BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF THE PETITION TO CONVEY CAREY ACT LANDS TO H & S FARMS LIMITED PARTNERSHIP	))))	**FINAL ORDER**

The Director of the Idaho Department of Water Resources ("IDWR") has concluded an investigation of the above-captioned matter, including a review of Carey Act records on file with IDWR and the Idaho State Historical Society and documents provided by the Cassia County Assessor's Office and Land Title and Escrow, Inc., of Burley Idaho. After considering these records and documents and other water rights and mapping information available in IDWR's records, the Director now finds, concludes and orders as follows:

FINDINGS OF FACT

1. On or about December 12, 2008, IDWR received a petition from R. Hilton Critchfield ("Critchfield") requesting that the Director convey title to an 80-acre parcel of land located in the E1/2 SE1/4 of Section 15, Township 13 South, Range 22 East, B.M. in Cassia County to H & S Farms Limited Partnership.

2. Critchfield accompanied the petition with information that H & S Farms Limited Partnership maintained an equitable claim to the 80-acre parcel and therefore should be conveyed title to those lands pursuant to section 67-3301, Idaho Code.

3. Title to the above-described land was conveyed under the provisions of the Carey Act, 43 U.S.C.S. § 641, by patent no. 655470 dated December 7, 1918, from the United States to the State of Idaho.

4. The State of Idaho did not patent title to an entryman under the Carey Act and the 80-acre parcel has remained in state ownership since December 7, 1918.

5. There are three deeds in the Cassia County records pertaining to this parcel:

   a. A quitclaim deed dated July 13, 1995 executed by Mathews Brothers, Inc. to R. Hilton and Suzanne Critchfield;

   b. A quitclaim deed dated July 26, 1995 executed by R. Hilton and Suzanne Critchfield to H & S Farms Limited Partnership; and

   c. A quitclaim deed dated February 14, 1996 executed by R. Hilton Critchfield & Sons, R. Hilton Critchfield and Suzanne Critchfield and Shaun Hilton Critchfield to H & S Farms Limited Partnership.

6. Cassia County tax records currently indicate that ownership of the parcel is held in the name of "State of Idaho c/o H & S Farms Limited Partnership."

7. Cassia County tax records establish that R. Hilton Critchfield & Sons has paid the taxes on the parcel from 1992 through 2007. Cassia County was unable to access tax records prior to 1992.

8. IDWR records show that ground water rights 45-2250B, 45-2496, 45-2647, 45-4100, 45-13571, 45-13760, 45-13762, and 45-13764 in the name of H & S Farms Limited Partnership are appurtenant to the 80-acre parcel, which is part of the 972-acre authorized place of use for the listed water rights. The parcel also lies within the service area of the Oakley Canal Company.

9. Critchfield submitted affidavits from three long-time Oakley residents who attested that the 80-acre parcel was irrigated and produced crops each and every year since 1966.

10. IDWR imagery and photographic records indicate that the parcel was irrigated from 1976 through 2008.

CONCLUSIONS OF LAW

1. Pursuant to section 67-3301, Idaho Code, the Idaho Department of Water Resources has authority to convey to equitable claimants, their heirs, successors or assigns, title to lands retained in state ownership which were patented to the state under the Carey Act, 43 U.S.C.S. § 641, prior to July 1, 1931, provided the Director determines that equitable claims to the lands accrued prior to July 1, 1982, and are based upon the cultivation or improvement of the lands, or the payment of property taxes thereon.

2. The 80-acre parcel in the E1/2 SE1/4 of Section 15, Township 13 South, Range 22 East, B.M. in Cassia County was patented under the Carey Act to the State of Idaho prior to July 1, 1931.

3. IDWR's investigation established that the 80-acre parcel was improved and cultivated prior to July 1, 1982.

4. IDWR determined that the Critchfields, Critchfields & Sons, or H & S Farms Limited Partnership have paid property taxes on the 80-acre parcel since at least 1992.

