

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A21-04078
Date Received: 3/09/1989
Receipt No: E006908
Received By:

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: KENNETH T. WRIGHT 312-558-9055
Address: 626 WARWICK ROAD
KENILWORTH, IL 60043

2. Date of Priority: APR 01, 1938

3. Source: LITTLE ICEHOUSE CREEK Trib. to: HENRYS FORK SNAKE R
BUNKHOUSE CREEK HENRYS FORK SNAKE R
TOM & JERRY CREEK HENRYS FORK SNAKE R

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
13N	42E	1	SE	NE			FREMONT
		6	SE	SW			FREMONT
14N	42E	36	SW	SE			FREMONT

5. Description of diverting works:
WOODEN HEADGATE ON LITTLE ICEHOUSE CREEK; DITCH FLOWS SOUTHEAST

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	04/01	11/01	12.400		
STOCKWATER	04/01	11/01	3.000		

7. Total Quantity Appropriated is:
12.400 C.F.S. (and/or) A.F.A.

8. Total consumptive use is 1550.0 Acre Feet Per Annum.

9. Non-irrigation uses:
S/400 PAIRS OF COWS AND CALVES

A21-04078

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Date: 05/01/89

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10. Place of Use:

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
13N	42E	7	NE		NE		IRR	20.0
			NE		NE		STOCK	
			SW		NE		IRR	40.0
			SW		NE		STOCK	
			SE		NE		IRR	40.0
			SE		NE		STOCK	
			SE		NW		IRR	40.0
			SE		NW		STOCK	

Section Acres 140.0

Total Acres 140.0

11. Place of use in counties: FREMONT

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
NONE

14. Remarks:

15. Basis of Claim: STATUTORY CLAIM

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): _____ Date: _____
_____ Date: _____

State of Idaho)
County of _____) SS.

Subscribed and sworn (or affirmed) before me this _____ day
of _____ 19 _____

Notary Public

Seal

Residing at _____
My Commission Expires _____

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number 21-4028Date Received 3-9-89Receipt Number 6006908

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

RECEIVED

MAR 9 1989

Department of Water Resources
Eastern District Office

Please type or print clearly

1. Name of Claimant (s) Kenneth T. Wright Phone (312) 558-9055Mailing Address 626 Warwick Road, Kenilworth, Illinois Zip 600432. Date of Priority (Only one (1) per claim) April 1, 19383. Source of water supply (a) Little Icehouse, Bunkhouse, Tom & Jerry Creeks
which is tributary to (b) Henry's Fork, Snake River4. a. Location of existing point of diversion is: Township 14N Range 42E Section 36,
1/4 of SW 1/4 of SE 1/4, Govt. Lot, B.M., County of FremontAdditional points of diversion if any: SE1/4NE1/4 Sec. 1; SE1/4SW1/4 Sec. 6;
Township 13 North, Range 42 East

b. If instream flow, beginning point of claimed instream flow is:

Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4,

Govt. Lot _____ B.M., County of _____

ending point is: Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____

_____ 1/4, Govt. Lot _____ B.M., County of _____

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as
constructed and as enlarged and the depth of each well. Wooden Headgate on Little Icehouse
Creek; ditch flows southeasterly through Sections 1, 6, 7, 8 and 17 of
T.13N, R.42E.

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6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For Irrigation purposes from Apr 1 to Nov 1 amount 12.4 or _____

For Stockwater purposes from Apr 1 to Nov 1 amount 3.0 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 12.4 (cfs) and/or (b) _____ (acre feet)

8. Total consumptive use claimed is 1550 acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) 400 pairs of cows and calves

10. 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 use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
13N	42E	7	20		40	40				40									140

Total number of acres irrigated 140

11. In which county (ies) are lands listed above as place of use located? Fremont

12. Do you own the property listed above as place of use? Yes X No _____
If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above.
_____ or None (X)

14. Remarks:

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Last Name Wright Ident No. 21-4028

Copies: White -State, Yellow-Claimant

15. Basis of Claim (check one) Beneficial Use X Posted Notice _____ License _____ Permit _____
Decree _____
If applicable provide IDWR Water Right Number _____
Court _____ Case Number _____ Decree Date _____
Plaintiff vs Defendant _____

16. Signature (s)
(a.) By signing below, I/We acknowledge that I/We have received, read, and understand the form entitled
"How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not X
wish to receive and pay a small annual fee for monthly copies of the docket sheet.
Number of attachments 1

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true
and correct.

Signature of Claimant (s) *K. J. Wright* Date 3/2/89

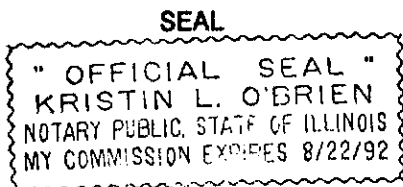
Date _____

For Organizations: I do solemnly swear or affirm that I am _____ Title _____
of _____, that I have signed the foregoing
Organization
document in the space below as _____ of _____
Title Organization
and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent _____
Title and Organization _____ Date _____

State of Idaho/or _____)
County of _____) SS.

