

Ronald D. Schoen, Trustee
Box 216
Payette, ID 83661
Tel No. (208) 642-9820

U. S. BANKRUPTCY COURT
DISTRICT OF IDAHO

AUG 06 1998

1:05 P M. RECD
LODGED FILED *RL*

UNITED STATES BANKRUPTCY COURT
DISTRICT OF IDAHO

In re:

TERRY HIPWELL

Debtor.

Chapter 12

Case No. 96-02095

ORDER APPROVING TRUSTEE'S
MOTION TO SELL REAL
PROPERTY

Upon Motion of the Trustee, and pursuant to the confirmed plan in this matter, the Court hereby orders the Trustee to convey by Trustee's Deed the following-described real property under the terms and conditions set forth, with distribution of the proceeds of sale as specified herein.

The Trustee shall convey by good and satisfactory Trustee's Deed said real property to Elden and Melba Jean Lind. Said sale shall be closed no later than August 7, 1998 and the Trustee is authorized to use the services of Pioneer Title Company, 423 South Kimball, Caldwell, Idaho, to perform necessary and customary services in closing said transaction with all fees and charges to be paid as outlined in this Order.

The legal descriptions in this Order are in accordance with the Commitment for Title Insurance No. PC 25814, issued June 23, 1998, and No. FA 10041, issued July 7, 1998

cc: Ron Schoen

ORDER APPROVING TRUSTEE'S
MOTION TO SELL REAL PROPERTY -1

A. DESCRIPTION OF PROPERTY BEING SOLD

Land situated in the County of Canyon, State of Idaho, described as follows:

PARCEL I:

The North One-Half of the Northwest Quarter of Section 35, Township 6 North, Range 5 West, Boise Meridian, Canyon County, Idaho.

EXCEPTING THEREFROM the following parcel:

COMMENCING at the West 1/16 corner common to Section 26 and 35 of Township 6 North, Range 5 West, Boise Meridian, Canyon County, Idaho; thence

North 90° 00' 00" East a distance of 323.00 feet along the North line of said Section 35 and the centerline of Shelton Lane to a point; thence

South 0° 00' 00" East a distance of 250.00 feet at right angles with the centerline of said Shelton Lane and the North line of said Section 35 to a point; thence

North 90° 00' 00" West a distance of 523.00 feet along a line parallel with the North line of said Section 35 to a point; thence

North 0° 00' 00" East a distance of 250.00 feet, more or less, to the centerline of said Shelton Lane and the North line of said Section 35; thence

North 90° 00' 00" East a distance of 200.00 feet, more or less, along the centerline of said Shelton Lane and the North line of said Section 35 to the **TRUE POINT OF BEGINNING**.

PARCEL II:

The Northwest Quarter of the Northeast Quarter of Section 35, Township 6 North, Range 5 West, Boise Meridian, Canyon County, Idaho.

PARCEL III:

COMMENCING at the West 1/16 corner common to Sections 26 and 35 of Township 6 North, Range 5 West, Boise Meridian, Canyon County, Idaho; thence

North 90° 00' 00" East a distance of 323.00 feet along the North line of said Section 35 and the centerline of Shelton Lane to a point; thence

South 0° 00' 00" East a distance of 250.00 feet at right angles with the centerline of said Shelton Lane and the North line of said Section 35 to a point; thence

North 90° 00' 00" West a distance of 523.00 feet along a line parallel with the North line of said Section 35 to a point; thence

North 0° 00' 00" East, a distance of 250.00 feet, to the centerline of said Shelton Lane and the North line of said Section 35; thence

North 90° 00' 00" East a distance of 200.00 feet, more or less, along the centerline of said Shelton Lane and the North line of said Section 35 to the **TRUE POINT OF BEGINNING**.

A. DESCRIPTION OF PROPERTY BEING SOLD (cont'd)

Land situated in the County of Payette, State of Idaho, described as follows:

The South half of the Northeast quarter; and the North half of the Southeast quarter; and the Northwest quarter of the Southwest quarter; and the Southwest quarter of the Northwest quarter; and the Southeast quarter of the Northwest quarter; and the Northeast quarter of the Southwest quarter, and the South half of the Southeast quarter and the South half of the Southeast quarter all in Section 26, Township 6 North, Range 5 West, Boise Meridian, Payette County, Idaho.

