

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 22-545
Date Received: 7/26/2001
Receipt No:
Received By:

**NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW**

1. Name of Claimant(s)

BOYD C & JILL J SMITH TRUST Phone: (208)523-0620

C/O HOLDEN KIDWELL HAHN & CRAPO
PO BOX 50130
IDAHO FALLS ID USA 83405

2. Date of Priority: 06/01/1896

3. Source: Unknown

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
----------	-------	---------	-----------------------	--------	------

5. Description of diverting works:

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	04/15	10/15	1.8	

7. Total Quantity Appropriated is:
1.8 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4 Lot	Use	Acres
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06N	46E	30	NE	SW	IRRIGATION	20
			NW	SW	IRRIGATION	25
			SW	SW	IRRIGATION	35
			SE	SW	IRRIGATION	38
			NE	SE	IRRIGATION	34
			NW	SE	IRRIGATION	28
			SW	SE	IRRIGATION	40
			SE	SE	IRRIGATION	40

Section Acres 260

06N	46E	31	NE	NE	IRRIGATION	40
			NW	NE	IRRIGATION	40
			NE	NW	IRRIGATION	40
			NW	NW	IRRIGATION	38
			SE	NW	IRRIGATION	38
			SW	NW	IRRIGATION	29
			SE	NE	IRRIGATION	22
			SW	NE	IRRIGATION	38

Section Acres 285

06N	46E	32	NW	NW	IRRIGATION	36
			SW	NW	IRRIGATION	20
			SE	NW	IRRIGATION	19
			NW	SE	IRRIGATION	28
			NW	NE	IRRIGATION	17
			NE	NW	IRRIGATION	34
			SW	NE	IRRIGATION	28

Section Acres 182

Total Acres 727

11. Place of use in counties: TETON

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

13. Other Water Rights Used:

14. Remarks:

POINT OF DIVERSION IS TETON COUNTY, STATE OF WYOMING, T44N, R118W, S6, SENE

SOURCE IS SOUTH LEIGH CREEK, TETON RIVER

OTHER WATER RIGHTS: 22-160 & 22-616 (AND 22-63, 22-312, 22-313, 22-487C, & 22-13016 FOR LANDS IN SECTION 30 ONLY)

THIS RIGHT APPEARS TO HAVE BEEN DECREED ORIGINALLY TO JACKSON TAYLOR IN THE REXBURG DECREE FOR IRRIGATION OF UNSURVEYED LANDS IN SECTION 32 OF TOWNSHIP 6 N, RANGE 46 E. WE HAVE OBTAINED A COPY OF A PATENT GRANTED BY THE UNITED STATES OF AMERICA TO MR. JACKSON C TAYLOR IN 1908, A COPY OF WHICH IS ATTACHED HERETO. THE LAND IN SEC 30 IS IRRIGATED AS A RESULT OF AN ACCOMPLISHED TRANSFER WHICH TOOK PLACE BEFORE 1987. ACTUALLY, NO MORE THAN 467 ACRES ARE IRRIGATED WITH A COMBINATION OF RIGHTS 22-160, 22-545 & 22-616 AT ANY TIME. THE PERMISSIBLE PLACE OF USE WAS ENLARGED WHEN THESE RIGHTS WERE USED TO SUPPLEMENT IRRIGATION OF THE LANDS IN SEC. 30

15. Basis of Claim: Decreed

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

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C/O HOLDEN KIDWELL HAHN & CRAPO
PO BOX 50130
IDAHO FALLS ID USA 83405

2. Date of Priority: 06/01/1896

3. Source: Unknown

4. Point of Diversion:

Township Range Section 1/4 of 1/4 of 1/4 Lot County Type

5. Description of diverting works:

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	04/15	10/15	1.8	

7. Total Quantity Appropriated is:
1.8 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
06N	46E	30	NE	SW	IRRIGATION	20
			NW	SW	IRRIGATION	25
			SW	SW	IRRIGATION	35
			SE	SW	IRRIGATION	38
			NE	SE	IRRIGATION	34
			NW	SE	IRRIGATION	28
			SW	SE	IRRIGATION	40

