

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: 29-37

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
Earl Smith
Dempsey Irrigating Co.

Date

CLAIMANT:

Gene Fagnant
Gene Fagnant
Topaz Irrigation Co.

Date

OBJECTOR:

Larry G. Brown
Larry Brown, USDOJ
Attorney for BLM

Date

IDWR CONCURRENCE:

Ernie Carlsen
Ernie Carlsen
Adjudication Supervisor, Eastern Region

Date

Candice M. McHugh
Candice M. McHugh (As to Form)
Attorney for IDWR

Date

IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHTS ACQUIRED UNDER STATE LAW

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

APR 21 2004

RIGHT NUMBER: 29-37
NAME AND ADDRESS: DEMPSEY IRRIGATING CO
C/O EARL SMITH
PO BOX 235
LAVA HOT SPRINGS ID 83246

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

By _____
Clerk
Deputy Clerk

SOURCE: PORTNEUF RIVER TRIBUTARY: SNAKE RIVER

QUANTITY: 7.500 CFS

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: 01/14/1907

POINT OF
DIVERSION: T088 R38E S28 SWNESEW Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	4/15 9/15	7.500 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.

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)(b). 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 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 AND 29-11773

Place of use is within the area served by the Dempsey Irrigating 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 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 IRRIGATION CO. IS ALSO CARRIED IN THIS SAME CANAL SYSTEM FROM FISH CREEK POINT OF DIVERSION TO NESEMW SEC. 28 T9S R38E WHERE IT IS SPLIT OFF THE CANAL SYSTEM AND BECOMES ITS OWN ENTITY.

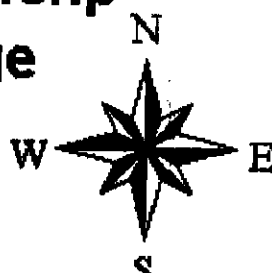
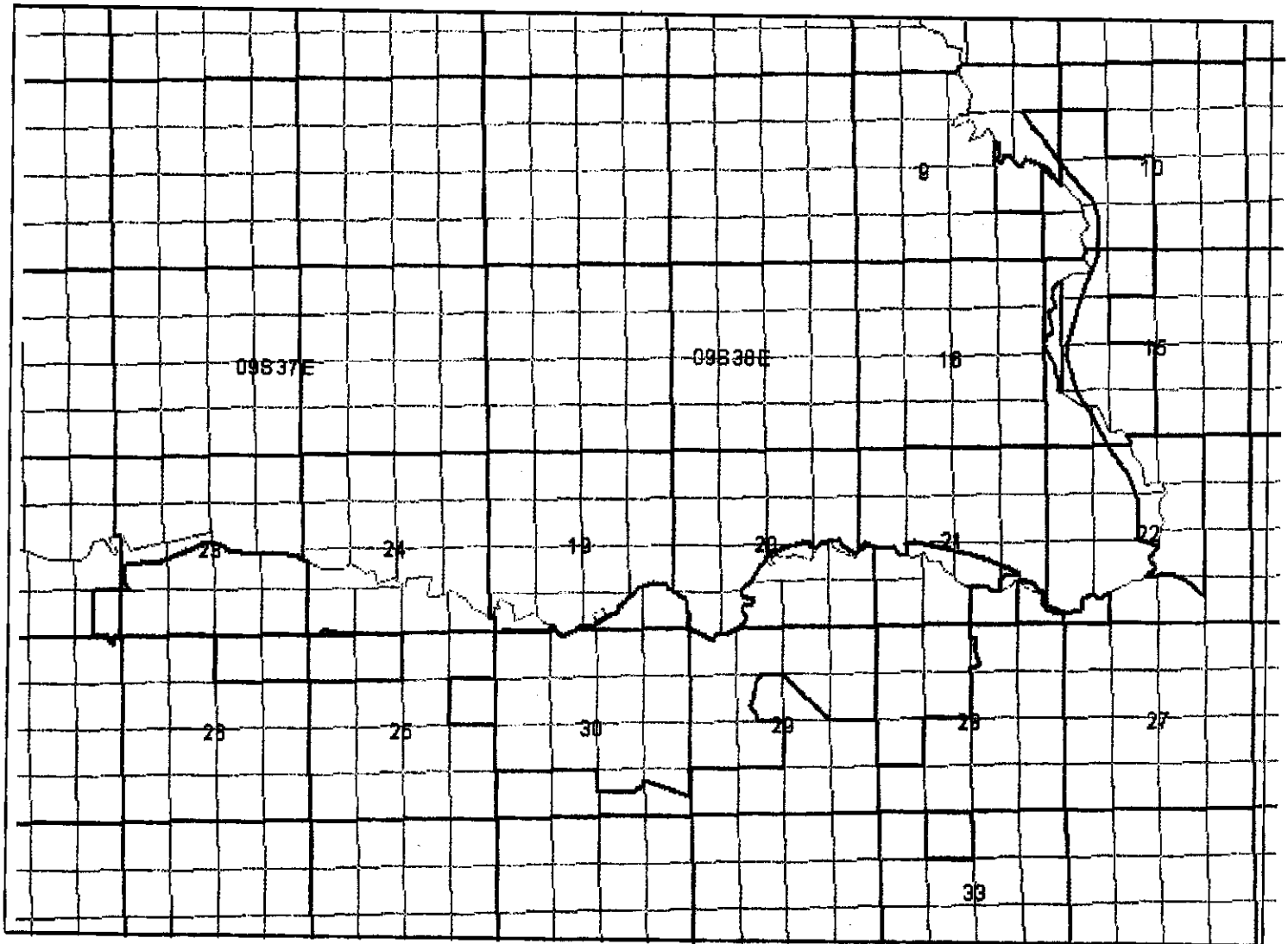
SL

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

ED *8m^c* *EMC*
jos



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

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

Earl Smith
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