Subscribed and sworn (or affirmed) before me this 2nd day of March 19 89



Notary Public *Kristin L. O'Brien*
Residing at 320 North Main Street, Chicago, Ill.
My Commission Expires 8/22/92

Please Print Name

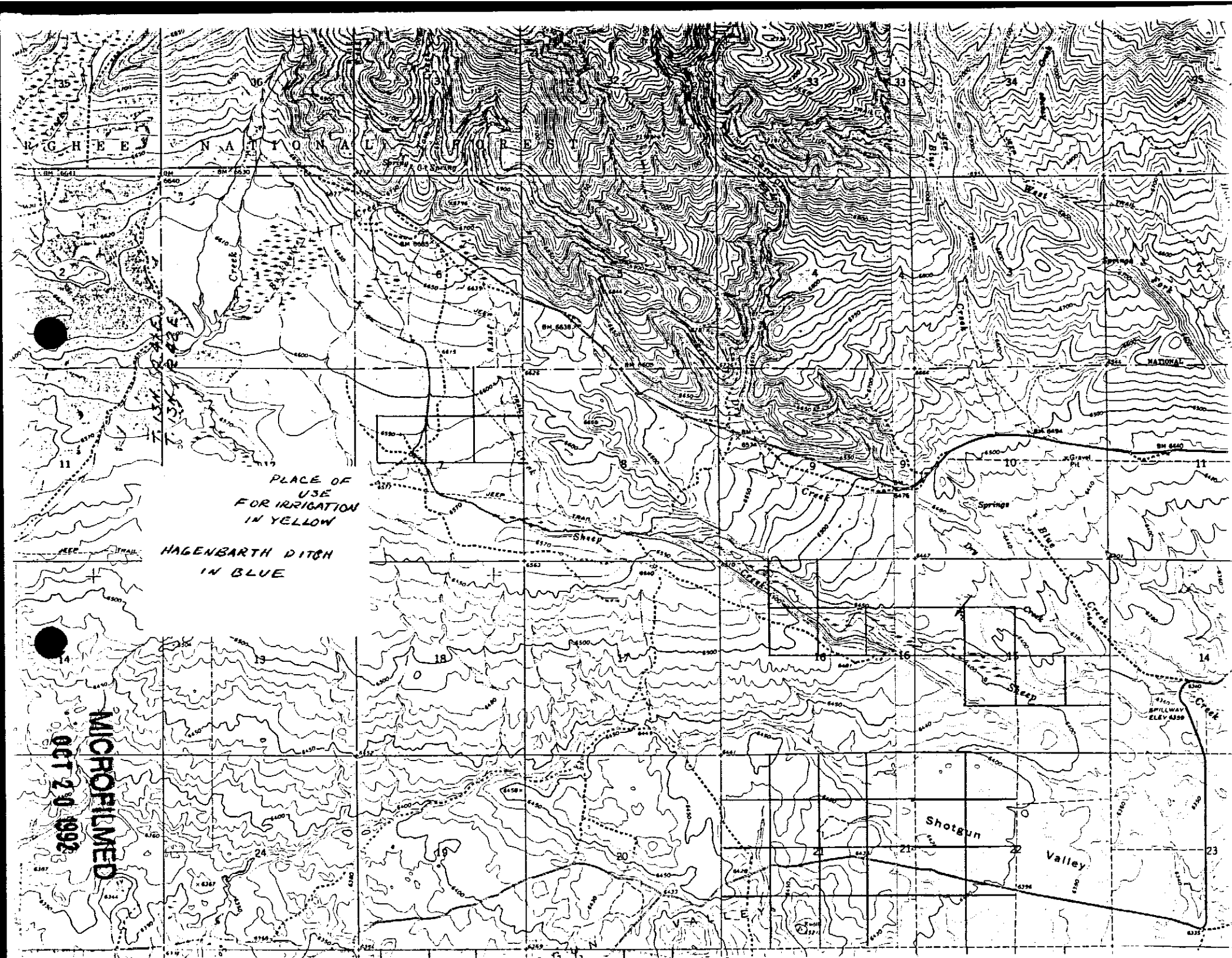
17. Notice of Appearance:
Notice is hereby given that I, Kent W. Foster will be acting as attorney at law on behalf
of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above
should be mailed to me at the address listed below.

Signature *Kent W. Foster*
Address P.O. Box 50130, Idaho Falls, Idaho 83405
Date March 8, 1989

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Last Name Wright Ident. Number 21-4028

Copies White-State, Yellow-Claimant



1/30/1989

SRBA CLAIMS RECEIVING CHECKLIST #2

CLAIMANT'S NAME

Wright

CLAIM IDENT. NO.

