

RECEIVED
NOV 18 2003
Department of Water Resources

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

In Re SRBA)

A: Subcase 29-4101B

(Insert water right number)

Case No. 39576)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B: NAME AND ADDRESS OF PERSON OBJECTING

Name: Charles & Joan (Poesy) Thomsen

Address: 2599 S. Marsh Creek Road

McCammon, ID 83250

Daytime Phone: _____

Name & Address of Attorney, if any:

C: CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: Same as above

Address: _____

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ Name and Address
Should be: _____
2. ☐ Source
Should be: _____
3. ☒ Quantity
Should be: 1) .05 CFS for 2.5 acres, not .02 for 1 acre
2) .03 CFS per acre, not .02 CFS per acre
4. ☐ Priority Date
Should be: _____
5. ☐ Point(s) of Diversion
Should be: _____
6. ☐ Instream Flow Description
Should be: _____
7. ☐ Purpose(s) of Use
Should be: _____
8. ☐ Period of Year
Should be: _____
9. ☐ Place of Use
Should be: _____

11. I object because:

- ☐ This water right should not exist.
- ☒ This water right was not recommended, but should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTION(S): _____

Please see attached sheet

E. REASONS SUPPORTING OBJECTION(S):

The IDWR preliminary recommendation on this water right - 29-4101B reduced the acres claimed to one acre based on an aerial photo taken of this property in 1987 (see enclosure 1). This photo does not provide a complete or true evaluation of this acreage that was irrigated on this property under our water right, 29-4101B.

We (Charles Thomsen and Joan M. Poesy) purchased this property (6.7 acres) from Keith Henrichs on May 31, 1985. In the purchase agreement a water right was granted from the seller of .05 CFS to irrigate 2.5 acres of our property (see enclosure 2). We proceeded to irrigate these 2.5 acres of our property from Walker Creek using an irrigation ditch and an in stream pump. The acreage shown in the photo was irrigated from the irrigation ditch and the acreage above the ditch was irrigated with the pump.

Beginning in 1986 and lasting until the Walker Creek irrigation rotation agreement was signed in February of 1988 Mr. Keith Henrichs, the individual we purchased the property from would not allow us to pump from Walker Creek to irrigate the acreage above the ditch. Please review the statement from Chuck Thomsen dated October 27, 1988, that explains the irrational reasons for Henrichs' actions (see enclosure 3).

This controversy was settled by the Walker Creek irrigation agreement signed by all Walker Creek water users in February 1989 (see enclosure 4). After the agreement was signed we began irrigating the acreage (1.5) above the ditch again and have continued to irrigate this acreage for the past 14 years. Please note the Walker Creek agreement provides our property 16 hours on our rotation.

Please review claim no: 29-4101 which shows this property was included in an amended claim filed by Mr. Keith Henrichs in October 1987 (see enclosure 5). Our property is that 6.7 acres above Marsh Creek Road. Claim no. 29-4101 is now 29-4101A and is also enclosed for your review. This claim has been reduced in acreage but has received an increase from .02 CFS per to .03 CFS per acre because the soil has a low water holding capacity (see enclosure 6). Our acreage has the same type soil and should receive the same consideration (see enclosure 7).

(1)

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

07/10/2003

RIGHT NUMBER: 29-4101B

NAME AND ADDRESS: JOAN THOMSEN
2599 S MARSH CREEK RD
MC CAMMON ID 83250

CHARLES E THOMSEN
2599 S MARSH CREEK RD
MC CAMMON ID 83250

SOURCE: WALKER CREEK

TRIBUTARY: MARSH CREEK

QUANTITY: 0.020 CFS

PRIORITY DATE: 05/05/1916

POINT OF
DIVERSION: T08S R36E S15 NENWSW Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
STOCKWATER	01/01 12/31	0.020 CFS
IRRIGATION	03/15 11/15	0.020 CFS

PLACE OF USE: IRRIGATION Within BANNOCK County
T08S R36E S15 NESW 1.0
STOCKWATER Within BANNOCK County
T08S R36E S15 NESW

1 ACRES TOTAL

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT
TO SECTION 42-1425, IDAHO CODE.



