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*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

**CORRECTED FIRST AFFIDAVIT  
OF STEVE HOWSER**

STATE OF IDAHO                    )

ss.

County of BANNOCK                )

STEVEN T. HOWSER, being first duly sworn under oath, deposes and states that he is Registered Agent for, and General Manager of, Aberdeen-Springfield Canal Company (hereafter "ASCC") and a Special Deputy Water Master of Water District #1, duly elected by the shareholders of ASCC and appointed by the Director of the Idaho Department of Water Resources, and he makes this affidavit to the best of his knowledge, information and belief.

1. ASCC is an Idaho 'Carey Act' corporation duly authorized as a water users association that provides water to stockholders who use the water to irrigate approximately 62,000 acres of real property in Idaho. ASCC has nearly 500 stockholders, including Plaintiffs Jeffrey and Chana Duffin of Aberdeen, Idaho.
2. ASCC holds natural flow, storage, and groundwater rights. ASCC's primary source of water is 1,072.1 cfs of natural flow from the Snake River with a priority date of February 6, 1895 and 230 cfs of natural flow from the Snake River with a priority date of April 1, 1939. ASCC is one of the largest storage water holders in the upper Snake River with (at full pool) 57,661 acre feet in Jackson reservoir, 139,417 acre feet in Palisades reservoir, and 29,771 acre feet in American Falls reservoir. In addition, ASCC has groundwater rights (35-2542 and 35-4246) for two Company-owned wells totaling 8.44 cfs (6 cfs with a priority date of August 7, 1958 and 2.44 cfs with a priority date of October 15, 1934). These wells are pumped directly into the canal system to supplement supply.
3. ASCC delivers irrigation water to its stockholders through a system of approximately 200 miles of canals and laterals extending from its diversion from the Snake River at Rose to

its terminus below the American Falls Dam near Neely to serve nearly 62,000 acres of crop land owned by its stockholders.

4. ASCC, as required by Idaho law, has been meticulously measuring and documenting its daily diversion from the Snake River, deliveries to stockholders, and return spills to the Snake River for over 100 years. In addition, ASCC estimates annual transmission loss based on the formula:  $Diversion_{af} - Delivery_{af} - Spill_{af} = Transmission\ Loss_{af}$ .

Transmission loss has two components: evaporation, which is estimated to be less than 2% of the total, and loss to the underlying Eastern Snake Plain Aquifer (ESPA). These annual amounts have been part of the General Manager's Annual Report to Stockholders every year since ASCC's incorporation in 1910. Prior to my tenure with ASCC, this data was handwritten and I began using computers to record and calculate these amounts, and incorporated historical, handwritten data back to 1989 and anecdotal data from the General Manager's Annual Report to Stockholders back to 1922. For the first 60 years of operation, ASCC's percentage loss ranged between 30% and 40% of total diversion. Beginning in the early 1970's loss rates began to increase and since the mid 1980's have stabilized, ranging between 55% and 62%. For the years 1989 to 2013, ASCC's average annual diversion was 319,953 af, average delivery to stock holders was 102,478 af, average return spill was 44,634 af, and average transmission loss (and consequent contribution to the ESPA) was 181,624 acre feet (57% of total diversion). It should be noted that contribution to the ESPA due to infiltration after application to crops was not calculated, but has been estimated at 2-4% of total application, which we consider de minimis. ASCC believes it has a lawful right to recover all of its transmission loss to the underlying ESPA utilizing recovery wells pursuant to Idaho Code §42-228.



5. As Plaintiffs' Jeffrey and Chana Duffin's property served by ASCC is located at the end of ASCC's 'J' lateral, and had historical difficulty receiving their share of the water due to system capacity issues, sometime in the early 1970's a well was excavated on the property to supplement surface water deliveries. This was a somewhat common occurrence in the 1960's and 1970's as conversion to sprinklers advanced across our system. Others who were similarly situated to the Duffins also converted to wells.
6. In the Spring of 2013, the Duffins made a request for delivery of their proportionate share of ASCC water to their lands located in the Northwest Quarter of Section 20, and the Southeast Quarter of the Northeast Quarter of Section 19, all in Township 5 South, Range 31 East Boise Meridian, Bingham County (ASCC Parcel #'s 352 and 304, with 170 ASCC Shares and 110 American Falls Reservoir District Shares). As per the policy of ASCC (Exhibit #1), if a demand for delivery is made for a parcel that has previously been irrigated by a well, ASCC will require that parcel receive its delivery through that existing well, provided the General Manager and Board of Directors approve an application to change the point of delivery associated with that parcel. I determined that ASCC's 'J' lateral has insufficient capacity to serve these parcels (indeed, ASCC was and continues to have difficulty supplying the parcels already dependent on 'J' lateral), and that the well located on the Duffin's parcel was in good repair, suitable and sufficient to supply the parcel and presented the application to the Board of Directors with a recommendation to approve (Exhibit #2). The application was approved (Exhibit #3), the well was assigned a head gate number (JR-2-1) and in compliance with ASCC policy the Duffins surrendered control of the well to ASCC and ASCC added it to its recovery well inventory. All water pumped from that well during the 2013 irrigation season, and

