

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: A75-04042
Date Received: 4/18/1990
Receipt No: Me06664
Received By: DC

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: UPPER GIBBONSVILLE WATER ASSOC. 208-865-2261
Address: C/O WAYNE RANDOLPH
BOX 1
GIBBONSVILLE, ID 83463
2. Date of Priority: OCT 09, 1901
3. Source: DAHLONEGA CREEK Trib. to: SALMON RIVER, NORTH FORK
4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
26N	21E	25	SE	NE			LEMHI

5. Description of diverting works:
DAM TO DITCHES TO GRAVITY SPRINKLER SYSTEM

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
DOMESTIC	01/01	12/31	0.400		

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
D/ LAWN GARDEN IRRIGATION

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
26N	21E	25	SW	NE		DOMEST	
			SE	NW		DOMEST	

A75-04042

Page 1

Date: 04/18/90

MICROFILMED

DEC 15 1992

A7504042



11. Place of use in counties: LEMHI

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 x wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: 1

For Organizations:

I do solemnly swear or affirm that I am The Water Master of
Upper Gibbonsville Title
Water Assn. Organization, that I have signed the foregoing
document in the space below as The Water Master of
Upper Gibbonsville Title
Water Assn. Organization and that the statements contained in the
foregoing document are true and correct.

Wayne A. Randolph
Signature of Authorized Agent
Upper Gibbonsville
Water Assn.
Title and Organization

4-18-1990
Date

State of Idaho

County of Lemhi) SS.

Subscribed and sworn (or affirmed) before me this 18 day

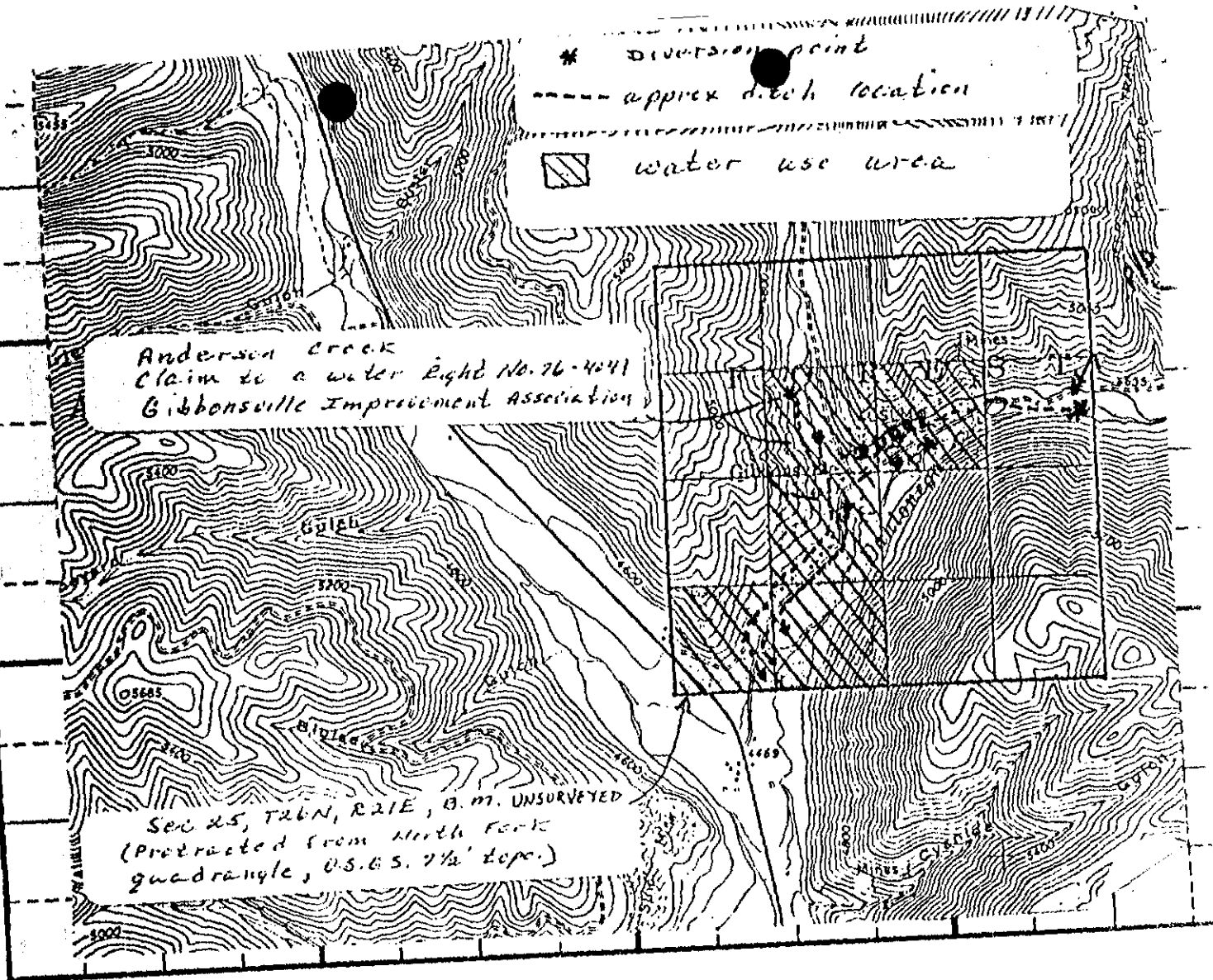
of April 1990

Deane C. Cook
Notary Public

Seal

Residing at Heise, Id

My Commission Expires 2/26/96



Scale: 2 inches equal 1 mile.

Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

State of Idaho

ss.

County of Lemhi

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the foregoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiant's knowledge.

Max B. May
(Claimant)

Sworn to before me this 16 day of September, 1985.

Adelta Skiderrick

Notary Public
Residing at Salmon

My commission expires 6/14/86

MICROFILMED

DEC 15 1992

FOR DEPARTMENT USE ONLY

Received by *Dee* Date *9-23-85*
Prelim. check by *Ln* Date *9-23-85*
\$30.00 fee received by *Ln* Date *9-23-85*

Exception filed by:

Forwarded to
claimant by:

Date

DATE: 09/21/98
PAGE: 1

Audit: 09/21/98 DSMITH

AJ5856NP

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

DATE: FEB-12-1998

PAGE: A-41

RIGHT NUMBER: 75-04042

NAME & ADDRESS: UPPER GIBBONSVILLE WATER ASSOC
C/O WAYNE RANDOLPH
BOX 1
GIBBONSVILLE ID 83463

SOURCE: DAHLONEGA CREEK TRIBUTARY: SALMON RIVER, NORTH FORK

QUANTITY: 0.4 CFS

PRIORITY DATE: 10/09/1901

POINT OF DIVERSION: T26N R21E S25 SENE Within LEMHI County

PURPOSE AND

PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	DOMESTIC D/ LAWN GARDEN IRRIGATION	01-01 12-31	0.4 CFS

PLACE OF USE: DOMESTIC Within LEMHI County
T26N R21E S25 SWNE SENW

EXPLANATORY MATERIAL: BASIS OF CLAIM - STATUTORY CLAIM

F00520000010

Verified by DMS Date: 9/8/98
Verification Source: 92 Cly Alpha

RECEIVED

MAR 28 2001

2001 MAR 23 PM 3:48

East
File

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

In Re SRBA

Case No. 39576

Subcase: 75-04042

ORDER SETTING-ASIDE PARTIAL
DECREE

ORDER REQUESTING
DIRECTOR'S REPORT

I.

PROCEDURAL HISTORY

1. On September 15, 2000, this Court issued a *Partial Decree Pursuant to I.R.C.P. 54(b) for Water Right 75-04042*, attached hereto as Exhibit A. This water right had been reported by the Idaho Department of Water Resources in the *Director's Report for Domestic and Stockwater, Reporting Area 23, IDWR Basin 75*, filed with the Court on December 7, 1998. Since no objections were filed to the *Director's Report* for this water right, the *Partial Decree* was issued as a matter of course pursuant to Idaho Code § 42-1412(7).

2. On November 24, 2000, this Court received a letter from Candice McHugh, Deputy Attorney General with the Idaho Department of Water Resources regarding the above-captioned water right number. The letter stated that "this water right was erroneously reported in the director's report for domestic and stockwater for basin 75 and should have been investigated as an irrigation and other right."

3. On November 30, 2000, this Court received a copy of a letter from Candice McHugh to the Upper Gibbonsville Water Association (claimant of the above-captioned water right), C/O Wayne Randolph, which informed the claimant that the water right had been erroneously reported and requested that the claimant write to the Snake River Basin Adjudication Court to advise the Court of the problem.

4. On December 6, 2000, this Court received a letter from Cathleen R. Bigelow, on behalf of her parents Julia I. Randolph and Wayne A. Randolph, stating among other things that the above-captioned water right "was established for multiple property owners in Upper Gibsonville, eight in all, including my father." Although not styled as such, this Court considers Ms. Bigelow's letter to be a motion to set aside the aforementioned partial decree.

5. On March 20, 2001, a hearing on the matter was held.

III.
ORDER

Based upon the representations made in the correspondence described above and GOOD CAUSE APPEARING THEREIN, it is HEREBY ORDERED:

1. That the *Partial Decree Pursuant to I.R.C.P. 54(b) for Water Right 75-04042*, issued on September 15, 2000, is set-aside.
2. That the recommendation for water right 75-04042 found in the *Director's Report for Domestic and Stockwater, Reporting Area 23, IDWR Basin 75* (filed on December 7, 1998) at page A-94, is declared to be without effect.
3. That the claim for water right 75-04042 shall be investigated and reported by IDWR in the forthcoming director's report for irrigation and other water rights in basin 75, which is scheduled to be filed in 2004.