Purchase Agreement

3/28/85

Price \$60,000.00 Home + apartment, 6 acres m/l

Interest Rate 11% - Eleven percent annual

Earnest Money - \$500.00 Access Date of - 3/30/85

Down Payment - \$5500.00

Monthly Payments - \$600 ^{4/30/85} Annual Principal Payment - \$2000 ^{4/30/86}

No penalty for prepayment - except no more than total of \$15,000.00 can be paid in 1985.

Taxes to be prorated 1/4 seller 3/4 purchaser

Insurance to be assumed by purchaser and must be a minimum of \$45,000 on home and \$5,000 on outbuilding

Closing costs to be shared equally between seller + purchaser

Escrow to be at Dawley State Bank - Inkorn. For purchase

Easement of 15' for each irrigation ditch, and 30' for headgate

Electrical - to outbuildings + B-mans.

Mercury car to be removed -

Old Home foundation to be pushed in and hole filled - no liability for damages to yard.

Washer + dryer removed -

Restrictive Covenants -

Water right - .05 CFS

Access for removal of supplies + materials in buildings and on premises to be removed by - May 31, 1985 fencing, all wood, equipment, and etc.

Purchaser has made on site inspection and agrees to acceptance of purchase in as is condition, seller does not imply or warrant anything.

Storage of furniture / Maynard / Blair - May 31, 1985.

Kathy V. [Signature], H.M.M. Diet Seller
 [Signature] PURCHASER
 Joe - M. [Signature] purchaser

(3)

AFFIDAVIT

STATE OF IDAHO)
 ss
County of Bannock)

GREEN, SERVICE,
GASSER & KERL
ATTORNEYS AT LAW
P.O. BOX 4883
POCATELLO, IDAHO
83205-4883
(208) 232-4471

I, Chuck Thomas, being
first duly sworn depose and say:

That attached hereto is a true and correct copy of
a signed statement prepared by me as a Walker Creek
water user based upon my own personal knowledge, and
incorporated herein as if set forth at length.

DATED This 27 day of October, 1988.

Chuck Thomas

SUBSCRIBED AND SWORN TO before me this 27th day
of October, 1988.

(SEAL)

Jim Spinner
NOTARY PUBLIC for Idaho
Residing at: Pocatello

Statement for Walker Creek Hearing - Oct. 27, 1988

Name: Chuck Thomsen

Claim: Statutory - 29-4101 - Supported by Deed to property.

Priority: March 15, 1912

Purchased property: April 1, 1985

Located: Downstream from John Schultz

I purchased this property from Keith Henrichs in 1985 with water rights included. This is supported by my deed and Keith Henrichs verbal agreement with me prior to moving in. In fact, Mr. Henrichs sold me an irrigation pump and pipe to irrigate my top pasture. However, when I started using the pump for this purpose, Mr. Henrichs told me I had to shut it down because he claimed I was using his water out of Walker Creek. This same year (1986) Keith Henrichs tore out my dam and diversion which was used for diverting water to the lower three acres of my property for over 30 years.

The following year (1986) Keith Henrichs tore out the side of a new diversion I had rebuilt in the spring. In 1987 he pulled my suction pipe out of my ditch and told me to shut it off or burn it up.

Since the Licensed Water users and I filed a protest in early 1988, Keith Henrichs has tried to enlist my support to deny these individuals their water rights. His main argument has been that since we are both claim holders it would be to our best interests to cooperate with each other. I have refused to cooperate with him in any way and fully support the other users attempts to obtain their legal water rights. I have observed Keith Henrichs flood his property many times in the past three years.. Small lakes

have formed on numerous occasions while downstream users have been forced to let their pastures burn up. I feel that I have enough water assigned to me by our 1988 Rotational Agreement and if Keith Henrichs would use proper irrigating methods his share according to the agreement would be sufficient.

We all agreed to the 1988 Rotational Agreement. I believe it was fair and equitable to all users and was a much more beneficial use of water than in years past when Keith Henrichs claimed all of Walker Creek water. It is difficult for me to understand the reasons why the Department of Water resources has issued a "Cease and Desist" order against the other Licensed water users when every condition of the agreement was adhered to by all users.

