

03/31/2004

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

RIGHT NUMBER: 23-55D

NAME AND ADDRESS: RAYMOND N HENKEN
PO BOX 237
IRWIN ID 83428

ELAINE L HENKEN
PO BOX 237
IRWIN ID 83428

SOURCE: PALISADES CREEK

TRIBUTARY: SOUTH FORK SNAKE RIVER

QUANTITY: 0.022 CFS

PRIORITY DATE: 08/20/1890

POINT OF DIVERSION:

T01N R44E S26 NESWSE Within BONNEVILLE County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE
IRRIGATION

PERIOD OF USE
04/15 10/31

QUANTITY
0.022 CFS

PLACE OF USE:

IRRIGATION Within BONNEVILLE County
T01N R44E S35 NWNE 1.1

1.1 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: Decreed

01/08/2004

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

RIGHT NUMBER: 23-55D
NAME AND ADDRESS: RAYMOND N HENKEN
PO BOX 237
IRWIN ID 83428

ELAINE L HENKEN
PO BOX 237
IRWIN ID 83428

DISALLOWED

SOURCE:
QUANTITY: 0.000 CFS
PRIORITY DATE: 08/20/1890
POINT OF DIVERSION:

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE
IRRIGATION

PERIOD OF USE
04/15 10/31

QUANTITY

PLACE OF USE:

IRRIGATION Within BONNEVILLE County
T01N R44E S35 NWNE

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

FORFEITED/ABANDONED. This is included for a claim based on a decree or license that is PROPOSED to be disallowed on the basis that the water right no longer exists because forfeiture of the right by nonuse was confirmed and a defense to forfeiture was not confirmed, or because abandonment of the right was confirmed.

FORFEITED/ABANDONED DUE TO NON-USE FROM 1986 TO PRESENT.

EXPLANATORY MATERIAL: Decreed

Water Right 23-55D

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: A23-00055D

Date Received: / /

Receipt No: E023938

Received By: DC

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

A2300055D

1. Name: RAYMOND N HENKEN 208-483-2049
Address: PO BOX 237
IRWIN ID 83428
OR
Name: ELAINE L HENKEN 208-483-2049
Address: PO BOX 237
IRWIN ID 83428
2. Date of Priority: AUG 20, 1890
3. Source: PALISADES CREEK Trib. to: SNAKE RIVER, SOUTH FORK
4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
01N	44E	26	SW	SW	SE		BONNEVILLE
5. Description of diverting works:
CREEK DIVERSION TO DITCH/ FLOOD IRR
6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/01	10/31	0.100		
7. Total Quantity Appropriated is:
0.100 C.F.S. (and/or) A.F.A.
8. Total consumptive use is Acre Feet Per Annum.
9. Non-irrigation uses:
10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
01N	44E	35	NW	NE		IRR	5.0

10. Place of Use: Continued

Section Acres 5.0

Total Acres 5.0

11. Place of use in counties: BONNEVILLE

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:

14. Remarks:

STOCKWATER, 2 HORSES

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date: 12/16/1910

REXBURG IRR. CO. ET AL

Decree Plaintiff

TETON IRRIGATION CANAL CO. ET
vs Decree Defendant

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

Number of attachments: _____

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): Raymond H. Hecker Date: 3-5-98
Elaine J. Hecker Date: 3-5-98

State of Idaho

County of Bonneville) SS.

Subscribed and sworn (or affirmed) before me this 5 day
of MARCH 19 98

Seal

Wane Cole
Notary Public

Residing at Rigny, Id
My Commission Expires 2/26/2002

BONNEVILLE

A PORTION OF THE N. 1/2 OF SECTION 35 T.1N. R.44 E. B.M.

