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Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF LEMHI**

THE IDAHO DEPARTMENT OF  
WATER RESOURCES,

Plaintiff,

vs.

LAURENT COMTE, an individual; and  
PANTHERC, LLC, an Idaho limited  
liability company,

Defendants.

**Case No. CV30-23-0191**

**DECLARATION OF DAVID T.  
GRAYBILL**

I, David T. Graybill, being first duly sworn upon oath, depose and state as follows:

1. I am over the age of eighteen (18) years and competent to testify to the matters contained herein. I make this declaration pursuant to Idaho Code § 9-1406 and based on my own personal knowledge.

2. I am currently the Technical Hydrologist and Watermaster of the Upper Salmon River Basin Water District 170 for the Idaho Department of Water Resources (“Department”). I am based out of the Department’s Salmon Office, 1301 Main Street STE 10, Salmon, ID 83467. I have served in this capacity since July 2021.

3. When I visited the PantherC, LLC property in June 2023, I observed that the trench Mr. Comte dug had diverted the entire flow of Panther Creek.

4. The water diverted into the trench was not being used to irrigate any of the PantherC, LLC property.

5. Based on the size of the trench and the velocity of the water, I estimate the flow of water was at least 20 cfs.

6. PantherC, LLC and Mr. Comte performed temporary remedial measures to return flow into Panther Creek from the trench on October 30 and October 31, 2023.

7. Without permanent measures that stabilize the disturbed soil, the remedial measures implemented by PantherC, LLC and Mr. Comte will likely fail causing further erosion and sediment transport. In addition, the aquatic habitat of Panther Creek will remain degraded.

8. On November 7, 2023, I visited the PantherC, LLC property to observe and document the temporary remediation measures. While on the property I measured the flow of Panther Creek. My measurement showed the flow was 11.7 cfs. A copy of the reading from my instrument is attached as **Exhibit 1**.<sup>1</sup>

9. Prior to my flow measurement on November 7, 2023, the area had not received precipitation for more than a week. Therefore, the flow measurement is a good

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<sup>1</sup> The flow tracker was set to the wrong date and the date and time reflected in Exhibit 1 are incorrect.

approximation of the winter base flow of Panther Creek at the PantherC, LLC property.

Panther Creek has its lowest flows in winter.

10. The water right associated with the PantherC, LLC property (No. 75-14226) allows for diversion of 1.4 cfs for irrigation of 70 acres. A copy of the water right report for Water Right No. 75-14226 is attached as **Exhibit 2**.

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

DATED March 5, 2024.



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DAVID T. GRAYBILL  
Technical Hydrologist  
Idaho Department of Water Resources

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on March 5, 2024, I caused to be served a true and correct copy of the foregoing *Declaration of David T. Graybill* via iCourt E-File and Serve, upon the following:

Robert L. Harris  
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C  
[rharris@holdenlegal.com](mailto:rharris@holdenlegal.com)





MEGHAN M. CARTER  
Deputy Attorney General

# **Exhibit 1**

# Exhibit 1

## Panther Creek Flow Measurement

### Discharge Measurement Summary

Date Generated: Thu Nov 16 2023

File Information		Site Details	
File Name	PANT1115.WAD	Site Name	3
Start Date and Time	2023/11/15 11:41:24	Operator(s)	DAVID

System Information		Units (English Units)		Discharge Uncertainty		
Sensor Type	FlowTracker	Distance	ft	<b>Category</b>	<b>ISO</b>	<b>Stats</b>
Serial #	P841	Velocity	ft/s	Accuracy	1.0%	1.0%
CPU Firmware Version	3.9	Area	ft <sup>2</sup>	Depth	0.3%	1.2%
Software Ver	2.30	Discharge	cfs	Velocity	0.8%	8.7%
Mounting Correction	0.0%			Width	0.1%	0.1%
				Method	1.6%	-
				# Stations	1.5%	-
				<b>Overall</b>	<b>2.6%</b>	<b>8.8%</b>

Summary			
Averaging Int.	35	# Stations	35
Start Edge	LEW	Total Width	22.310
Mean SNR	27.3 dB	Total Area	8.568
Mean Temp	36.69 °F	Mean Depth	0.384
Disch. Equation	Mid-Section	Mean Velocity	1.3689
		<b>Total Discharge</b>	<b>11.7290</b>

# **Exhibit 2**

Close

## Water Right Report : 75-14226( Decreed/Active)

### Water Right Owners

Owner Type	Name	Address	City	State	Postal Code
Current Owner	PANTHERC LLC	784 S CLEARWATER LOOP STE B	POST FALLS	ID	83854-9599
Original Owner	JONES, VERL	1335 MORGAN CREEK RD	CHALLIS	ID	83226
Original Owner	JONES, HATTIE	HC 82 BOX 4020	CHALLIS	ID	83226

### Water Right Status

Priority Date : 5/1/1920  
 Basis : Decreed  
 Status : Active

### Water Source

Source	Source Qualifier	Tributary	Tributary Qualifier
PANTHER CREEK		SALMON RIVER	

### Points Of Diversion (Location)

Source	Township	Range	Section	Govt. Lot	QQQ	QQ	Q	County	Diversion Type
PANTHER CREEK	18N	18E	3	0		SW	SE	LEMHI	
PANTHER CREEK	18N	18E	10	0		NW	NE	LEMHI	
PANTHER CREEK	18N	18E	10	0		NW	SE	LEMHI	

### Water Uses

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	04/01	11/01	1.40 CFS	
<b>TOTAL</b>			1.40 CFS	

### Places of Use

[Printable View](#) [Paged View](#)

### Place of Use Legal Description : IRRIGATION (LEMHI county)

Township	Range	Section	Lot	QQQ	QQ	Q	Acres
18N	18E	3			NE	SW	5
18N	18E	3			NW	SE	19
18N	18E	3			SW	SE	20
18N	18E	10			NW	NE	15
18N	18E	10			SW	NE	11

### Irrigation Totals

Total Acres	Acre Limit
70.00	

### Conditions

#### Code Conditions

C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.



This right is renumbered from former right 77-10124 .

**Dates**

Licensed Date :
Decreed Date : 11/17/2008
Permit Proof Due Date :
Permit Proof Made Date :
Permit Approved Date :
Permit Moratorium Expiration Date :
Enlargment Use Priority Date :
Enlargement Statute Priority Date :
Application Received Date:
Protest Deadline Date:

**Other Information**

State or Federal : S
Water District Number : NWD
Generic Max Rate Per Acre : 0
Generic Max Volume Per Acre : 0
Civil Case Number :
Decree Plaintiff :
Decree Defendant :
Swan Falls Trust or Nontrust :
Swan Falls Dismissed :
DLE Act Number :
Cary Act Number :
Mitigation Plan: False

IDAHO DEPARTMENT OF WATER RESOURCES

3/4/2024