

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

APR 21 2004

By _____
Clerk
Deputy Clerk

**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

SUBCASE NO: 29-180

Case No. 39576

STANDARD FORM 5

**STIPULATED ELEMENTS OF A
WATER RIGHT**

This form is used to report the stipulated elements of one water right acquired under state law. Submission of this form will not automatically result in the issuance of a partial decree. The Presiding Judge or Special Master will conduct any hearing necessary to determine whether the facts, data, expert opinions and law support the issuance of a partial decree for the water right.

The parties agree that the Snake River Basin Adjudication Court has jurisdiction of the parties and subject matter to enter a partial decree for this water right; and they have been served with sufficient process, according to the law; and that they have appeared, prosecuted and defended their positions with regard to this water right dispute.

The parties and IDWR agree and stipulate that the elements of this water right should be described per the attached. The parties and IDWR have further indicated their concurrence by initialing each of the attached pages.

CLAIMANT:

Gene Fagnant 4-21-04
Gene Fagnant Date
Topaz Irrigation Co

OBJECTOR:

Larry A. Brown 4/21/04
Larry Brown, USDOJ Date
Attorney for BLM FWP

IDWR CONCURRENCE:

Ernie M. Carlsen 2/18/04
Ernie Carlsen Date
Adjudication Supervisor, Eastern Region

Candice M. McHugh 2-12-04
Candice M. McHugh (As to Form) Date
Attorney for IDWR

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

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

APR 21 2004

RIGHT NUMBER: 29-180
NAME AND ADDRESS: TOPAZ IRRIGATION CO
C/O GENE FAGNANT
PO BOX 293
JAVA HOT SPRINGS ID 83246

By _____
Clerk
Deputy Clerk

SOURCE: DEMPSEY CREEK TRIBUTARY: PORTNEUF RIVER

QUANTITY: 13.440 CFS

PRIORITY DATE: 04/01/1883

POINT OF
DIVERSION: T098 R382 S33 SE1/4NW Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	4/15 9/15	13.440 CFS

THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY BEGIN AS EARLY AS APRIL 1 AND MAY CONTINUE TO AS LATE AS OCTOBER 31, PROVIDED OTHER ELEMENTS OF THE RIGHT ARE NOT EXCEEDED. THE USE OF WATER BEFORE APRIL 15 AND AFTER SEPTEMBER 15 UNDER THIS RIGHT IS SUBORDINATE TO ALL WATER RIGHTS HAVING NO SUBORDINATED EARLY OR LATE IRRIGATION USE AND A PRIORITY DATE EARLIER THAN THE DATE A PARTIAL DECREE IS ENTERED FOR THIS RIGHT.

PLACE OF USE:
861.3 ACRES TOTAL

The boundary encompassing the place of use for this water right is described with a digital boundary as defined by I.C. Section 42-202B(2) and authorized pursuant to I.C. Section 42-1411(2)(h). The data comprising the digital boundary are incorporated herein by reference and are stored on a CD-ROM disk issued in duplicate originals on file with the SRBA District Court and the Idaho Department of Water Resources. A map depicting the place of use is attached hereto to illustrate the place of use described by the digital boundary.

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 861.3 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED RIGHT NOS.: 29-36, 29-37, 29-180, 29-11773.

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 672 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

Place of use is within the area served by the Topaz Irrigation Company.
THE USE OF WATER UNDER THIS RIGHT DOES NOT INCLUDE A USE ON FEDERAL PUBLIC LAND.

02/11/2004

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

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

THIS RIGHT IS SUBJECT TO REGULATION BY THE WATERMASTER OF
WATER DISTRICT #29.

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.

FWP

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

TOPAZ IRRIGATION CO. OWNS 51% OF DEMPSEY-TOPAZ CANAL
SYSTEM. FISH CREEK IRRIGATING CO. IS ALSO CARRIED IN THIS SAME
CANAL SYSTEM FROM FISH CK POINT OF DIVERSION TO NESENN SEC.28
TSS R388 WHERE IT IS SPLIT OFF THE CANAL SYSTEM AND BECOMES ITS
OWN ENTITY.

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

ADDITIONAL WATER FROM WATER RIGHTS 29-36, 29-37, AND 29-11773 IS
DELIVERED THROUGH DEMPSEY-TOPAZ CANAL SYSTEM UNTIL INJECTED
INTO DEMPSEY CREEK AND REDIVERTED.