			SE	SE	IRRIGATION	40
					Section Acres	260
06N	46E	31	NE	NE	IRRIGATION	40
			NW	NE	IRRIGATION	40
			NE	NW	IRRIGATION	40
			NW	NW	IRRIGATION	38
			NE	SW	IRRIGATION	38
			NW	SW	IRRIGATION	29
			NE	SE	IRRIGATION	22
			NW	SE	IRRIGATION	38
					Section Acres	285
06N	46E	32	NW	NE	IRRIGATION	34
			NE	NW	IRRIGATION	17
			NW	NW	IRRIGATION	36
			SW	NW	IRRIGATION	20
			SE	NW	IRRIGATION	19
			NE	SW	IRRIGATION	28
			NW	SE	IRRIGATION	28
					Section Acres	182
					Total Acres	727

11. Place of use in counties: TETON

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

13. Other Water Rights Used:

14. Remarks:

POINT OF DIVERSION IS TETON COUNTY, STATE OF WYOMING, T44N, R118W, S6, SENE

SOURCE IS SOUTH LEIGH CREEK, TETON RIVER

OTHER WATER RIGHTS: 22-160 & 22-616 (AND 22-63, 22-312, 22-313, 22-487C, & 22-13016 FOR LANDS IN SECTION 30 ONLY)

THIS RIGHT APPEARS TO HAVE BEEN DECREED ORIGINALLY TO JACKSON TAYLOR IN THE REXBURG DECREE FOR IRRIGATION OF UNSURVEYED LANDS IN SECTION 32 OF TOWNSHIP 6 N, RANGE 46 E. WE HAVE OBTAINED A COPY OF A PATENT GRANTED BY THE UNITED STATES OF AMERICA TO MR. JACKSON C TAYLOR IN 1908, A COPY OF WHICH IS ATTACHED HERETO. THE LAND IN SEC 30 IS IRRIGATED AS A RESULT OF AN ACCOMPLISHED TRANSFER WHICH TOOK PLACE BEFORE 1987. ACTUALLY, NO MORE THAN 467 ACRES ARE IRRIGATED WITH A COMBINATION OF RIGHTS 22-160, 22-545 & 22-616 AT ANY TIME. THE PERMISSIBLE PLACE OF USE WAS ENLARGED WHEN THESE RIGHTS WERE USED TO SUPPLEMENT IRRIGATION OF THE LANDS IN SEC. 30

15. Basis of Claim: Decreed

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

RECEIVED
JAN 9 2003
Department of Water Resources
Eastern Region

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 22-545

Date Received _____

Receipt Number _____

AMENDED NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s) Boyd C. and Jill J. Smith Trust Phone (208) 523-0620
Mailing Address c/o Holden, Kidwell, Hahn & Crapo, P.L.L.C., P.O. Box 50130, Idaho Falls, ID Zip 83405
2. Date of Priority (Only (1) per claim) June 1, 1896
3. Source of water supply (a) South Leigh Creek
which is tributary to (b) Teton River
- 4.a. Location of existing point of diversion is:
State of Wyoming, South Leigh Creek in Lot 2 which is the SENE of Section 6, Township 44N., Range 118 W. of the 6th P.M., Teton County, Wyoming.
- b. If instream flow, beginning point of claimed instream flow is:
Township ____ Range ____ Section __, __ 1/4 of __ 1/4 of __ 1/4, Govt. Lot ____ B.M., County of ____
ending point is: Township ____ Range ____ Section __, __ 1/4 of __ 1/4 of __ 1/4 Govt. Lot ____ B.M., County of ____
5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc), including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed and as enlarged and the depth of each well. Two (2) irrigation pumps at Idaho-Wyoming state line, or through Kilpack Ditch.
6. Water is claimed for the following purposes:
(Both dates are inclusive) (cfs) (acre feet)
For Irrigation purposes from April 15 to Oct. 15 amount 1.8 or ____
For _____ purposes from _____ to _____ amount ____ or ____
7. Total quantity claimed (a) 1.8 (cfs) and/or (b) ____ (acre feet)
8. Total consumptive use claimed is ____ acre feet per annum.