Chuck Thomsen
2599 S. Marsh Cr. Rd.
McCammon, Id., 83250

(4)

WALKER CREEK IRRIGATION ROTATION AGREEMENT

The undersigned water users of Walker Creek, located in Bannock County, Idaho, hereby agree to distribute the water of Walker Creek until such time as the rights and priorities of the parties have been formally adjudicated. The agreed distribution shall be as follows:

(A). If the flow of Walker Creek exceeds .36 cubic foot per second ("cfs"), the waters of Walker Creek shall be distributed by the undersigned users on a 10-day rotation period. The order of delivery and number of hours of use per rotation for each user shall be:

Keith Henrichs - 96 hours

Raymond Girard - 36 hours

Gene Wise - 31 hours

Bob Wardle - 31 hours

Chuck Thompson - 16 hours

John Shultz - 10 hours

Norman Rademacher - 20 hours

(B). If the water flow of Walker Creek falls below .36cfs, as measured as set forth below, then the above stated 10-day rotation period shall be modified and the undersigned users shall go to a 20-day rotation period. The modification from the 10-day rotation period to the 20-day rotation period will be based on the same acreage as the 10-day rotation period and on the same water allotment of .02cfs/acre/user. The number of hours of use per rotation credited to each user under the 20-day rotation period shall be:

Keith Henrichs - 192 hours

Raymond Girard - 72 hours

Gene Wise - 62 hours
Bob Wardle - 62 hours
Chuck Thompson - 32 hours
John Shultz - 20 hours
Norman Rademacher - 40 hours

The reason for the modification from a 10-day rotation period to a 20-day rotation period when the flow of Walker Creek falls below .36cfs is to allow the parties longer periods of time to irrigate so that they may preserve, in times of low water, their pastures and other appurtenant property. Any of the undersigned users may use the water during their stated turn on each rotation or may pass their turn to another user they so designate. Any such designation shall not effect the designating party's use of the water on the next rotation. Each of the undersigned users is responsible for regulating their headgate at both the beginning and end of their respective turn.

For a determination of which rotation period to use at any particular time, the measurement of the flow of water in Walker Creek shall be done at such time as the water level appears to be approaching .36cfs. Any of the undersigned users may request the Portneuf River water master, if he or she so consents, or some other third person mutually agreed upon by all of the undersigned users to measure the water. If a

disagreement arises as to measurement, any of the undersigned users may request that a Department of Water Resources official measure the flow of water in Walker Creek. Such measurement by a Department of Water Resources official shall be deemed conclusive as to the level of flow in Walker Creek.

All measurements of the flow of Walker Creek used to make any determination under this agreement shall take place at the point of diversion used by water users Wardle, Wise and Girard. Any such measurements shall take place at a consistent hour at each time of measurement. An hour agreed upon by the parties is 10:00 a.m. on the day of measurement, or such consistent time as is convenient to the Portneuf River water master, the mutually agreed upon third party, or the Department of Water Resources official.

This agreement shall be in force and effect during the time period from March 15 through November 15 of each and every year, beginning with March 15, 1989, until an adjudication of the rights of the undersigned water users of Walker Creek is finally and fully completed. All prior agreements among the Walker Creek water users are superceded by this agreement. This agreement is binding on heirs, personal representatives, successors and assigns of any of the undersigned water users.

13

All of the undersigned, including the Department of Water Resources, agree that no adjudication has been completed on Walker Creek and that this agreement does not have any binding effect on any of the undersigned parties on any future adjudication. This agreement is solely a compromise agreement of a continuing controversy as to the rights and priorities of the parties to the use of Walker Creek and shall be considered solely in that regard. It shall not be considered as an admission in any regard by any of the undersigned parties as to their claims, licenses, permits or other arguments they may have in a subsequent adjudication. It shall not be considered binding, and shall not be used by any of the parties, including the Department of Water Resources, in any adjudication and shall not be considered by any Court in any hearing or other proceeding on an adjudication. All of the parties hereto reserve their objections to the various claims of the other users. The Department of Water Resources acknowledges and understands that the purpose of this agreement is solely for the purpose of a settlement of an on-going controversy. This agreement is a temporary, interim agreement until an adjudication of the rights of the parties can be formally determined.

The Department of Water Resources agrees that any cease and desist order issued to any of the undersigned

users is hereby terminated. It is further understood that the parties who received cease and desist orders do not admit that the Department of Water Resources had any legal authority to issue the cease and desist orders.