arguably since it was drilled, is considered by ASCC to be delivery made to its shareholders and is recorded and subtracted from the Duffin's annual allocation in the same manner as all other ASCC head gates. A map of these parcels and the location of ASCC headgate JR-2-1 is attached and incorporated herein by reference as Exhibit #4.

7. ASCC granted the Duffins' application to take control of their well and to operate it as a "recovery well" under Idaho Code § 42-228. ASCC has been providing the water to the Duffins for irrigation purposes through this recovery well since 2013. This has been done pursuant to the ASCC's policy adopted and implemented by its Board of Directors.
8. ASCC is currently identifies 13 "recovery wells" under Idaho Code § 42-228. These wells were drilled and installed at different times under proper drilling permits once those permits were required by Idaho law, but all with the same lawful purpose. The bulk of the wells were drilled in the 1930's. Initially, wells were excavated to facilitate drainage of lands with ASCC shares appurtenant (these wells were production wells, not injection wells) and during the great drought of the 1930's to supplement canal system deliveries and have been used as needed since that time. The most recent was drilled in 2004. Eight of these wells pump water directly into canals or laterals and five of these wells may be used to deliver water directly to specific parcels. Two of the wells that divert directly into the canal system have separate water rights (35-2542 and 35-4246), which were filed on as ground water right claims years after they were excavated and used as recovery/drain wells, but the remainder do not as they are operated under Idaho Code § 42-228, recovering a small portion of the transmission loss incurred over the entire system (typically less than 500 acre feet are diverted in total each year, with the exception of short water years, e.g. 2001-2004, when ASCC has pumped approximately 2,000 acre

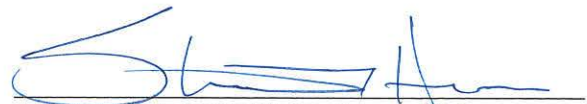
feet in an irrigation season). All recovery wells are measured daily and calibrated weekly (when operating) and the flows are noted in the General Manger's Daily Log, in accordance with Idaho Law. IDWR has never attempted to stop our use of any of these recovery wells in the past.

9. ASCC maintains that it is lawfully entitled to own and operate wells to recover water lost through the Company's delivery system pursuant to Idaho Code § 42-228 and to deliver that water to lands which have ASCC shares appurtenant, to wit: "excavation and opening of wells and the withdrawal of water therefrom by canal companies and other owners of irrigation works for the sole purpose of recovering ground water resulting from irrigation works for further use on the lands to which the established water rights of the parties constructing the wells are appurtenant". Defendant IDWR has issued to Duffin two separate Notices of Violation asserting that Duffin is illegally irrigating his lands and threatening to curtail their use of the water lawfully supplied by ASCC from its natural flow and storage water rights and rightfully appurtenant to the Duffin's land (*See Exhibits A and B to the Complaint for Declaratory Relief filed herewith*). IDWR has also threatened by said Notice of Violation to charge the Duffins with over \$52,000 in civil fees/penalties and to install locks to prevent the use of the recovery well by ASCC to deliver water to the Duffin's parcels. This threatened action is not only unreasonable as contrary to the intent of the statute, but if the threatened action is allowed it could cause irreparable injury and harm to the Duffin's 175 acres of farm property by depriving them of irrigation water they are legally entitled to, and which ASCC has an obligation to deliver. This should not be allowed.



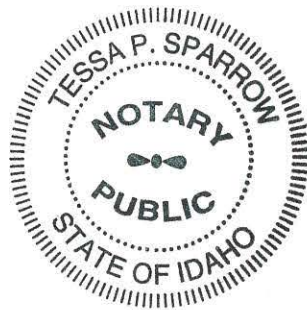
FURTHER YOUR AFFIANT SAITH NAUGHT.