9. Non-irrigation uses; describe fully (e.g. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) _____

10. Description of place of use:

- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instruction for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TLS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
6N	46E	30									20	25	35	38	34	28	40	40	260
6N	46E	31	40	40			40	38			38	29			22	38			185 <i>28</i>
6N	46E	32		34			17	36	20	19	28					28			182

Total number of acres irrigated 429
(Permissible place of use - 727)

11. In which county(ies) are lands listed above as place of use located? Teton

12. Do you own the property listed above as place of use? Yes x No

If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above.
22-160 and 22-616 (And 22-63, 22-312, 22-313, 22-487C and 22-13016 for lands in Section 30 only)
_____ or None ()

14. Remarks:

This right appears to have been decreed originally to Jackson Taylor in the Rexburg Decree for irrigation of unsurveyed lands in Section 32 of Township 6 North, Range 46 East. We have obtained a copy of a patent granted by the United States of America to Mr. Jackson C. Taylor in 1908, a copy of which is attached hereto. The land in Section 30 is irrigated as a result of an accomplished transfer which took place before 1987. Actually, no more than 467 acres are irrigated with a combination of rights 22-160, 22-545, and 22-616 at anytime. The permissible place of use was enlarged when these rights were used to supplement irrigation of the lands in Section 30.

15. Basis of Claim (Check one) Beneficial Use Posted Notice Permit Decree X License
If applicable provide IDWR Water Right Number 22-545
Court Sixth District Case Number Decree Date December 16, 1910
Plaintiff vs Defendant Rexburg Irrigation Co. et al v. Teton Irrigation Canal Company et al

16. Signature(s)

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s) _____ Date _____

_____ Date _____

Last Name Boyd C. and Jill J. Smith Trust

Ident. Number 22-545

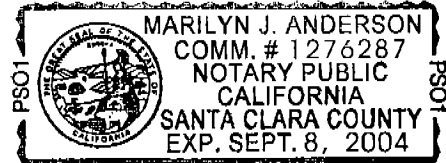
For Organizations: I do solemnly swear or affirm that I am Trustee of Boyd C. and Jill J. Smith Trust,
(Title) (Organization)
that I have signed the foregoing document in the space below as Trustee of Boyd C. and Jill J. Smith Trust and
(Title) (Organization)
that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent

Boyd C. Smith, Trustee

Title and Organization Boyd C. and Jill J. Smith Trust Date 2 Dec 2002

STATE OF CALIFORNIA)
) SS.
County of Santa Clara)



Subscribed and sworn (or affirmed) before me this 2nd day of December, 2002.

Notary Public

Residing at

My Commission Expires

Marilyn J. Anderson
San Jose, California
September 8, 2004

17. Notice of Appearance:

Notice is hereby given that I, Kent W. Foster will be acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature _____

Address P.O. Box 50130, Idaho Falls, Idaho 83405

Date _____

G:\WPDATA\KWF\8527 SMITH, BOYD\Claim.etc.Amended.22-545.wpd:kljm

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
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BOYD C & JILL J SMITH TRUST Phone: (208) 523-0620

C/O HOLDEN KIDWELL HAHN & CRAPO PLLC
PO BOX 50130
IDAHO FALLS ID USA 83405

2. Date of Priority: 06/01/1896

3. Source: SOUTH LEIGH CREEK Trib. to: TETON RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 Lot	County	Type
06N	46E	32	NE	NW	NE	TETON	
06N	46E	32	SE	NW	NE	TETON	
06N	46E	32	NE	SW	NE	TETON	

5. Description of diverting works:

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	04/15	10/15	1.8	

7. Total Quantity Appropriated is:
1.8 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of	1/4 Lot	Use	Acres
----------	-------	---------	--------	---------	-----	-------

