had any other conversations with
10 the Department or anybody identifying concerns with your
11 use of the well before that time?
12 A. Not that I can recollect.
13 Q. And so what did you do in response to this
14 letter?
15 A. You know, I believe I contacted Steve and
16 Randy, Mr. Budge.
17 Q. To see what you should do?
18 A. Figure out what to do.
19 Q. And what did you do?
20 A. I believe that's when they responded
21 with -- you know, I was using the canal water. So they
22 were telling me to stop using the ground water. And I
23 believe we responded that we were using canal water.
24 Q. And how did they respond to that?
25 A. I can't remember specifically.

Page 27

Page 29

1 (Discussion held off the record.)
2 Q. (BY MR. ARRINGTON) I'm going to hand you
3 two documents. Take a look at that. Do you recognize
4 that document?
5 A. Looks familiar.
6 MR. BUDGE: Exhibit 8?
7 MR. ARRINGTON: This will be Exhibit 8.
8 Q. (BY MR. ARRINGTON) I'll represent to you
9 that's the Notice of Violation. Is that your address
10 and name on the top of that?
11 A. Yes.
12 Q. And a Notice of Violation from the
13 Department of Water Resources dated May 1st, 2014?
14 A. Yes.
15 MR. ARRINGTON: That will be marked as
16 Exhibit 8.
17 (Exhibit 8 marked.)
18 Q. (BY MR. ARRINGTON) So take a look at that
19 document.
20 (Exhibit 9 marked.)
21 Q. (BY MR. ARRINGTON) Do you recollect that
22 letter, Exhibit 9?
23 A. It looks familiar.
24 Q. That's another Notice of Violation from
25 the Department of Water Resources dated May 28, 2014.

1 Q. Did you have any meetings with the
2 Department?
3 A. I don't think so. I believe all the
4 communications went through Randy.
5 Q. Went through Randy? Okay. And then you
6 received the May 28 letter, and I think we've marked
7 that as Exhibit 9, and that letter -- what did that
8 letter -- that letter is entitled Notice of Violation
9 No. E2014-498, Notice to Cease and Desist Unauthorized
10 Irrigation; Curtailment of Ground Water Use by Water
11 District 120 Watermaster. So did this letter tell you,
12 no, you're to stop diverting ground water?
13 A. I think, yeah, it appears that that's what
14 this letter says.
15 Q. So did you continue diverting after that?
16 A. You know, I -- there was communications
17 that went on with Mr. Budge and the ground water
18 district. And I believe that we were, you know,
19 operating through the Canal Company.
20 Q. Do you know how that was arranged?
21 MR. BUDGE: Just to clarify. I think the
22 pleadings would reflect that about that time, or shortly
23 afterwards, Aberdeen-Springfield and Duffin filed a
24 lawsuit against the Department and secured a temporary
25 restraining order from the Court. And then we worked

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1 out an arrangement by stipulation that he would be able
2 to continue to operate as a recovery well with
3 Aberdeen-Springfield. And I think Aberdeen-Springfield
4 Canal filed and secured approval from the Department of
5 a rental pool, an application to lease water from the
6 rental pool.

7 And from that point on, it's been in
8 litigation. So I doubt Mr. Duffin is knowledgeable
9 about all the details of that. And my recollection is
10 probably a little foggy too. But the pleadings
11 generally reflect that.

12 Q. (BY MR. ARRINGTON) Okay. Do you have any
13 other knowledge about any of those circumstances?

14 A. Not specifically.

15 MR. ARRINGTON: Okay. I don't have any
16 other questions right now. I'll let -- I think Kent may
17 have a few. And I may have a few later.

18 MR. FLETCHER: Thank you.

19 EXAMINATION

20 QUESTIONS BY MR. FLETCHER:

21 Q. Mr. Duffin, I'm Kent Fletcher. And I
22 represent a couple of the intervenors in this case.
23 And, basically, I'm just seeking some clarification.
24 Because in the complaint that you filed, it doesn't
25

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1 mention these Barron or Baker ladies. It makes
2 reference to this being your property, I believe. And
3 so I need some clarification on that.

4 Do you have a long-term lease arrangement
5 with the Barron and Baker lady, or their trusts, whoever
6 it may be?

7 A. Yes.

8 Q. Is it a written lease?

9 A. Yes.

10 Q. What's the duration of the lease?

11 A. I would have to go pull it out and review
12 it. I can't remember specifically.

13 Q. Have you been renting that property for a
14 long time?

15 A. Yeah. My father rented it. And then my
16 father-in-law rented it. And then I just carried on
17 the --

18 Q. So this has been part of this farming
19 operation for many, many years?

20 A. Yes.

21 Q. And then, as I understand it, you turned
22 around and leased the parcel owned by you, which is
23 around the hundred acres or so, and the property owned
24 by the Barron and Baker folks to someone else, correct?
25

A. Correct.

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1 Q. And who did you lease all the property to?