ELLSWORTH ENGINEERING, INC.
IDAHO FALLS, IDAHO

N. 89° 39' 08" E. 801.21

U. 1/4 COR. SEC. 35
T.1N. R.44 E. B.M.

N. 29° 39' 08" E.
276.71

N. 89° 39' 08" E.

525.00

N. 195.00 E

SUR

2d end
to by
1980

I Garth R. Cunningham
Registered Land Surveyor
described in the Book
that said tract has
according to the S.
STATE OF IDAHO
CERTIFICATE No. 827

OWNER

KNOWN ALL MEN BY THESE PRESENTS:
that of land described in the Book
the same to be subdivided into
be hereafter known as the PARK
dedicate the utility easement
IN WITNESS WHEREOF: we have hereof
of 1980, A.D. 1980

Garth R. Cunningham
Ellsworth Engineering, Inc.
Dale R. Cunningham
M. A. T. Cunningham
Mary T. Cunningham
Maurice D. Cunningham

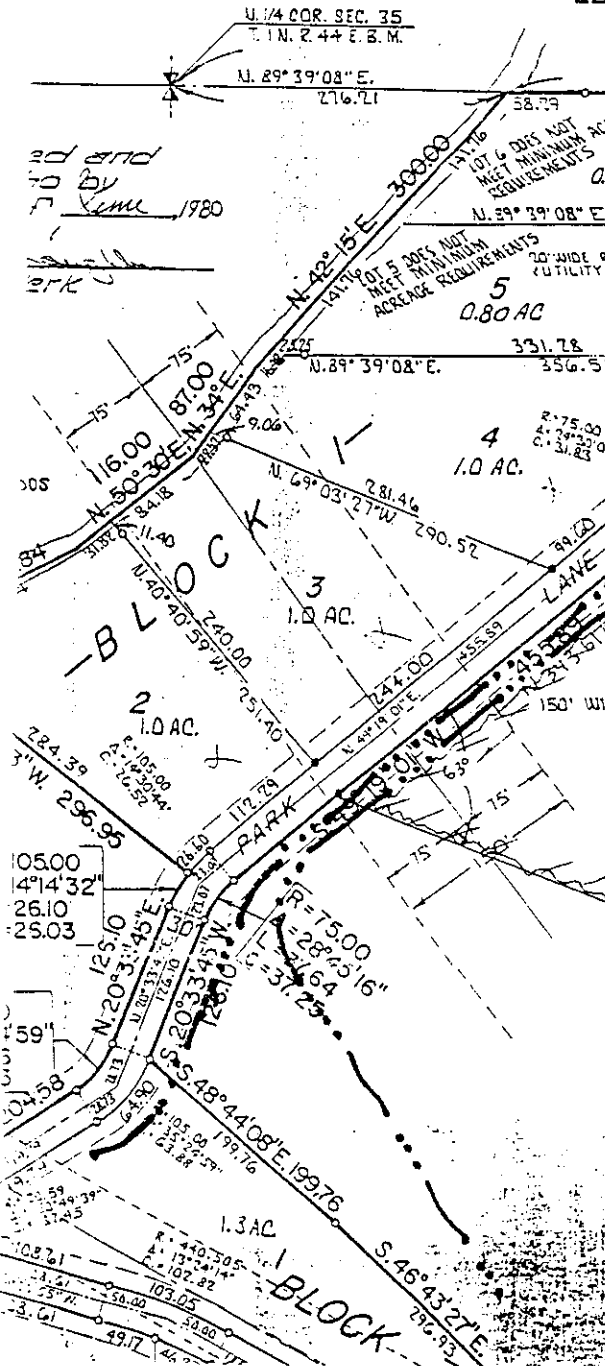
ACKNOWLEDGEMENT

State of IDAHO
County of BONNEVILLE
BE IT REMEMBERED: that on this 13th day of January, 1980, persons
signed before me, Notary Public in and for said State and County, the signers
after first being duly sworn, acknowledged to me that they signed
voluntarily for the purposes therein mentioned.
My Commission Expires: 11-14-82

Notary Public
Residing in

BOUNDARY DESCRIPTION

Beginning at a point that is N. 89° 39' 08" E. along the section line 801.21 feet from the
Township 1 North, Range 44 East of the Boise Meridian; running thence S. 24° 48' 54" W. 461.
211.32 feet; thence S. 49° 19' 01" W. 455.89 feet to a point of curve with a radius of 75.00
said curve, 37.64 feet; thence S. 20° 33' 45" W. 126.10 feet; thence S. 48° 44' 08" E. 199.76 fe
feet; thence S. 37° 39' 59" W. 73.13 feet; thence S. 28° 33' 19" W. 137.38 feet; thence N. 51° 25'
N. 77° 45' 55" W. 645 feet more or less to the centerline of Palisades Creek computed to be
along said centerline the following two approximate courses: N. 20° 30' E. 140.00 feet and
leaving said Palisades Creek, S. 65° 05' E. 250.32 feet; thence N. 55° 50' 10" E. 204.58 feet
of 75.00 feet; thence to the left along said curve 46.36 feet; thence N. 20° 33' 45" E. 126
a radius of 105.00 feet; thence to the right along said curve 26.10 feet; thence N. 51° 25'
the centerline of Palisades Creek computed to be 296.95 feet; thence Northerly along sa
approximate courses: N. 62° E. 155.84 feet, N. 50° 30' E. 115.00 feet, N. 34° E. 67.00 feet, c
to the North line of said Section 35 computed to be 300.00 feet; thence leaving sa
along said section line 525 feet more or less to the point of beginning computed to be
acres more or less.



