

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: 29-36
	)	
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:

Earl Smith - Sec 4/21/04
Earl Smith
Dempsey Irrigating Co.

CLAIMANT:

Gene Fagnant, Topaz Irrig 4-21-04
Gene Fagnant
Topaz Irrigation Co.

OBJECTOR:

Larry Brown, USDOJ 4/21/04
Larry Brown, USDOJ
Attorney for BLM

IDWR CONCURRENCE:

Ernie Carlson 3/18/04
Ernie Carlson
Adjudication Supervisor, Eastern Region

Candice M. McHugh 2-12-04
Candice M. McHugh (As to Form)
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: 29-36

NAME AND ADDRESS:

DEMPSEY IRRIGATING CO
C/O EARL SMITH
PO BOX 235
LAVA HOT SPRINGS ID 83246

TOPAL IRRIGATION CO
C/O GENE FAGNANT
PO BOX 293
LAVA HOT SPRINGS ID 83246

By _____

Deputy Clerk

SOURCE:

Source:

PORTENEUF RIVER

Tributary:

SNAKE RIVER

QUANTITY:

32.000 CFS 0.000 AFT

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED
DIVERSION RATE OF 39.5 CFS. COMBINED RIGHT NOS.: 29-36, 29-37 AND
29-11773

PRIORITY DATE:

04/18/1898

POINT OF DIVERSION:

T088 R38E S28 SWNE5W

Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

Purpose of use

Period of use:

Quantity:

IRRIGATION

4/15 9/15

32.000 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 REMARK 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.

FWP LS





PLACE OF USE:

1429.8 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 here
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 di
boundary.

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 1429.8 ACRES IN A SINGLE IRRIGATION
SEASON. COMBINED RIGHT NOS.: 29-36, 29-37, 29-180, 29-11773.

SMC

Place of use is within the area served by Dempsey Irrigation Co.

THE USE OF WATER UNDER THIS RIGHT DOES NOT INCLUDE
A USE ON FEDERAL PUBLIC LAND.

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.

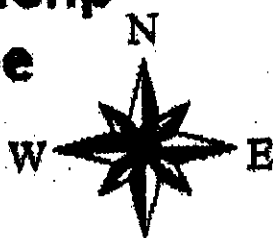
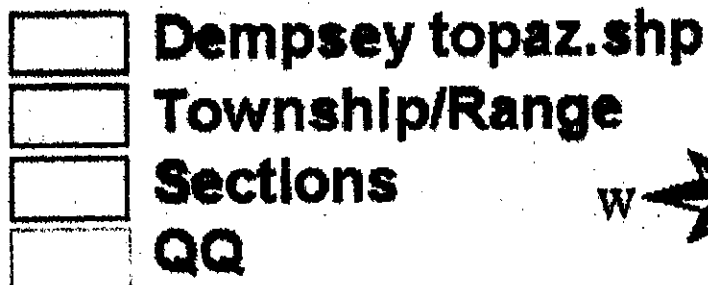
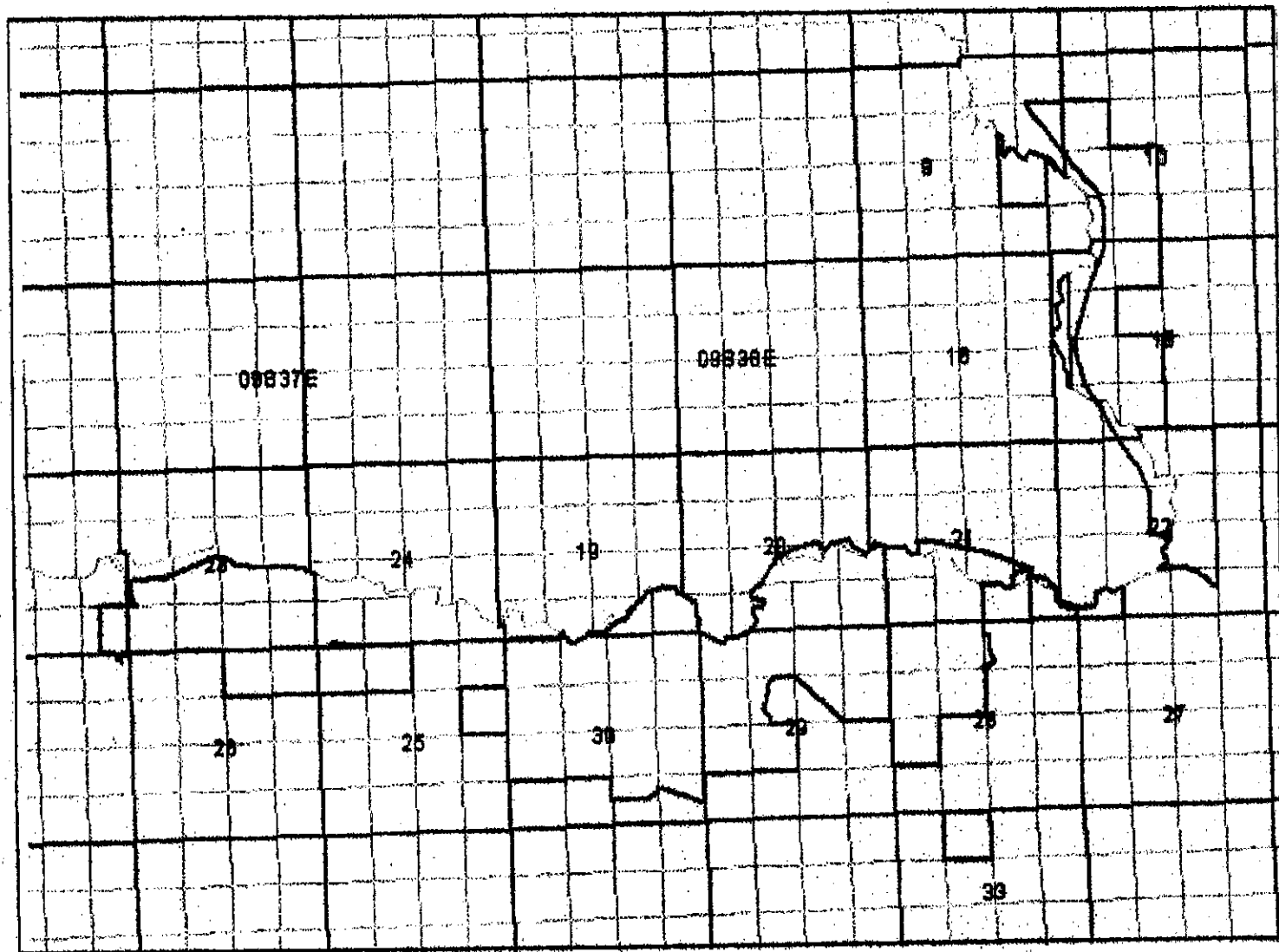
FWP

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 CR POINT OF DIVERSION TO NESENN SEC. 28 T9S R38E 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.

Smc emc
H.F.
12/ (initials)

Claim No.: 29-36, 29-37
29-11773



GIS Place of Use Illustration
1987/1988 NAPP photograph
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:

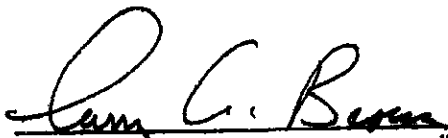
Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 83720
Boise, ID 83720-0098

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

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US DOJ
Attorney for BLM
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Dempsey Irrigating Co.
P.O. Box 235
Lava Hot Springs, ID 83246

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


Signature of person or attorney mailing the form