2 A. I've had two different tenants on there.

3 Lance Funk has rented it and John and Robert Burusco.

4 Q. Okay. So in 2013, when this all started,
5 who was renting the property, do you remember?

6 A. That would have been Burusco Brothers.

7 Q. And what was grown on the property that
8 year, do you remember?

9 A. Sugar beets.

10 Q. On all of it?

11 A. Yes.

12 Q. And then last year, who was it rented to?

13 A. Lance Funk Farms.

14 Q. And what was grown on the property last
15 year?

16 A. Wheat.

17 Q. And that was all of it?

18 A. Yes.

19 Q. And who is it rented to -- do you have
20 someone that's going to rent it this year?

21 A. Yes.

22 Q. Who is that?

23 A. Lance Funk.

24 Q. Okay. And do you know what will be grown
25 on it this year?

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1 A. Potatoes.

2 Q. Do you know if a Notice of Violation was
3 sent to the Baker/Barron folks?

4 A. I don't know that for sure.

5 Q. You're not aware of it?

6 A. I'm not aware of it.

7 Q. Okay. Now, as I understand it, you --
8 your predecessors filed for ground water rights on this
9 175 acres, correct?

10 A. My dad did, yes.

11 Q. Yeah, somebody who had owned the property
12 before you?

13 A. Correct.

14 Q. And that application is still pending,
15 correct?

16 A. That is the impression I'm under, yes.

17 Q. You have not withdrawn it?

18 A. No.

19 Q. Okay. And it was your impression until
20 2013 that you were irrigating this ground using the
21 water right represented by that application, correct?

22 A. Yeah, we -- one of the two. I mean, I
23 just -- I guess I hadn't really stopped to think about
24 that I was specifically using that. I mean, I figured I
25 was covered by both.

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1 Q. Okay. Do you know if these water right
2 applications that are represented by these numbers
3 reflect the Baker property as a place of use?
4 A. I do not know that specifically.
5 Q. Okay. Has this well -- to your knowledge,
6 has this well always furnished water to the Baker
7 property as well as the 110 acres owned by you?
8 A. Yeah. Well, my whole life, ever since my
9 memory.
10 Q. Yeah, to your knowledge?
11 A. To my knowledge, yes.
12 Q. Okay. Do you know whose name is reflected
13 on the water right application as the owner?
14 A. Currently?
15 Q. Well, when the application was made, it's
16 under somebody's name.
17 A. I'm sure originally the application name
18 was under Vern Duffin.
19 Q. Okay. Do you know if the Baker -- I can't
20 remember the other lady's name?
21 A. LaVerda Barron.
22 Q. Do you know if Barron or Baker appeared on
23 that at all?
24 A. I don't think so.
25 Q. As I understand your testimony to

1 other shareholder with a headgate.
2 Q. (BY MR. FLETCHER) I might have just asked
3 you this, I don't remember. What is the status of the
4 ground water application right now?
5 A. I believe it's still just pending.
6 Q. Are you doing anything with it? Are you
7 trying to move it along?
8 A. I currently am not doing anything
9 specifically with it.
10 Q. Do you know what the hangup is on getting
11 it licensed?
12 A. You know, I don't know. I don't
13 understand it well enough to understand the specific
14 reason why it's being held up.
15 MR. FLETCHER: Okay. I think that's all I
16 have. Thank you.
17
18 EXAMINATION
19 QUESTIONS BY MS. CARTER:
20 Q. I'm Meghan Carter for the Department of
21 Water Resources. And I think I actually just have one
22 question for you.
23 I know Mr. Arrington asked you about the
24 depth of the well. Do you know what the diameter of the
25 well is?

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1 Mr. Arrington, you do have the ability to, if you
2 decided to install a pond, to divert directly out of the
3 surface water delivery system of Aberdeen-Springfield
4 and then irrigate this property out of that pond; is
5 that correct?
6 A. Yes.
7 Q. Is there some reason you've elected not to
8 do that?
9 A. You know, at this time, just visiting with
10 the Canal Company, it was -- they -- we -- we chose the
11 other way to do it, to operate as a headgate out of the
12 well.
13 Q. To kind of make this a test case, is that
14 what you're talking about?
15 A. I don't know specifically.
16 Q. But, to your knowledge, there would be
17 nothing prohibiting you from doing that, developing a
18 pond, diverting out of the canal, and then irrigating
19 out of the pond?
20 A. No.
21 MR. BUDGE: With the clarification that
22 the Company would have to approve that. At this point
23 his application was approved and only allows him to pump
24 out of the well as a recovery well headgate. So he
25 would have to have approval to change that, like any