A2200545



06N	46E	31	NE	NE	IRRIGATION	40
			NW	NE	IRRIGATION	40
			NE	NW	IRRIGATION	40
			NW	NW	IRRIGATION	38
			NE	SW	IRRIGATION	38
			NW	SW	IRRIGATION	29
			NE	SE	IRRIGATION	22
					Section Acres	247
06N	46E	32	NW	NE	IRRIGATION	34
			NE	NW	IRRIGATION	17
			NW	NW	IRRIGATION	36
			SW	NW	IRRIGATION	20
			SE	NW	IRRIGATION	19
			NE	SW	IRRIGATION	28
			NW	SE	IRRIGATION	28
					Section Acres	182
					Total Acres	429

11. Place of use in counties: TETON

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14. Remarks:

THIS RIGHT APPEARS TO HAVE BEEN DECREED ORIGINALLY TO JACKSON TAYLOR IN THE REXBURG DECREE FOR IRRIGATION OF UNSURVEYED LANDS IN SECTION 32 OF TOWNSHIP 6 NORTH, RANGE 46 EAST. WE HAVE OBTAINED A COPY OF A PATENT GRANTED BY THE UNITED STATES OF AMERICA TO MR. JACKSON C TAYLOR IN 1908, A COPY OF WHICH IS ATTACHED HERETO.

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Mailing Address c/o Holden, Kidwell, Hahn & Crapo, P.L.L.C., P.O. Box 50130, Idaho Falls, ID Zip 83405
2. Date of Priority (Only (1) per claim) June 1, 1896
3. Source of water supply (a) South Leigh Creek
which is tributary to (b) Teton River
- 4.a. Location of existing
point of diversion is: Township 6N Range 46E Section 32, NE 1/4 of NW 1/4 of
NE 1/4, Govt. Lot 1, B.M., County of Teton
Additional points of diversion if any: Township 6N Range 46E Section 32, SE 1/4 of NW 1/4 of
NE 1/4, Govt. Lot 1, B.M., County of Teton and Township 6N Range 46E Section 32,
NE 1/4 of SW 1/4 of NE 1/4, Govt. Lot 2, B.M., County of Teton
b. If instream flow, beginning point of claimed instream flow is:
Township ____ Range ____ Section __, ____ 1/4 of ____ 1/4 of ____ 1/4, Govt. Lot ____ B.M., County of ____
ending point is: Township ____ Range ____ Section __, ____ 1/4 of ____ 1/4 of ____ 1/4 Govt. Lot ____ B.M., County of ____
5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed and as enlarged
and the depth of each well. Two irrigation pumps (1675 horse power at Idaho-Wyoming state line, or through Kilpack Canal.
6. Water is claimed for the following purposes:
(Both dates are inclusive) (cfs) (acre feet)
For Irrigation purposes from April 15 to Oct. 15 amount 1.8 or ____
For _____ purposes from _____ to _____ amount ____ or ____
7. Total quantity claimed (a) 1.8 (cfs) and/or (b) ____ (acre feet)
8. Total consumptive use claimed is ____ acre feet per annum.

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10. Description of place of use:

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TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TLS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
6N	46E	31	40				40				38				22				140
				40				38				29				38			145
6N	46E	32		34			17	36	20	19	28					28			182

Total number of acres irrigated 467

11. In which county(ies) are lands listed above as place of use located? Teton

12. Do you own the property listed above as place of use? Yes x No _____
If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above.
22-160 or None ()

14. Remarks:

This right appears to have been decreed originally to Jackson Taylor in the Rexburg Decree for irrigation of unsurveyed lands in Section 32 of Township 6 North, Range 46 East. We have obtained a copy of a patent granted by the United States of America to Mr. Jackson C. Taylor in 1908, a copy of which is attached hereto.