01/08/2004

NOTICE OF ERROR
REPLY

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR know that you agree with its recommendation.

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS:

Water right number: 23-55D

RAYMOND N HENKEN
PO BOX 237
IRWIN ID 83428
Telephone Number: (208)483-2049

ELAINE L HENKEN
PO BOX 237
IRWIN ID 83428
Telephone Number: (208)483-2049

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):

SEE ATTACHED

2. Describe the changes you wish to make in the proposed recommendation:

SEE ATTACHED

3. Give a brief explanation as to why you disagree with these portions:

SEE ATTACHED

DISAGREE
I ~~AGREE~~ with this proposed recommendation: ^{that} no changes need to be made.

DATE: 3-16-2004

SIGNATURE:

Raymond W. Henken
RAYMOND N. HENKEN

Please print your name:

IDWR Regional Office,

3/31/04 Recommended w/ all COMMENTS AS
Appropriate.



Water in the ditch was not abandoned in 1986

Water in the ditch was used until 1992 or 1993 when Fish and Game dredged Palisade Creek.

Fish and Game dredged and shifted the Creek flow to install a fish trap. the purpose of the trap was to prevent Rainbow Trout from spawning up Palisades Creek.

As a result of Fish and Game rerouting the Creek it left our ditch head gate high and dry.

We were warned not to touch anything in Palisades Creek that would return flow to the ditch

We filed for water rights in good faith with the then Water Masters approval.

We have waited for arbitration to redress this wrong. We now wish to move the head gate approximately 25 feet and return flow to the ditch

When the recent flood year occurred, the dredged creek flow increased property erosion down stream from the fish trap. If the flow could have been partially diverted, as it was, prior to the fish trap installation, less property damage would have occurred.

It occurs to me that the fish trap has not worked, or, catch and keep all Rainbow trout and year round access to the Snake River up to Palisades ^{Dam} would not be necessary.

Perhaps the fish trap expense could have been avoided if the present catch and keep ^{all} rainbow would have been in effect since 1992-93.

Not to be old fashioned, it is my belief that a true fisherman catches and keeps fish (only enough fish) to eat! If this were true then the cutthroat trout would not be endangered!

RECEIPT
For Monies Paid
to the
Idaho Department of Water Resources

Receipt No:
E023938

Date:
Time: 3/ 5/1998
15:11:09

Received
From: HENKEN, RAYMOND
Type of Payment

ADJUDICATION FEE

Program A cct

Amount

41503

337

1155

55.00

CHECK

1025

Total

\$

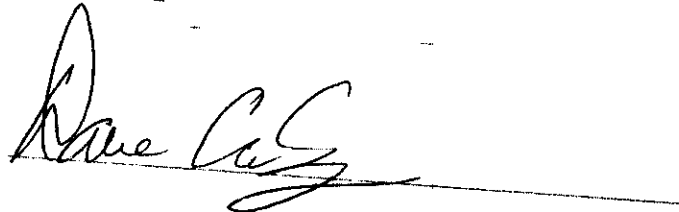
55.00

A23-00055D

Water Right Numbers

Region: EASTERN

Signature:



Dennis Bitton
1705 Mountainview Drive
McCammon, ID 83250

17 March 2004

To Whom It May Concern:

I was water master for the Swan Valley area, which included Palisades Creek, from 1976 to 1999. I can attest that water was run down the ditch that was headgated on the east side of Palisade Creek and ran through property belonging to Harry J. Taylor, Greg L. Taylor and Raymond Henken from 1976 until 1997. All of these individuals were allowed to divert or pump water from the ditch in all the years before 1997 because my understanding was they had purchased the appropriate portion of water rights when they purchased the property. The water was used virtually every year until 1997 when the flooding changed several headgate conditions.