A21-04028

DATE RECEIVED

18 April 89

CR #

42715

AMOUNT \$

4969.1671

YES

NO

Required
Info?

1. Is the name and address complete with zip code? ☒ YES ☐ NO *
2. Is a priority date entered? ☒ YES ☐ NO *
- Is the priority date acceptable in view of mandatory filing dates?
See Adjudication Memos #1 and #4 to determine if a Permit is required. ☒ YES ☐ NO *
3. (a) Is a source entered? ☒ YES ☐ NO *
- (b) Is a tributary to entered? (if required) ☒ YES ☐ NO N/A *
4. Is the legal description of the p.d. sufficient? ☒ YES ☐ NO *
5. Is there a description of the diverting works? ☒ YES ☐ NO *
6. Are the water uses appropriate for the form? The short form is limited to domestic and stockwater uses with direct diversion. All claims that include storage or instream stockwater must use long form. ☒ YES ☐ NO *
- Is the period of use included? ☒ YES ☐ NO *
- Is a quantity claimed for each use? ☒ YES ☐ NO *
7. Is a total quantity claimed entered? ☒ YES ☐ NO *
8. If required is a consumptive use entered? ☒ YES ☐ NO N/A *
- Is the consumptive use correct? ☐ YES ☒ NO N/A *
9. Are the non-irrigation uses listed properly? If this claim is on the short form, and more than one domestic use is listed, single ownership must be stated. If not under single ownership, see Adjudication Memo # 4. ☒ YES ☐ NO N/A *
10. Is (are) the place(s) of use and purpose(s) indicated? ☒ YES ☐ NO *
11. Is (are) the county(ies) entered? ☒ YES ☐ NO *
12. Is the ownership of p.u. checked? ☒ YES ☐ NO *
13. Are other water rights listed or "none" indicated? ☒ YES ☐ NO *
14. If required, are remarks correct? (If the claimant does not own the place of use, authority for filing the claim must be explained in the remarks.) ☒ YES ☐ NO N/A *
15. Is the basis of the claim indicated? ☒ YES ☐ NO *
16. If the claimant requested a monthly docket sheet, is payment enclosed? (If yes, describe payment status in "Comments" below.) ☐ YES ☒ NO N/A *
17. Is the claim signed by the claimant, and is the signature appropriate? Organizations must complete the organization block. ☒ YES ☐ NO *
18. Has the claim been signed, sealed, and dated by a notary? ☒ YES ☐ NO *
19. Was this claim filed on time, or was an extension granted? ☒ YES ☐ NO *
20. Is the fee enclosed correct? ☒ YES ☐ NO Exempt *
21. If this claim is based on an existing water right, has the identification number been entered? ☒ YES ☐ NO N/A *
22. Should this claim be receipted and data entered? ☒ YES ☐ NO *

Claim checked by:

Ernest Carlson

Date:

18 April 89

Claim must be returned to claimant:

(Yes) ☐ (No) ☒

Claimant must be notified of modifications:

(Yes) ☐ (No) ☒

Receipt Prepared by:

Claim data entered by:

Sent to claimant by:

Date:

Date:

Date:

Checked by:

Date:

Comments:

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LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO

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ARTHUR W. HOLDEN (1877-1967)
ROBERT B. HOLDEN (1911-1971)
TERRY L. CRAPO (1939-1982)
R. VERN KIDWELL, OF COUNSEL

April 17, 1989

Mr. Ernest Carlson
Department of Water Resources
150 Shoup, Suite 15
Idaho Falls, Idaho 83402

Dear Ernest:

We are enclosing for filing ten Notices of Claim and a check in the amount of one thousand six hundred seventeen dollars (\$1,617.00). The fees have been calculated as follows:

1. Claim No. 21-4028
 - Flat Fee \$ 50.00
 - Variable Fees
 - 148 Acres Irrigated \$140.00
 - Stockwatering \$300.00 (paid under protest)
2. Claim No. 21-0003
 - Flat Fee \$ 50.00
 - Variable Fee \$302.00
 - 302 Acres Irrigated
3. Claim No. 21-2023
 - Flat Fee \$ 50.00
 - Variable Fee
 - Same acres as 21-0003
4. Claim No. 21-0005
 - Flat Fee \$ 50.00
 - Variable Fee
 - Acreage--same acres as 21-0003 and 21-2023
 - Stockwatering \$200.00 (paid under protest)