B. DESCRIPTION OF ADDITIONAL PROPERTY BEING SOLD

All water rights of whatever kind or nature, including but not limited to the below:

<u>WATER RIGHT</u>	<u>CUBIC FEET PER SECOND</u>	<u>TOTAL ACRES</u>
A63-08387	4.46	451
A63-08244	0.65	65
A63-03307	3.73	212

All pumps, pump panels, motors and irrigation equipment, whether considered fixtures, personal property or mixed, including but not limited to the following which was originally a part of a security interest:

- (a) Ten-inch aluminum mainline; 32 pieces 50-foot supply line and 35 pieces 50-foot mainline.
- (b) 8 inch aluminum mainline; 30 pieces 50-foot.
- (c) 6 inch aluminum mainline; 11 pieces 50-foot.
- (d) 4 inch aluminum mainline; 18 pieces 40-foot.
- (e) 3 inch aluminum mainline; misc pieces.
- (f) Buried mainline approximately 7/8 mile of steel.
- (g) Approximately 1/8 mile of 8-inch PVC supply line.
- (h) 4 pieces, 5-inch x 50-foot PVC mainline.

B. DESCRIPTION OF ADDITIONAL PROPERTY BEING SOLD (cont'd)

- (i) 3-inch hand lines-hook and latch.
714 pieces, 3-inch x 40-foot center risers.
21 pieces, 3-inch x 20-foot end riser end pipes.
54 pieces, 3-inch x 40-foot end risers.

Less equipment missing as a result of an inventory consisting of 8 each 10-inch lines; 3 each 4-inch lines and 3 each hand lines.

C. ITEMS FREE AND CLEAR FOR CANYON COUNTY

The conveyance described herein shall be free and clear of the following liens or encumbrances which currently appear of record:

1. A financing statement filed in the office of the County Recorder showing:

Debtor: TERRY L. HIPWELL
Secured Party: THE TRAVELERS INSURANCE CO
Recorded: December 20, 1994
No. 9437581

2. A Mortgage to secure an indebtedness as shown below, and any other obligation secured thereby:

Amount: \$375,000.00
Dated: December 20, 1994
Mortgagor: TERRY L. HIPWELL
Mortgagee: TRAVELERS INSURANCE COMPANY
Recorded: December 20, 1994 as Instrument No. 9437580

3. A pending Court action as disclosed by a recorded notice:

Plaintiff: THE TRAVELERS INSURANCE COMPANY
a Connecticut corporation
Defendant: TERRY L. HIPWELL; UNITED STATES OF AMERICA; THE INTERNAL REVENUE SERVICE; BURKS TRACTOR COMPANY, INC.; JOHN DOE NO 1; JOHN DOE NO. 2 and DOES I through XX
County: Payette
Court: Third Judicial District
Case No. CV-0 C-96-03490*D
Nature of Action: Lix Pendens
Recorded: May 4, 1996 as Instrument No. 9607065

C. ITEMS FREE AND CLEAR FOR CANYON COUNTY (cont'd)

4. State Tax lien against TERRY L. HIPWELL in the amount of \$972.01, recorded April 1, 1996 as Instrument No. 9610051, records of Canyon County, Idaho.

5. An abstract of Judgment for the amount shown below and any other amount due:

Debtor: TERRY L. HIPWELL and JANE DOE HIPWELL,
husband and wife
Creditor: FARM PLAN CORPORATION
Date entered: April 24, 1996
County: Canyon
Court: Third Judicial District
Case No.: CV 96 00403
Amount: \$16,379.24
Recorded: April 25, 1996 as Instrument No. 9613133.

6. Mortgage to secure an indebtedness as shown below, and any other amounts and/or obligations secured thereby:

Amount: \$126,563.46
Dated: May 6, 1996
Mortgagor: TERRY L. HIPWELL
Mortgagee: LAND VIEW FERTILIZER, INC.
Recorded: May 6, 1996 as Instrument No. 9614492

D. ITEMS FREE AND CLEAR FOR PAYETTE COUNTY

1. A mortgage dated December 20, 1994 to secure an indebtedness in the principal sum of \$375,000.00.

Recorded: December 20, 1994 as Instrument No. 253366
Mortgagor: TERRY L. HIPWELL
Mortgagee: THE TRAVELERS INSURANCE COMPANY,
a Connecticut corporation

2. State of Idaho financing statement:

Recorded: December 20, 1994 as Instrument No. 253367.
Debtor: Terry L. Hipwell
Secured Party: The Travelers Insurance Company

3. A mortgage dated May 6, 1996 to secure an indebtedness in the principal sum of \$126,563.46.

Recorded: January 8, 1997 as Instrument No. 265609.
Mortgagor: TERRY L. HIPWELL
Mortgagee: ~~THE TRAVELERS INSURANCE COMPANY~~
Landview Fertilizer, Inc.