Dated this 17 day of November, 2014.

  
STEVEN T. HOWSER, General Manager

SUBSCRIBED AND SWORN to before me this 17<sup>th</sup> day of November, 2014.

(SEAL)



  
NOTARY PUBLIC  
Residing in Bannock County, Idaho  
My Commission Expires 10/05/15

## CERTIFICATE OF SERVICE

I certify that on this 18<sup>th</sup> day of November, 2014, the foregoing document was served on the following persons in the manner indicated.

  
\_\_\_\_\_  
Signature of person mailing form

Clerk of the District Court Snake River Basin Adjudication P.O. Box 2707 253 Third Avenue North Twin Falls, Idaho 83303-2707	<input checked="" type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> E-mail
John K. Simpson Travis L. Thompson Paul L. Arrington Barker Rosholt & Simpson LLP P.O. Box 485 Twin Falls, Idaho 83303-0485 <a href="mailto:flt@idahowaters.com">flt@idahowaters.com</a> <a href="mailto:jks@idahowaters.com">jks@idahowaters.com</a> <a href="mailto:pla@idahowaters.com">pla@idahowaters.com</a>	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-mail
W. Kent Fletcher Attorney at Law P.O. Box 248 Burley, Idaho 83318 <a href="mailto:wkf@pmt.org">wkf@pmt.org</a>	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-mail
John Homan Garrick Baxter Meghan Carter Deputy Attorneys General Idaho Department of Water Resources P.O. Box 83720 Boise, Idaho 83720-0098 <a href="mailto:john.homan@idwr.idaho.gov">john.homan@idwr.idaho.gov</a> <a href="mailto:Garrick.baxter@idwr.idaho.gov">Garrick.baxter@idwr.idaho.gov</a> <a href="mailto:Meghan.carter@idwr.idaho.gov">Meghan.carter@idwr.idaho.gov</a>	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-mail



James Catalo  
Water Master  
900 N. Skyline Dr., Ste A  
Idaho Falls, Idaho 83402  
[james.cefalo@idwr.idaho.gov](mailto:james.cefalo@idwr.idaho.gov)

- ☐ U.S. Mail/Postage Prepaid
- ☐ Facsimile
- ☐ Overnight Mail
- ☐ Hand Delivery
- ☒ E-mail

# **Exhibit 1**

**Aberdeen-Springfield Canal Company  
Minutes of the Regular Board Meeting  
December 10, 2012**

The Regular Board Meeting of the Aberdeen-Springfield Canal Company was called to order on December 10, 2012 at 10:12 a.m. Present at the meeting were: Melvin Chappell, Thayne Driscoll, Ray Duffin, John Houghland, Robert Knudsen, Jr., Clarence Schroeder, Charles Shackelford, Ron Thompson and Val Wahlen.

**MOTION** by John Houghland, second by Ron Thompson to accept the Minutes of the Regular Board Meeting of October 29, 2012.

**Motion Passed.**

**MOTION** by Thayne Driscoll, second by Ray Duffin to accept the December 2012 Financial Report and approve payment of the Company's bills.

**Motion Passed.**

[REDACTED]

**Motion Passed.**

**MOTION** by Melvin Chappell, second by Ron Thompson to accept the December 2012 Manager's Report.

**Motion Passed.**

**Board Consensus** to add a Condition of Approval to the Application to Change or Add Point of Delivery to state that any mortgage liens or secretarial pledges associated with the property must be notified as to the request change or add point of delivery to the water rights associated with the property and that permission must be granted by the lender to ASCC to approve said request.

**MOTION** by Thayne Driscoll, second by Robert Knudsen, Jr. to approve the format of the Application to Change or Add Point of Delivery with the addition of the mortgage lien/secretarial pledge condition.

**Motion Passed.**

**MOTION** by Ray Duffin, second by John Houghland to adopt in the Company's Policies and Procedures the following Resolution regarding Recovery Head Gates:

**Whereas** Aberdeen-Springfield Canal Company's SRBA Settlement Agreement with the State of Idaho was abrogated by the SRBA Court and,



**Whereas** the loss of mitigation for ground water rights irrigating lands with Aberdeen-Springfield Canal Company shares appurtenant is likely to result in the increased demand for delivery from the Company's surface water system,

**Therefore, be it Resolved** that any call for delivery from the Company's surface water system onto lands which have been previously irrigated exclusively from a well will be required to take delivery through a Recovery Head Gate, and that this head gate will be the existing well serving the property.