IT IS SO ORDERED:

DATED: 3-23-01



Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

CERTIFICATE OF MAILING

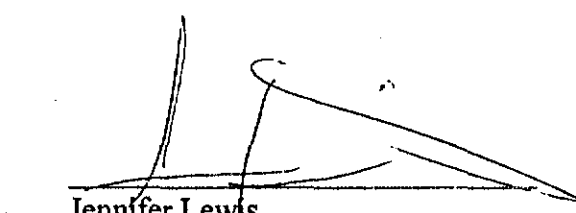
I certify that true and correct copies of the **ORDER SETTING-ASIDE PARTIAL DECREE/ ORER REQUESTING DIRECTOR'S REPORT** were mailed on March 23, 2001, with sufficient first-class postage, to the following:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environmental and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

Upper Gibbonsville Water Association
C/o Wayne Randolph
PO Box 1
Gibbonsville, ID 83463



Jennifer Lewis
Deputy Clerk of the Court
Snake River Basin Adjudication

CERTIFICATE OF MAILING

RECEIVED

Jan. 31, 2001

FEB 5 2001

Idaho Dept. of Water Resources
1301 North Orchard St., P. O. Box 83720
Boise, Idaho 83720-0098
Attn: IDWR Eastern Region Adjudication Supervisor Ernie Carlsen

Department of Water Resources

Re: Water Right 75-04042

Dear Mr. Carlsen,

Water Right 75-04042 is an "irrigation and other" water right held by the Upper Gibbonsville Water Association. Please be advised of the following changes in names of said Association.

1) Original persons in Association, April 1990:

Boyd CLARK (moved)
Jim JOHNSON
Arthur BEVAN (now deceased)
Frances MACK
Bob MILLER (used)
Ira TAYLOR
Roger STOVER
Leslie BEAVERS
Wayne RANDOLPH

Place in folder for 75-04042

2) Please add to the list of participants in the Upper Gibbonsville Water Association:

Brad FROEMKE
Owen LEMASTER
Brian SOPATYK
Candis Donicht

Sincerely,

Wayne A. Randolph
Wayne A. Randolph
80 Gibbonsville Rd.
Gibbonsville, Idaho 83463

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FEB 08 2001

Department of Water Resources
Eastern Region

MEMORANDUM

TO: CANDICE MC HUGH
FROM: ERNIE CARLSEN
DATE: NOVEMBER 21, 2000
RE: 75-04042, PARTIAL DECREE

On October 4, 2000, Mrs. Randolph contacted me concerned that the partial decree for 74-04042 contained a remark limiting the domestic use to 13,000 gallons per day in association with one home. The rate of diversion for the domestic use was decreed at 0.40 cfs (ten times the typical rate of diversion for domestic use). At Mrs. Randolph's request I verified that the SRBA Claim as originally filed did not show one home nor the 13,000 gallon a day limitation. In talking with Mrs. Randolph she confirmed the water from Dahlenega Creek was used to irrigate several residential lots in Gibbonsville. For this reason she felt IDWR should remove the reference to 1 home and the 13,000 gpd limitation. I explained that changing the record was now driven by procedures established by the SRBA Court and suggested she contact the Court for instructions on requesting the partial decree be set aside. I also advised her that if the water was being used to irrigate several residential lots of different ownership that the use should be changed to irrigation, especially if the amount of irrigation exceeded ½ acre. She expressed opposition to such a change.

Subsequent to this telephone conversation, I researched IDWR records and located a Claim to Water Right filed under Section 42-243, Idaho Code. The claim identified by number 75-04042 was filed in 1985 in the name of Gibbonsville Improvement Assn. The was filed for 0.40 cfs used for domestic purposes with the explanation that domestic use included drinking water for livestock and irrigation of lawns, gardens etc. Item 6 lists the total number of acres as 200. Though it is unclear if that means 200 irrigated acres or the area serviced contains 200 acres. The number of residential lots receiving water is not identified on the claim. Because this claim was based on beneficial use, IDWR did not investigate the its accuracy.

In retrospect this claim should not have been reported to the Court for partial decree. Eastern Region utilized a contractor to review the domestic and stock water claims. However only claims for diversion rates of 0.24 cfs were to be reviewed and efforts were made to exclude claims with diversion rates greater than this amount. Unfortunately, this claim was somehow not excluded for those given to the contractor. In his examination of thousands of claims it is reasonable for him to look at 0.40 cfs and register 0.04 cfs. At 0.04 cfs 99.9% of the claims were for a single household. Consequently, the claim number was added to a list of claims that programmatically were modified to list "1 home" under non-irrigation uses and contain the remark limiting the daily usage to 13,000 gallons.

I concur with Mrs. Randolph that the partial decree should be set aside and reference to 1 home and the 13,000 gpd limitation removed. However, with a diversion rate of 0.40 cfs and water being used on several residential lots owned by different individuals, the purpose of use should also be modified to state irrigation.

CONVERSATION MEMO

October 4, 2000

To: 75-04042

From: Ernie Carlsen

Re: Error in Partial Decree

Mrs. Randolph called with a concern about the remarks listed on the partial decree for 75-04042. This claim was filed to record the use of 0.4 cfs of water from Dahlonga Creek for irrigation of lots in Gibbonsville. The use listed on the claim is domestic and with a fee of \$90.00. The partial decree say incorrectly states domestic 1 home with a 13,000 gpd limit. I suggested Mrs. Randolph call the SRBA Court to find out how she can initiate changing the partial decree. My opinion is the claim should be for irrigation not domestic.