D. ITEMS FREE AND CLEAR FOR PAYETTE COUNTY (cont'd)

4. Judgment for amounts due thereunder.
Date: May 15, 1996
Debtor: Terry L. Hipwell and Jane Doe Hipwell, husband and wife.
Creditor: Farm Plan Corporation
Amount: \$16,379.24
Recorded: May 16, 1996 as Instrument No. 261582
Case No.: CV 96 00403, in the District Court of Canyon County.

E. ITEMS ASSUMED BY BUYERS FOR CANYON COUNTY

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interest, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) as shown by the public records.
6. Any liens, or rights to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.
7. Liens and assessments of the Black Canyon Irrigation District, and the rights and powers of said district as by law provided.
8. Provisions, reservations and restrictions as shown by the several contracts between the United States of America and Black Canyon Irrigation District, and the amendments thereto, or between the present owner or past owners of the real property herein described and the Black Canyon Irrigation District or the United States of America, whether said contracts be of record in the office of the Recorder of Canyon County, Idaho, or on file with the Secretary of Black Canyon Irrigation District.

E. ITEMS ASSUMED BY BUYERS FOR CANYON COUNTY (cont'd)

9. Rights of way for irrigation and drainage ditches and canals and roads.
10. Any right, title or interest in any minerals, gravel, mineral rights or related matters, including, but not limited to, oil, gas, coal and other hydrocarbons. Matters may appear of record affecting said rights, but neither this Commitment nor the forthcoming Policy covers an examination of or insurance as to the ownership or condition of minerals.
11. An Easement for the purpose shown below and rights incidental thereto as set forth in a document:

Granted to:	MICHAEL D. SKOGSBERG and BARBARA S. SKOGSBERG, husband and wife
Purpose:	ingress and egress
Recorded:	December 13, 1988 as Instrument No. 8824478

Together with the restrictions contained therein.
12. Matters in the J-U-B Engineers Survey recorded December 7, 1994 as Instrument No. 9436404, records of Canyon County, Idaho.

F. ITEMS ASSUMED BY BUYERS FOR PAYETTE COUNTY

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. Unpatented mining claims: reservations or exceptions in patents or in acts authorizing the issuance thereof; water rights, claims, or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

F. ITEMS ASSUMED BY BUYERS FOR PAYETTE COUNTY (cont'd)

7. Regulations of Black Canyon Irrigation Co., Ltd., within which the property lies, or all other Irrigation districts, laterals that the property lies, including levies, assessments, water and irrigation rights and easement for ditches and canals as provided by law.
8. Any easements, rights-of-way or ditches as they may exist.
9. Easement to construct, maintain and repair a roadway granted to County of Payette, State of Idaho, a municipal corporation, recorded as Instrument No. 169477. affects a strip of land 30 feet wide.
10. Easement to construct, maintain and repair a roadway granted to County of Payette, a municipal corporation, recorded as Instrument No. 169478. affects a strip of land 30 feet wide.
11. An Easement for power lines and incidental purposes in favor of Idaho Power Company, as set forth in an instrument recorded February 18, 1982, as Instrument No. 192699, records of said County.

G. ADDITIONAL CONDITIONS

1. The property is being sold in "as is" condition. The trustee is not authorized to warrant the property being sold in any respect or manner. The Buyers shall take such property subject to all conditions, defects and encumbrances, except as specifically provided herein.
2. The trustee will pay title insurance, one-half recording and closing costs, taxes, penalty and interest for the years 1994 thru 1997 and the prorated portion of 1998 taxes from January 1 to July 31, 1998. These items will be deducted by Pioneer Title Company from the gross sale proceeds received from the buyers.
3. Upon Court approval, and after closing at Pioneer Title Company, associate broker fees for \$35,000.00 will be paid by the trustee to Rae Anderson from the proceeds of sale received by the trustee from Pioneer Title Company.