**Be it Further Resolved** that the landowner will be required to surrender control of the well to the Company and will be required to pay for a Company approved measuring device to be installed on the head gates(s).

**Be it Further Resolved** that maintenance of the well and associated equipment (pump, motor, etc.) will be the responsibility of the land owner.

**Motion Passed.**

The next Regular Board Meeting was scheduled for January 8, 2013.

The Board recessed at 11:45 a.m. for lunch and the Annual Shareholders Meeting at the Hazard Creek Golf Course Club House, Aberdeen, Idaho and reconvened at 3:30 p.m. for the Reorganization Meeting at the Hazard Creek Golf Course Club House, Aberdeen, Idaho.

**MOTION** by Clarence Schroeder, second by Robert Knudsen, Jr., to re-elect Officers and maintain Directors positions same as last year: Val Wahlen – President, John Houghland – Vice-President and Melvin Chappell – Treasurer.

**Motion Passed.**


**MOTION** by Clarence Schroeder, second by Robert Knudsen, Jr. to appoint Steven Howser as General Manager and Secretary, hire Randall Budge as Company Attorney and Jeff Clark, Deaton and Company as Company Accountant.

**Motion Passed.**

**MOTION** by Thayne Driscoll, second by Ray Duffin to adjourn.

**Motion Passed.**

  
Secretary

Approved January 8, 2013  
  
President

# **Exhibit 2**

Aberdeen-Springfield Canal Company  
P.O. Box 857  
144 S. Main  
Aberdeen, Idaho 83210  
208-397-4192

**Application to Change or Add Point of Delivery**

The undersigned shareholder in Aberdeen-Springfield Canal Company ("Company") hereby submits this Application to Change or Add Point of Delivery ("Application") and hereby states that the following information is true and correct to the best of his knowledge, information and belief:

**1. Shareholder Information**

Name: Jeffery T. & Chana Duffin  
Address: P.O. Box 525, Aberdeen, Idaho 83210  
Phone No.: (208)221-1115  
Email: jeffduffin33@gmail.com

**2. Stock Information**

a. Owner of Shares: Jeffery T. & Chana Duffin  
b. Number of Shares on land irrigated from the new point of delivery: 190  
c. Number of acres irrigated from the new point of delivery: 175  
d. ASCC Parcel Number(s): 352, 304  
e. Existing Company Head Gate Number(s): J-2-8, J-2-10  
f. Legal Description of property to be irrigated from new point of delivery:  
Township 05S, Range 31E, Section 19, SE¼NE¼ (Parcel #352)  
Township 05S, Range 31E, Section 20, W½NW¼, E½NW¼ (Parcel #304)

**3. Purpose of Application**

a. Abandon old point of delivery (yes or no). No  
b. Change existing point of delivery (yes or no). No  
c. Add new point of delivery (yes or no). Yes

**4. Describe the location of the new point of delivery:**

Township 05S, Range 31E, Section 20, SW¼NW¼NW¼

**5. Is the new point of delivery an existing well? Yes**

If yes, provide the following information:

a. Ground Water Right Number (if any): None  
b. Will the ground water right continue to be used at the well? (yes or no) N/A  
c. Is the change in point of delivery temporary or permanent? Permanent  
d. If temporary, when is use of the new point of delivery to end? \_\_\_\_\_



e. Describe the reason for the new point of delivery requested:

J lateral to our farm was removed years ago, we need our canal water because the State said we can't use our well.

**6. Are there mortgages or liens on the property?**

a. Mortgage Holder: \_\_\_\_\_

b. Lien Holder: \_\_\_\_\_

**7. What is the start date for the delivery of water to the new point of delivery?**

April 1, 2013

**8. Date Submitted:** 3/17/2013

  
Signature

**Conditions of Approval**

After the Application has been completed and submitted, the Company Manager will review the Application and submit a report and recommendation to the Board of Directors to be considered and acted upon at a subsequent Board meeting. The following conditions will apply to each Application approved by the Board of Directors. The Board may impose additional conditions particular to the Application as necessary to provide for the efficient administration and delivery of the Company's water rights to the Applicant and other shareholders.