The Department of Water Resources agrees to recognize this agreement and not to intervene in the agreement or interfere with any of the use of the undersigned unless such parties do not abide by the rotation agreement set forth above. The undersigned users understand that the Department of Water Resources cannot view the agreement as revising any water rights the parties may be determined as having in an adjudication, but is solely an interim agreement.

IN WITNESS WHEREOF the undersigned hereby execute this agreement and acknowledge that each clearly understands the terms and conditions stated herein.

Dated: 1-19-89

Keith Henrichs
Keith Henrichs

Dated: 2-5-89

Raymond Girard
Raymond Girard

Dated: 2-4-89

Gene R. Wise
Gene Wise

Dated: 2-4-89

Bob Wardle
Bob Wardle

Dated: 2-4-89

Chuck Thompson
Chuck Thompson

Dated: Feb 6 1989

John Shultz
John Shultz

Dated: Feb 5, 89

Norman Rademacher
Norman Rademacher

Acknowledged and Approved by
the State of Idaho, Department
of Water Resources

Dated: February 5, 1989

By Norman C. Young
Norman C. Young
Administrator
Resource Administration Div.
Department of Water Resources



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 334-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

February 24, 1989

Jim Spinner
Green, Service, Gasser & Kerl
2043 E. Center
P. O. Box 4883
Pocatello, ID 83205-4883

RE: Walker Creek Rotation Agreement

Dear Mr. Spinner:

Enclosed is the executed copy of the agreement. I have kept a copy for the department's files, and am providing a copy to Mr. Goodell.

You, Mr. Goodell, and each of the water users are to be commended for negotiating rather than litigating this matter. I am confident that the spirit of cooperation, evidenced by the agreement and the forthright discussions at the conference of positive ways to resolve distribution and water supply problems on Walker Creek, will allow the community to use the available water in harmony.

Sincerely,

A handwritten signature in cursive script, reading 'Norman C. Young'.

NORMAN C. YOUNG
Administrator
Water Management Division

NCY:alw
cc: John Goodell with agreement copy
Encl.

Claim No. 29-4101

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

AMENDED

CLAIM TO A WATER RIGHT AMENDED



Under the provisions of Section 42-243, Idaho Code, any person using or claiming rights to the public waters of Idaho established by diversion and application to a beneficial use must file a claim with the Department of Water Resources on or before June 30, 1983. Exempted from this filing are single family domestic uses as defined in Section 42-230(d), Idaho Code. Also exempted are rights represented by a permit, license, decree, adjudicated right, or a previously filed claim.

The filing of this claim does not confirm the water right claimed but failure to file may result in forfeiture of a water right.

Notice is hereby given that Keith V. or Josephine V. Henrichs

2526 S. Marsh Creek Road, McCannan, ID 83250 (Name of Claimant)

Telephone No. 254-3340

(Mailing Address)

(Zip Code)

claims a right to the diversion and beneficial use of the surface or ground water. The extent and nature of said claim is as follows:

- (1) Date of priority: (When was the water first applied to a beneficial use) March 15, 1912

A claim is not acceptable on a ground water source with a priority later than March 25, 1963 or on a surface water source with a priority later than May 20, 1971. An exception is that a claim may be filed on single family domestic use from a ground water source.

- (2) Describe the source of water: (Name of stream, lake, spring, etc., or ground water)

- (3) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

(cfs, af)		(Domestic, Irrigation, Stock, Etc.)		(Both dates inclusive)	
Quantity		Use		(Mo., Day)	(Mo., Day)
Quantity	2.00 cfs	Use	Irrigation	Period of Use From	3/15 To
Quantity	0.02 cfs	Use	Stockwater	Period of Use From	1/1 To
Quantity		Use		Period of Use From	1/1 To
Quantity		Use		Period of Use From	1/1 To
Quantity		Use		Period of Use From	1/1 To
Quantity	2.02 cfs	Use		Period of Use From	1/1 To

- | Quantity | Use |
|--------------|----------------------|
| (4) 2.02 cfs | TOTAL QUANTITY USED. |

- (5) A) Point of diversion: (Location of point where water is diverted from its source)
NE 15 SW 85 36E B.M. County of Bannock
 Additional points of diversion:

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.). Give sizes and capacities: be as specific as possible. Describe any changes in the system and give the date of the change. Private ditch 3' x 2' deep

- (6) A) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

[illegible]

No. of acres 31

- B) If water is used for other than irrigation, fully describe that use, being as specific as possible:

NOTE: Include here the type and number of stock watered: 80 head of cows and calves

- (7) If you are claiming water as a member of an organization, list name of organization: _____

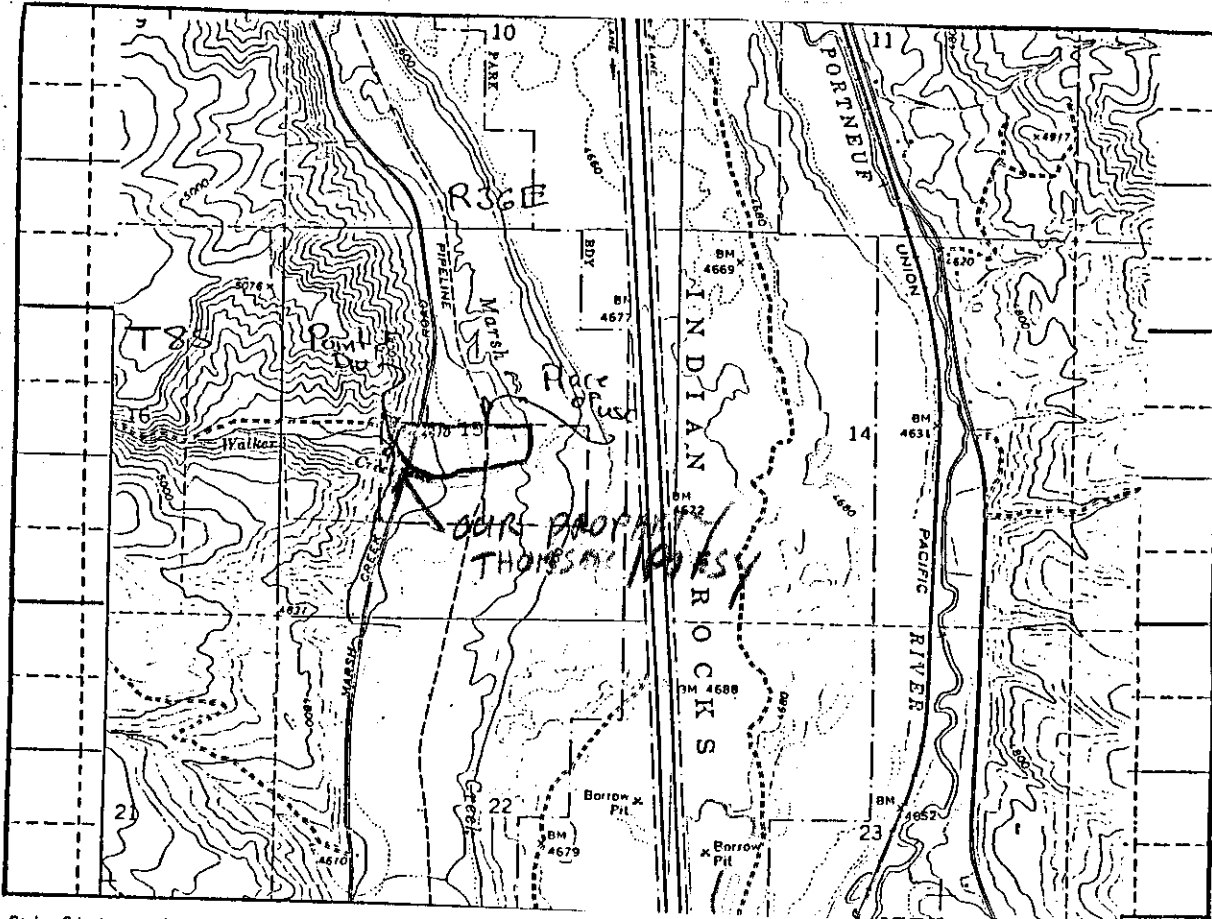
Chart #2

(0.32)

19
11

Remarks

12 13



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

County of Bannock

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.

Sworn to before me this 20th day of Oct.