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5. Claim No. 21-0004	
Flat Fee	\$ 50.00
Variable Fee	
Acreage--same acres as	
21-0003, 21-2023 and	
21-0005.	
6. April 1, 1987--Domestic	
Flat Fee	\$ 25.00
Late Fee	\$ 50.00
7. April 1, 1938--Domestic	
Flat Fee	\$ 25.00
Late Fee	\$ 50.00
8. June 1, 1988--Stockwell	
Flat Fee	\$ 25.00
Late Fee	\$ 50.00
9. Sheep Creek Stock Claim	
Flat Fee	\$ 50.00
Late Fee	\$ 50.00
10. Claim for Pond	
Flat Fee	\$ 50.00
Late Fee	\$ 50.00

Besides the five claims previously submitted, there are four which should have been included with the first five, but apparently were inadvertently omitted from the first group. They include two for domestic wells, one for a stockwater well, and one for instream stockwater from Sheep Creek. The tenth claim is for a pond or lake used primarily for recreation, but from which the same cattle that drink from the ditch described in 21-0005, 21-0003, 21-0004 and 21-2023 can and do also drink.

We anticipate that you may request a variable fee on this additional claim as well for stockwater and/or recreation uses. However, as we will attempt to express, we cannot see how such a variable use fee could be justified under the statute, or computed under the rules. The five hundred dollar (\$500.00) variable use fees for stockwater under 21-0005 and 21-4028 is paid under protest. We request that the matter be reconsidered and that this sum be refunded. We respectfully disagree with your analysis.

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You make reference to §42-1201A(12); we assume you really mean §42-1401A(12), which is the definition of "stockwatering use". As we have argued in other instances, we are not convinced that either the legislature (under 42-1414(2)(d)) or IDWR under its rules, has provided for a variable use fee for livestock watering purposes, whether the use is within the definition of §42-1401A(12) or not. As we have said, we are skeptical that IDWR has the legal power to provide for charging of a variable use fee for use excluded from the statute; assuming IDWR's position to be that Rule 5, 4, 3 is intended to include such uses as stockwater even though the same are excluded by the statute.

But even if a variable use fee is to be charged for stockwatering use that does not meet the 42-1401A(12) definition, we are not persuaded that the claims we have filed do not come within the parameters of that definition anyway. As you have indicated, 13,000 gallons per day is more than enough water for the number of cattle shown in the claim.

Your review of the department's standards on diversion rates raises additional issues. Surely the department realizes that diversion requirements, even for stockwater, are dependent upon a number of variables. Until the department has investigated each of those variables in a given instance, we do not see how it is helpful to suggest that the department has historically recognized any particular diversion rate. A claimant, attempting to file an adjudication claim, is probably better advised to rely on the historical rate of diversion in his ditch rather than some theoretical rate the department recognizes. The department gets to make a report with a determination, but hopefully that will be based upon an appropriate examination and not just what the department has historically recognized.

The other question apparently raised by your discussion of IDWR recognized diversion rates is how is such relevant to the variable use fee issue? Both the code and the rules refer to a variable "use" fee, not a variable "diversion rate" fee. We understand use and diversion to be two different things and believe the legislature does also. If the use does not exceed 13,000 gallons per day, then why are you concerned about the diversion rate? You use the term "total use" in your letter. As nearly as we can tell that is neither a statutory term or concept, nor can we see it in the rules. We are skeptical that the legislature intended a variable fee to be charged on the basis of diversion rather than use, even if somehow it intended a variable use fee to be charged for stockwatering.

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Mr. Ernest Carlson
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We agree that there should be no variable fee for incidental stockwater, but whether stockwater is incidental to the irrigation in Shot Gun Valley or whether irrigation is incidental to stockwatering might be debatable. Typically in a good water year there is enough water for irrigation of all irrigated lands only for a few days or a couple weeks in the early summer and after that the rancher is lucky to have adequate stockwater and some incidental irrigation.

We appreciate your suggestions about how to fill out a claim for incidental stockwater, but we doubt that the stockwater claimed here is merely incidental, at least in the same sense it might be in the case of a large canal company or irrigation district further down in the valley where potatoes and other cash crops are more important. The claim form, the instructions, and even the rules do not appear to clarify how incidental stockwater is to be treated.

A claimant really has no choice but to claim his historical diversion rate under number 6 on the form rather than the potentially much smaller amount that may be actually used by his cattle. Also it would be a mistake to only claim that the water is used for one purpose when in fact it is needed and used for more than one. We cannot imagine IDWR taking the position that a water right holder is entitled to use water for a purpose not listed in the decree. But it appears to us that the legislature did not provide that two variable fees must be paid when the same water (whenever a sufficient amount is available) is diverted through a single diversion for irrigation and for stockwater use, and for only for stockwater use when the supply is insufficient for economical irrigation.

As we have said before, we would be pleased to visit further with you about these matters because it is probably not cost effective for any single claimant to litigate these questions.

Yours very truly,


Kent W. Foster

#1535.00/srr

Enclosures

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