1 A. I don't specifically.
2 MS. CARTER: Okay. I think that covered
3 everything.
4 MR. FLETCHER: That just brings up one
5 other question, from me anyway.
6
7 FURTHER EXAMINATION
8 QUESTIONS BY MR. FLETCHER:
9 Q. Do you know the pumping depth of that
10 well?
11 A. I don't, off the top of my head.
12 MR. FLETCHER: Okay. Thanks.
13 MR. ARRINGTON: I feel like we should ask
14 you a whole bunch more questions though.
15 MR. FLETCHER: Don't want to shortchange
16 you.
17 THE WITNESS: That's okay.
18 MR. ARRINGTON: I think we're done. Thank
19 you.
20 (Deposition concluded at 3:10 p.m.)
21 (Signature requested.)
22
23
24
25

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CERTIFICATE OF WITNESS

I, JEFFREY T. DUFFIN, being first duly sworn, depose and say:

That I am the witness named in the foregoing deposition consisting of Pages 6 through 37; that I have read said deposition and know the contents thereof; that the questions contained therein were propounded to me; and that the answers contained therein are true and correct except for any changes that I may have listed on the Change Sheet attached hereto.

DATED this ____ day of _____, 2015.

JEFFREY T. DUFFIN

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2015.

NAME OF NOTARY PUBLIC

NOTARY PUBLIC FOR

RESIDING AT

MY COMMISSION EXPIRES

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CHANGE SHEET FOR JEFFREY T. DUFFIN

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Please use a separate sheet if you need more room.

WITNESS SIGNATURE

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REPORTER'S CERTIFICATE

I, CATHERINE L. PAVKOV, CSR No. 638,

Certified Shorthand Reporter, certify:

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me:

That the testimony and all objections made were recorded stenographically by me and were thereafter transcribed by me, or under my direction.

That the foregoing is a true and correct record of all testimony given, to the best of my ability.

I further certify that I am not a relative or employee of any attorney or party, nor am I financially interested in the action.

IN WITNESS WHEREOF, I have set my hand and seal this 2nd day of March 2015.

Catherine L. Pavkov

CATHERINE L. PAVKOV, CSR NO. 638

Notary Public

Post Office Box 2636

Boise, Idaho 83701-2636

My commission expires June 24, 2015.

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Exhibit T

496273

After Recording, Mail To:
Mrs. LaVerda R. Barron
475 East 1070 South
Orem, Utah 84058

FEE 3.00 DEF MP

2001 JAN -3 PM 4:12

RECORDED AT THE REQUEST OF

LaVerda Brown

QUIT-CLAIM DEED

For the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, LaVERDA R. BARRON, VERDALEE BARRON, BRYCE H. BARRON, and BRYAN H. BARRON, Successor Trustees of the BARRON FAMILY TRUST AGREEMENT dated the 17th day of September, 1987, grantors, of Orem, Utah County, State of Utah, hereby QUIT-CLAIM an undivided one-half (1/2) interest to LaVERDA R. BARRON, Trustee of the LaVERDA R. BARRON MARITAL TRUST, dated the 17th day of September, 1987, of Orem, Utah County, State of Utah, and an undivided one-half (1/2) interest to VERDALEE BARRON, BRYCE H. BARRON, and BRYAN H. BARRON, Successor Trustees of the BARRON FAMILY TRUST AGREEMENT dated the 17th day of September, 1987, grantees, in and to the following described tract of land in Bingham County, State of Idaho:

An undivided one-half (1/2) interest in and to the following parcel of real property:

E 1/2 NW 1/4 Sec. 20, T 5 S, R 31, E. B. M., Bingham County, Idaho

WITNESS the hand of said grantors, this 18th day of December, 2000.

Verdalee Barron
VERDALEE BARRON, Trustee

LaVerda R. Barron
LaVERDA R. BARRON, Trustee

Bryce H. Barron
BRYCE H. BARRON, Trustee

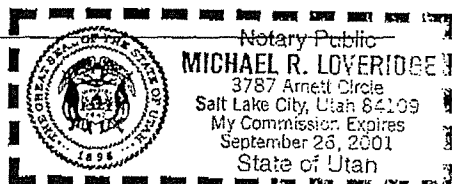
Bryan H. Barron
BRYAN H. BARRON, Trustee

STATE OF UTAH)
: SS.
COUNTY OF SALT LAKE)

On the 18th day of December, 2000, personally appeared before me, LaVERDA R. BARRON, VERDALEE BARRON, BRYCE H. BARRON, and BRYAN H. BARRON, the signers of the within instrument, who duly acknowledged to me that they executed the same.

My Commission Expires:

Michael R. Loveridge
NOTARY PUBLIC
Residing at: Salt Lake City, Utah



496273