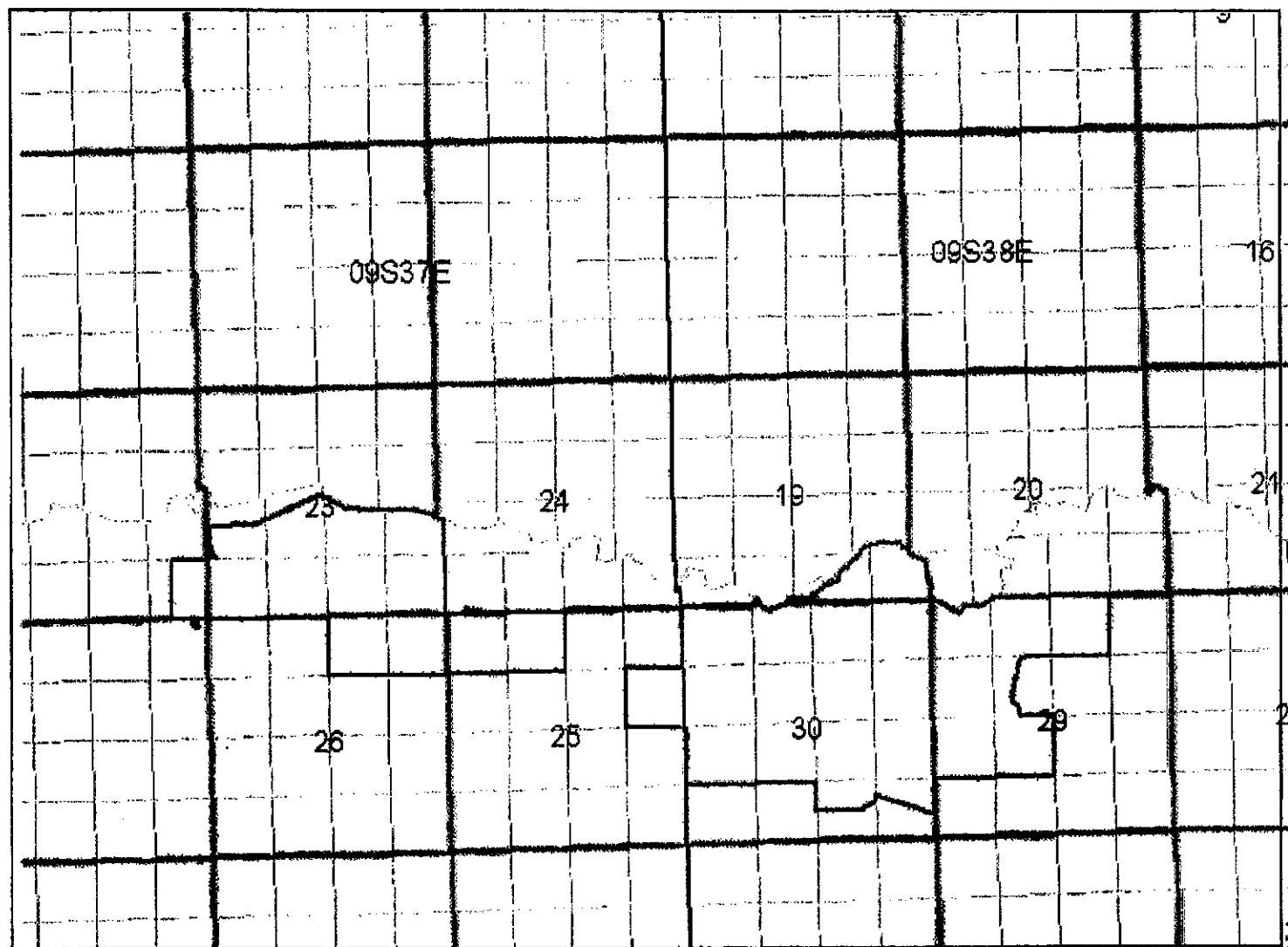
SM *enc*
SAK
YF



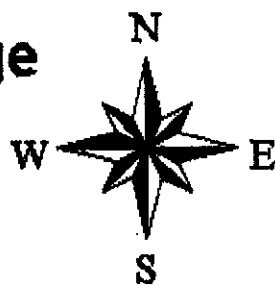
State of Idaho

Department of Water Resources

Claim No.: 29-180



-  **Topaz.shp**
-  **Township/Range**
-  **Sections**
-  **QQ**



GIS Place of Use Illustration
1987/1988 NAPP photography
Prepared by: E Carlsen
Date: February 2004

CERTIFICATE OF MAILING

I certify that on Apr. 21, 2004 I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, Idaho 83303-2707

2. Copies to:

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 83720
Boise, ID 83720-0098

IDWR Document Repository
P.O. Box 83720
Boise, ID 83720-0098

Larry Brown
US DOJ
Attorney for BLM
550 W. Fort St. MSC 033
Boise, ID 83724

Gene Fagnant
Topaz Irrigation Co.
P.O. Box 293
Lava Hot Springs, ID 83246


Signature of person or attorney mailing the form