**1. Standard Conditions of Approval**

- a. The shareholder must be paid current on all Company Assessments.
- b. The shareholder must submit a nonrefundable application fee of \$50.
- c. The shareholder must pay for the cost of moving/installing head gates.
- d. The shareholder grants to the Company a right of way and access to construct, maintain, and operate the new point of delivery.
- e. All land irrigated from the new point of delivery must be within the Company service area.
- f. The shareholder must have sufficient shares of stock appurtenant to all land to be irrigated from the new point of delivery.
- g. The Company reserves the right to require the shareholder to move his head gate to another point of delivery as may be necessary for efficient delivery and administration of the Company's water rights, as determined by the Company in its sole discretion.
- h. If the new point of delivery is an existing well, the well must be operated by the Company as a recovery well for the sole purpose of recovering ground water resulting from irrigation under the Company's irrigation works. If the well cannot continue to be operated for any reason, the



### Legend

Canal

WELLSKRIGING17\_20WNDDJOIN042014

GKRND17wRose17w65b\_113hmwmd053012Cb113hmMinuswmd040112Cb113hm

Res: 1 : 0.562

Cell size: 88.273

### Differences in Ground Water Elevation (Feet)

**12.1 - 54.5**

**10.1 - 12**

8.1 - 10

6.1 - 8

5.1 - 6

4.1 - 5

3.1 - 4

2.6 - 3

2.1 - 2.5

1.6 - 2

1.1 - 1.5

0.6-1

0.1-0.5

$-0.4 - 0$



-0.9 - -0.5


-14-1

-19-15


24-2

2.4	2
2.9	2.5

	2.0	2.0
	2.9	2

	3.8	3
	4.9	4

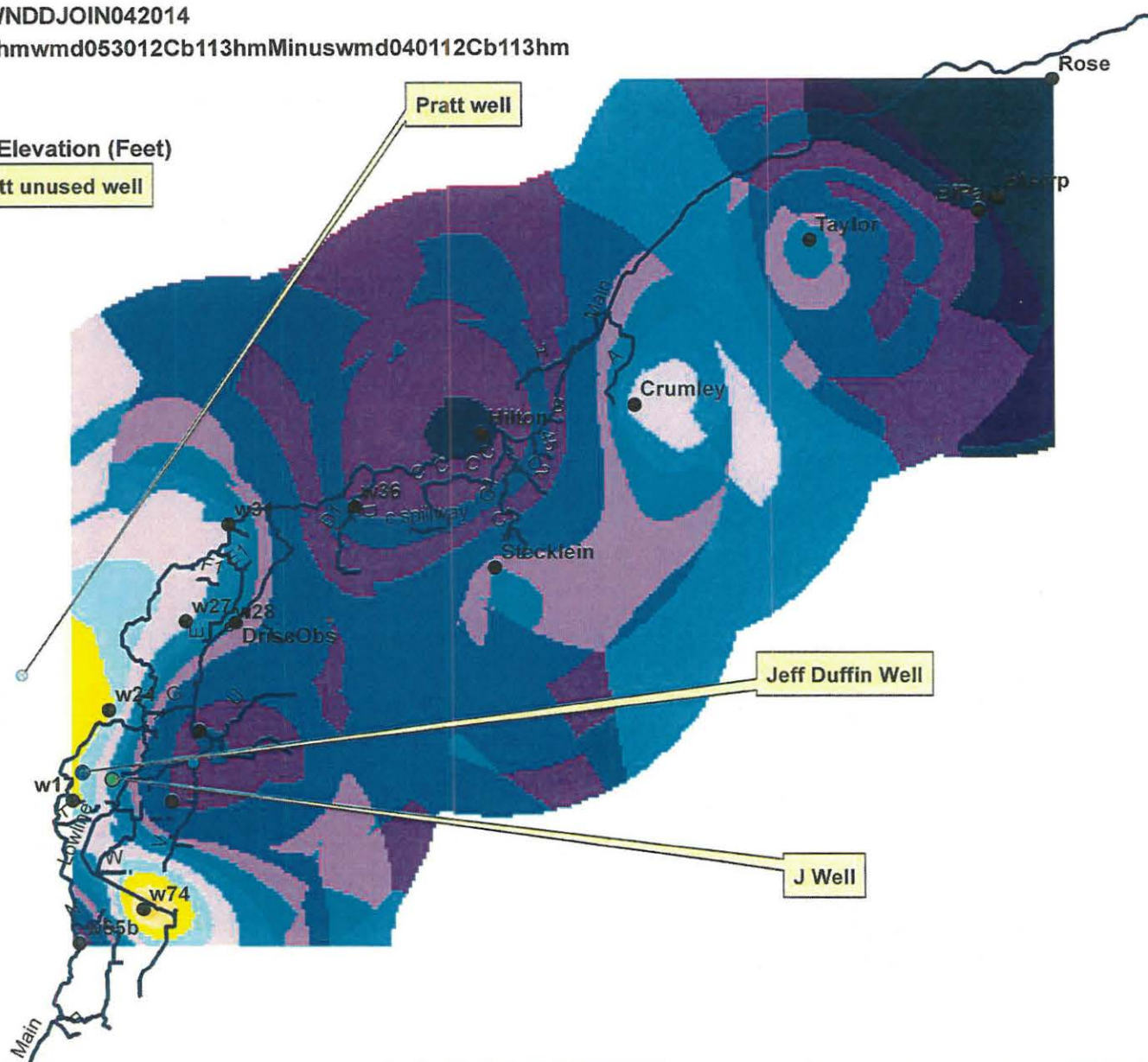
	4.0	4
	5.0	5

	0.5	0
	3.0	6

0.0 8

11.0 10

11. 10







Aberdeen-Springfield Canal Company  
PO Box 857  
Aberdeen, ID 83210  
(208) 397-4192

# INVOICE

Date	Invoice #
3/17/2014	171

<b>Bill To</b>
Jeff Duffin

Quantity	Item Code	Description	Price Each	Amount
1	POD Fee	Jeff Duffin POD Application Fee (NON-REFUNDABLE) Parcel# 352 representing 110 shares S20 & S19.T5S.31E	50.00	50.00

			<b>Total</b>	<b>\$50.00</b>
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# **Exhibit 3**

**Aberdeen-Springfield Canal Company  
Minutes of the Regular Board Meeting  