15. Basis of Claim (Check one) Beneficial Use _____ Posted Notice _____ Permit _____ Decree X License _____
If applicable provide IDWR Water Right Number 22-545
Court Sixth District Case Number _____ Decree Date December 16, 1910
Plaintiff vs Defendant Rexburg Irrigation Co. et al v. Teton Irrigation Canal Company et al

16. Signature(s)

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s) _____ Date _____

_____ Date _____

Last Name Smith Ident. Number 22-545

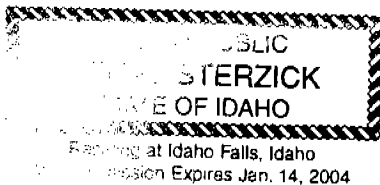
For Organizations: I do solemnly swear or affirm that I am Attorney of
(Title)

Boyd C. and Jill J. Smith Trust, that I have signed the foregoing document in the space below as
(Organization)
Attorney of Boyd C. and Jill J. Smith Trust and that the statements contained in the
(Title) (Organization)
foregoing document are true and correct.

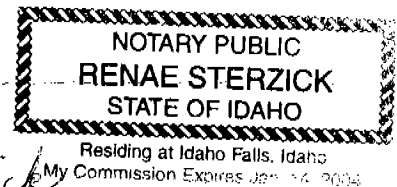
Signature of Authorized Agent [Signature]
Title and Organization attorney for trust Date 7/24/01

State of Idaho)
County of Bonneville) SS.

Subscribed and sworn (or affirmed) before me this 24 day of July, 2001



Notary Public Renae Sterzick
Residing at Idaho Falls Idaho
My Commission Expires 1-14-2004



17. Notice of Appearance:

Notice is hereby given that I, Kent W. Foster will be acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature [Signature]
Address P.O. Box 50130, Idaho Falls, Idaho 83405
Date 7/24/01

G:\WPDATA\KWF\8527\Claim.ntc.wpd:kljm

Law Offices
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
CHARLES A. HOMER
GARY L. MEIKLE
DONALD L. HARRIS
DALE W. STORER
MARIE T. TYLER
ROBERT M. FOLLETT
FREDERICK J. HAHN, III
KARL R. DECKER
THEL W. CASPER
SHAN B. PERRY
AMELIA A. SHEETS
DeANNE CASPERSON*

*Licensed in Missouri & Kansas

US BANK BUILDING
330 SHOUP AVENUE, THIRD FLOOR
P.O. BOX 50130
IDAHO FALLS, IDAHO 83405

TELEPHONE (208) 523-0620
FACSIMILE (208) 523-9518
E-MAIL KFOSTER@HOLDENLEGAL.COM

Arthur W. Holden
(1877-1967)
Robert B. Holden
(1911-1971)
Terry L. Crapo
(1939-1982)
William S. Holden
(1907-1988)

Of Counsel
Fred J. Hahn

March 6, 2003

Jennifer Crabtree
Idaho Department of Water Resources
900 N. Skyline Dr., Ste. A
Idaho Falls, ID 83402

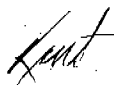
RE: SRBA Claim numbers 22-160, 22-545, 22-616

Dear Jennifer:

We recently received printouts of revisions of the above Notices of Claim. As a result of our amendments of these claims, you added the land in section 30. However, I have reviewed the lands in Sections 31 and 32, it appears to me that these new printouts may contain some errors. It looks like it is our fault because you just followed our amended claims. I have enclosed a copy of 22-160 with what appear to me to be the necessary corrections marked in red. I believe all three Notices of Claim contained the identical information. Would you mind reviewing those notices to see whether you think they should be corrected?

Normally I would wait until the preliminary recommendations come out because the corrections will probably be made at that time. However, we have a situation here where we are trying to comply with Wyoming law also because the state of Wyoming wants to document the point of diversion and conveyance means within that state, but is also reviewing the information from Idaho to make sure their records conform. I have received inquiries from the state of Wyoming about these numbers and thought perhaps I had better point this matter out to you now rather than wait. As always, thank you for your kind assistance.