Keith W. Semich
(Claimant)

William Wray
Notary Public

Residing at Idaho Falls

My commission expires 5/29/1991

FOR DEPARTMENT USE ONLY

Received by KW Date 11-2-87
Prelim. check by KLW Date 11-2-87
\$30.00 fee received by KLW Date 11-2-87
Published in Idaho State Journal
Dates 11-19 + 11-26-87

Exception filed by: _____ Date _____
Forwarded to claimant by: _____ Date _____

10/28/2002

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 29-4101A

NAME AND ADDRESS: CURTIS DUNN
PO BOX 101
INKOM ID 83245

JODEANA DUNN
PO BOX 101
INKOM ID 83245

SOURCE: WALKER CREEK

TRIBUTARY: MARSH CREEK

QUANTITY: 0.420 CFS

PRIORITY DATE: 05/05/1916

POINT OF DIVERSION:

T08S R36E S15 NWNESE Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USEPERIOD OF USEQUANTITY

STOCKWATER

01/01 12/31

0.020 CFS

IRRIGATION

03/15 11/15

0.420 CFS

PLACE OF USE:

STOCKWATER Within BANNOCK County

T08S R36E S15

NESW

T08S R36E S15

NWSW

IRRIGATION Within BANNOCK County

T08S R36E S15

NESW

10.0

T08S R36E S15

NWSE

4.1

14.1 ACRES TOTAL $\times .03 = .420 \text{ CFS}$

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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.

EXPLANATORY MATERIAL: Beneficial Use



United States
Department of
Agriculture

Soil
Conservation
Service

250 South 4th--Suite 112
Pocatello, Idaho 83201

March 14, 1988

Keith Henrichs
2526 S. Marsh Creek Rd.
McCammon, Idaho 83250

Dear Keith:

As a follow-up to your question on the Hondohe gravelly silt loam, this soil has a lower water holding capacity than the average silt loam soil in Bannock County. As stated in our letter dated March 2, 1988, its water holding capacity is 4.8 to 6.6 inches, while the average silt loam is 11.4 to 12.6 inches of water.

Thus, if the State of Idaho, Department of Water Resources typical allocation per acre is .02 cfs per acre on average soils, then to have adequate water as stated above, an increase of 50% is needed.

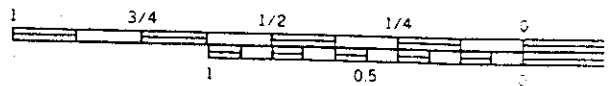
The above information applies to all soils in your area labeled Honodaho gravelly silt loam.

Sincerely,

David L. Curtis
District Conservationist

jw
cc: file

Base maps are orthophotographs prepared by the U.S. Department of the Interior, Geological Survey, from 1974, 1976, and 1977 aerial photography. Coordinate grid ticks and land division corners, if shown, are approximately positioned.



F:

VERIFICATION (Must be Completed)

State of Idaho)
)ss.
County of Bannock)

Charles E. Thomson Joan Poesy Thomson, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

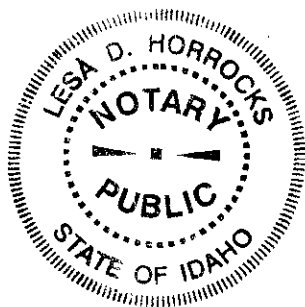
That I am the party/claimant/filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant/objecting and that ^{we} I have read this objection, know its contents and believe that the statements are true to the best of ^{our} my knowledge.

Charles E. Thomson
(Signature of person filing objection)

Joan Poesy Thomson
(Agency signing in representative capacity)

Subscribed and sworn to before me on:

November 14, 2003



Lesa D. Horrocks
Notary Public for Idaho
Residing at: Pocahontas
My Commission Expires: 9/14/2005

INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the Court. FAX filings will not be accepted. You must also send a copy to all the parties listed below in the Certificate of Mailing.

G.

CERTIFICATE OF MAILING

I certify that on November 14, ²⁰⁰³~~2002~~, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707 *Hand Delivered*

2. One copy to the claimant of the water right at the following address:

Name: Charles & Joan (Poesy) Thomsen
Address: 2599 S. Marsh Creek Road
McCammon, ID 83250

3. Copies to:

IDWR Document Depository
PO Box 85720
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
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724



Signature of Objector or attorney
mailing on Objector's behalf