March 12, 2013**

The Regular Board Meeting of the Aberdeen-Springfield Canal Company was called to order on March 12, 2013 at 10:00 a.m. Present at the meeting were: Melvin Chappell, Thayne Driscoll, Ray Duffin, John Houghland, Robert Knudsen, Jr., Clarence Schroeder, Charles Shackelford, Ron Thompson and Val Wahlen.

**MOTION** by Robert Knudsen, Jr., second by Ron Thompson to accept the Minutes of the Regular Board Meeting of February 13, 2013.

**Motion Passed.**

**MOTION** by Ray Duffin, second by Melvin Chappell to accept the March 2013 Financial Report and approve payment of the Company's bills.

**Motion Passed.**

**MOTION** by Charles Shackelford, second by Ray Duffin to proceed with the V-lateral project.

**Motion Passed.**

**MOTION** by Melvin Chappell, second by Clarence Schroeder to accept the March 2013 Manager's Report and approve the Duffin Change in Point of Delivery request.

**Motion Passed.**

**MOTION** by Robert Knudsen, Jr., second by Ron Thompson to require a minimum of one (1) shares per acre on recipient and source ground on all permanent transfers of shares.

**Motion Passed.**

**MOTION** by Charles Shackelford, second by Clarence Schroeder to deny participation, a second time, in the proposal from the Recharge Development Company.

**Motion Passed.**

**MOTION** by Ray Duffin, second by Robert Knudsen, Jr., to begin the permit application process for Idaho private water recharge in the amount of up to 3,000 CSF.

**Motion Passed.**

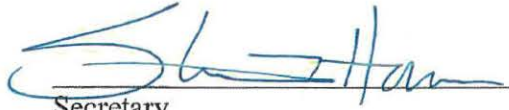
**MOTION** by Charles Shackelford, second by Ray Duffin to accept and mail the letter with attachments dated March 12, 2013 to Lyle Swank of the Idaho Department of Water Resources regarding the Recovery/Drainage Well issue.

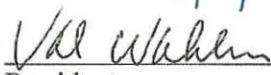
**Motion Passed.**

The next Regular Board Meeting was scheduled for April 3, 2013.



**MOTION** by Thayne Driscoll, second by Robert Knudsen, Jr. to adjourn.  
**Motion Passed.**

  
Secretary

Approved 4/3/2013  
  
President

# **Exhibit 4**

**Exhibit 4. Affidavit of Steven T. Howser**

**Map of ASCC Parcel #'s 325, 304  
and location of HG JR-2-1**