G. ADDITIONAL CONDITIONS (cont'd)

4. The sale is being made pursuant to the trustee's motion that the claim of Farm Plan Corp is an unsecured claim. Farm Plan Corp has not objected to the sale or its treatment as an unsecured creditor. Therefore, the property is being sold free and clear of Farm Plan's judgment lien.

5. Attorney fees for \$7,000.00 will be paid to Howard Foley by the trustee from the proceeds of sale received by the trustee from Pioneer Title Company.

6. The Idaho tax lien for \$972.01 will be deducted by Pioneer Title Company from the sale proceeds received from the buyers.

6. Any variation in the net sale proceeds to the trustee by Pioneer Title Company will be used to increase or decrease the distribution to The Travelers Insurance Company as reflected in the attached schedule.

H. ESTIMATED NET SALE PROCEEDS TO TRUSTEE BY PIONEER TITLE CO

TOTAL SALES PRICE	\$710,000.00
Less Earnest Money to Trustee	- 71,500.00
BALANCE DUE BY BUYERS	638,500.00

DEDUCTIONS:

Taxes Due Canyon County:

Parcel #R39470000-0

1994 thru 1997 Taxes	\$11,837.09
Penalty	236.76
Interest & Costs to 7/30/98	2,906.04
Est 1998 (7/12 of \$3,497.64)	2,040.29

Parcel #R39464000-0

1995 thru 1997 Taxes	1,062.08
Penalty	21.18
Interest & Costs to 7/30/98	260.80
Est 1998 (7/12 of \$336.18)	<u>196.11</u>

- 18,560.35

Taxes Due Payette County:

Parcel #250

1995 thru 1997 Taxes	3,966.42
Penalty	79.34
Interest to 7/30/98	773.54
Est 1998 (7/12 of \$1,311.86)	765.25

Parcel #251

1995 thru 1997 Taxes	819.70
Penalty	16.40
Interest to 7/30/98	161.04
Est 1998 (7/12 of \$265.22)	154.71

Parcel #251-1

1995 thru 1997 Taxes	4,292.90
Penalty	85.84
Interest to 7/30/98	842.98
Est 1998 (7/12 of \$1,391.04)	<u>811.44</u>

- 12,769.56

Idaho Tax Lien

- 972.01

Title Insurance

- 2,559.75

One-Half Est Closing Costs

- 450.00

NET PROCEEDS TO TRUSTEE

\$603,188.33

I. **ESTIMATED DISTRIBUTION OF
NET SALE PROCEEDS BY TRUSTEE**

RECEIPTS:

Net Proceeds from Pioneer Title Co	\$603,188.33
Earnest Money Held by Trustee	<u>71,500.00</u>

TOTAL

\$674,688.33

DISBURSEMENTS:

Travelers Insurance Co	
Claim #44 filed 12/20/96	\$480,030.45
Accrued Interest @ 9.625%	
12/06/96 - 7/30/98 = 601 days	<u>76,076.60</u>
	<u>556,107.05</u>

Associate Broker Fees

35,000.00

Attorney Fees for Debtor - Howard Foley

7,000.00

Land View Fertilizer (2nd mtg)

40,944.70

Variance Funds Available for Travelers

28.30

639,080.05

Trustee Fees:

7.0% of \$410,896.93	\$28,762.79
3.0% of \$228,183.12	<u>6,845.49</u>

35,608.28

TOTAL

\$674,688.33

DATED This 6th day of August, 1998.


UNITED STATES BANKRUPTCY JUDGE

APPROVED BY:

HOWARD FOLEY


Attorney for the Debtor.

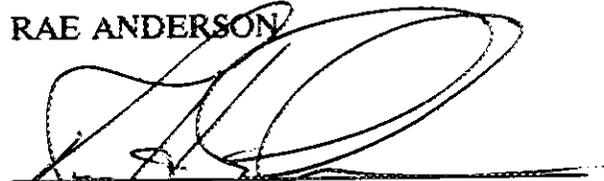
THE TRAVELERS INSURANCE CO


By Ramona Neal,
Attorney for the Creditor.

LAND VIEW FERTILIZER, INC.


By Julie Klein Fischer
Attorney for the Creditor

RAE ANDERSON


Associate Broker

RONALD D. SCHOEN, TRUSTEE