If you have any questions concerning this matter please contact me at one of the following phone numbers: home: (208) 254-9821; cell (208) 317-1447.

Sincerely

Dennis Bitton

MEMORANDUM

11 July 2003

To: Files; 23-55 A/B/C/D/E/F, 23-10271

From: A. Ruberry

Subject: Split portions of SRBA claims, as above

On April 22, 2003, a field exam was conducted by A. Ruberry, IWDR. The claimed Point of Diversion SWSWSE Sec. 26, T1N, R44E, was GPD'd and photographed. This claimed Point of Diversion has no structure to control any type of diversion off Palisades Creek; it is in-fact, filled with gravel and about 150' +/- down-ditch (remnant) from the claimed Point of Diversion is also filled and heavily overgrown with vegetation (see photographs).

In addition, within the SWNWNWNE of Sec. 35, there is a culvert in the ditch remnant that is crossed by a roadway. A short distance further down ditch the ditch is filled-in.

It is obvious this ditch has not been used due to the heavy growth of vegetation and lack of any type of maintenance. According to local residents, Chris Stoner and Jay Weeks, this ditch has not been used in 10 years (Jay) and 17 years (Chris). Thus, according to Mr. Stoner's statement abandonment of the ditch began in 1986.

Portions of the 23-00055 water right, as listed above, will be recommended as Disallowed pursuant to §42-222 (2) IC. Lands claimed under this water right are not a subject of the Conservation Reserve Program (CRP), as addressed under this statute. 23-00055 originated as a Decreed water right under the Rexburg Irrig. Co. vs Teton Irrig. Co., 1910, as 3.3 cfs from Palisades Creek, 8/20/1890. See attached split history attached; 1.92 cfs of this right is not accounted and unclaimed.

*Disallowed: Claim filed 1998. No use Between
1986 and 1998.*

Cons/Remk

P04

Water Right Split History Analysis

23-00055A R.J. JONES ✓

0.08 cfs

23-55B R.T. HUSKEY ✓

0.15 cfs

23-55C D.N. DENNING ✓

0.52 cfs

23-55D R. HENKEN

0.10 cfs

J.C. WEEKS

23-00055

3.30 cfs 8/20/1890

PALISADES CREEK

23-55E H.J. TAYLOR

0.03 cfs

23-55F R. RADFORD

0.03 cfs

23-10271 J. BYRD ✓

0.47 cfs (CLAIMS PART OF SSC.)

23-55? UNCLAIMED / UNACCOUNTED

1.92 cfs

 $\Sigma_{\text{CLAIMS}} = 1.38 \text{ cfs}$ Reviewer: ASRDate: 7/7/03

Log for claim 23-00055D

Spatial Dynamics LTD

5/29/01

TR	SEC	QQ	Acres Claimed	Acres Found	COMMENT
01n44e	35	NWNE	5	7.6	Indiscernible
Totals:			5	7.6	