5. H & S Farms Limited Partnership established an equitable claim to the 80-acre parcel under the criteria provided in section 67-3301, Idaho Code.

6. The Director of IDWR should execute a quitclaim deed in favor of H & S Farms Limited Partnership conveying title to the 80-acre parcel.

ORDER

IT IS HEREBY ORDERED that H&S Farms Limited Partnership having established an equitable claim to the subject parcel of land in satisfaction of the criteria under Idaho Code § 67-3301, the Director shall upon this Order becoming effective pursuant to the provisions of Idaho Code § 67-5246, execute a quitclaim deed in the form attached hereto as Attachment "A" to H&S Farms Limited Partnership conveying any interest the State of Idaho may have in the 80-acre parcel described as the E1/2 SE1/4 of Section 15, Township 13 South, Range 22 East, B.M. in Cassia County.

IT IS FURTHER ORDERED that this is a final order of the agency. Any party may file a petition for reconsideration of this final order within fourteen (14) days of the service date of this order. The agency will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law pursuant to Idaho Code § 67-5246.

IT IS FURTHER ORDERED that any person aggrieved by this decision shall be entitled to a hearing before the Director to contest the action taken provided the person files with the Director, within fifteen (15) days after receipt of written notice of the order, or receipt of actual notice, a written petition stating the grounds for contesting the action and requesting a hearing. Any hearing conducted shall be in accordance with the provisions of title 67, chapter 52, Idaho Code, and the Rules of Procedure of the Department, IDAPA 37.01.01. Judicial review of any final order of the Director issued following the hearing may be had pursuant to Idaho Code § 42-1701A(4).

Dated this 17th day of February, 2009.

David R. Tuthill, Jr.
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of February, 2009, a true and correct copy of the foregoing document described below was served by placing a copy of the same in the United States mail, postage paid and properly addressed to the following:

Documents Served: Final Order; and Explanatory Information Sheet to Accompany a Final Order (when a hearing was not held)

Persons Served:

R.Hilton Critchfield
H&S Farms Limited Partnership
1687 South Highway 27
Oakley, Idaho 83346

Victoria Wright

Deborah J. Gibson
Administrative Assistant
Idaho Department of Water Resources

QUITCLAIM DEED FORM

For Value Received

STATE OF IDAHO, DEPARTMENT OF WATER RESOURCES

Hereinafter called the grantor, hereby remises, releases, and forever Quitclaims unto

H & S FARMS LIMITED PARTNERSHIP, AN IDAHO LIMITED PARTNERSHIP
ADDRESS: c/o R. Hilton Critchfield
1687 South Highway 27
Oakley, Idaho 83346

Hereinafter called the grantee, the following described premises, in **Cassia** County, Idaho to-wit:

TOWNSHIP 13 SOUTH, RANGE 22 EAST, BOISE MERIDIAN,
CASSIA COUNTY, IDAHO

Section 15: E½SE¼

This Quitclaim Deed is executed pursuant to section 67-3301, Idaho Code, by the Director of the Idaho Department of Water Resources after a determination that equitable claims to such lands accrued prior to July 1, 1982.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto said Grantee, and the grantee's successors and assigns forever.

Dated: Xxxxx _____, 2009

Xxxxxxxxxxxxxxxx _____
David R. Tuthill, Jr.
Director, Idaho Department of Water Resources

STATE OF IDAHO)
) ss.
COUNTY OF Ada)

On this _____ day of Xxxxx, 2009, before me, the undersigned a Notary Public in and for said State, personally appeared **David R. Tuthill, Jr.**, known or identified to me to be the Director of the State of Idaho, Department of Water Resources that executed the said instrument, and acknowledged to me that such Director of the State of Idaho, Department of Water Resources executed the same.

_____
Notary Public
Residing at:
My Commission expires:

Attachment "A" to Final Order