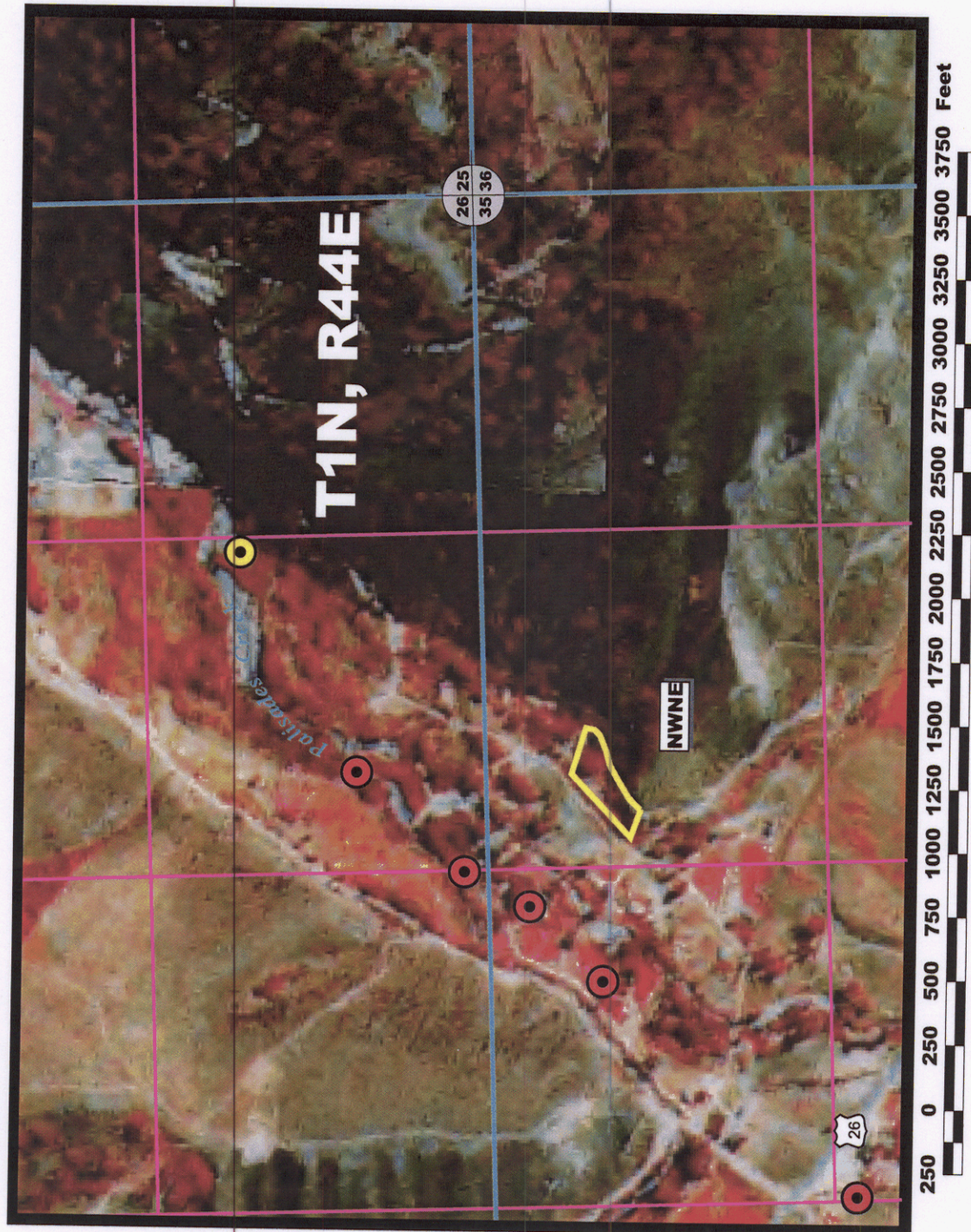
State of Idaho

Department of Water Resources

Eastern Region



Water Right(s):
23-00055D



Place of Use: (part of)

T1N, R44E

Sec. 25 NWNE

Point(s) of Diversion:

T1N, R44E

Sec. 26 NESWSE

LEGEND



Point of Diversion



Place of Use



Section



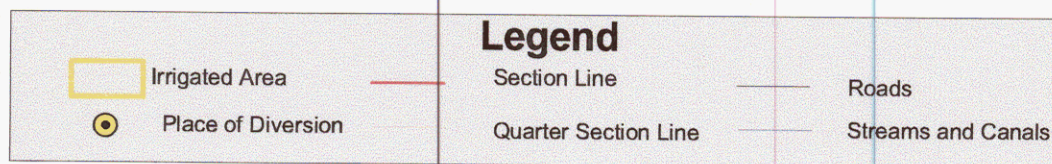
Quarter-Quarter



GIS Place of Use Illustration
1987/1988 NAPP Photography
Prepared by: A. Ruberry
Date: March 2004

Water Right Claim Number 23-00055D
Township , 1N44E

05/29/2001



PHOTOS TAKEN 4/22/03
BY: A. RUGBURY



Photo 1. OLD DITCH (NO STRUCTURE) OFF PALISADES CREEK
FOR DELIVERY ON SOUTH OF THE CREEK.



Photo 2. SHOWS A PLACE BEHIND THE BLOCKAGE OFF THE
CREEK. OBVIOUSLY THERE HAS BEEN NO MAINTENANCE
AND NO DELIVERY FOR A LONG TIME.