Yours very truly,



Kent W. Foster

Enclosure

G:\WPDATA\KWF\8527 SMITH, BOYD\CORRESPONDENCE\Jennifer Crabtree, 030603.wpd:cdv

RECEIVED

MAR 17 2003

Department of Water Resources
Eastern Region

Law Offices
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

KENT W. FOSTER
ROBERT E. FARNAM
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Robert B. Holden
(1911-1971)
Terry L. Crapo
(1939-1982)
William S. Holden
(1907-1988)

Of Counsel
Fred J. Hahn

January 8, 2003

RECEIVED
JAN 09 2003
Department of Water Resources
Eastern Region

Idaho Department of Water Resources
Attn: Ernie Carlsen
900 N. Skyline Dr., Ste. A
Idaho Falls, ID 83402

RE: SRBA Claims of Boyd C. and Jill J. Smith Trust,
Nos. 22-160, 22-545, and 22-616

Dear Mr. Carlsen:

We are enclosing with this letter Amended Notices of Claim for the above numbered water rights of the Boyd C. and Jill J. Smith Trust. The purpose of these amendments is to account for a practice which commenced before 1987, which results in the use of South Leigh Creek water north of the road known as 600 North between South Leigh and North Leigh Creeks essentially along the south section line of Section 30. The land which is benefitted by the use of South Leigh Creek water is approximately 260 acres in the South half of Section 30 of T6N., R46E. The practice is described in the attached depositions of Jim Beard and Dee O'Brien and the affidavit of Mr. Delmar Scroughams, the ranch manager for the Smith Trust.

Please let us know if we may provide any additional assistance in this matter. Thank you for your kind attention to the matter.

Very truly yours,



Kent W. Foster

Enclosures

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT

STATE OF IDAHO, COUNTY OF TWIN FALLS

In Re: SBRA) Subcase Nos. 22-160
 Case No. 39576) 22-545
) 22-616

DEPOSITION OF JIM BEARD

Thursday, December 19, 2002, 12:50 p.m.

Driggs, Idaho

Katherine McCoy

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CSR No. 678

DEPOSITION OF JIM BEARD

BE IT REMEMBERED that the deposition of

JIM BEARD was taken by the attorney for Boyd Smith at the
 Super 8 Motel Conference Room, 133 S. Highway 33, Driggs,
 Idaho, before Katherine McCoy, Court Reporter and Notary
 Public in and for the State of Idaho, on the 19th day of
 December 2002, commencing at the hour of 12:50 p.m., in the
 above-entitled matter.

A P P E A R A N C E S

For Boyd Smith: HOLDEN, KIDWELL, HAHN & CRAPO
 By KENT W. FOSTER, ESQ.
 Attorneys at Law
 330 Shoup Avenue
 Third Floor
 P. O. Box 50130
 Idaho Falls, Idaho 83405

Also Present: DEE O'BRIEN

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I N D E X

E X A M I N A T I O N

WITNESS	EXAMINATION BY	PAGE
Jim Beard	Mr. Foster	4

E X H I B I T S

NUMBER	PAGE
1. Diagram	4

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1 December 19, 2002 12:50 p.m.

P R O C E E D I N G S

JIM BEARD,

Produced as a witness at the instance of Boyd Smith,
 was sworn, examined and testified as follows:

(Deposition Exhibit Number
 One was marked
 for identification.)

E X A M I N A T I O N

10 BY MR. FOSTER:

11 Q. State your full name and your address, please.

12 A. James Beard, P. O. Box 300, Tetonia, Idaho.

13 Q. Jim, the purpose of this deposition, of course,
 14 I've talked with you about it before so you know what we're
 15 trying to do.

16 If you have questions -- the most important
 17 thing is that we try to be truthful. I know that being
 18 accurate when we start talking about dates will be
 19 difficult, but I guess all we can do is the best we can.

20 My assignment is to try to ask intelligent
 21 questions, and yours is to try to figure out what I asked
 22 and see if you can answer it as accurately as is possible.

23 Jim, what is your occupation?

24 A. I farm primarily. I have another job I work in
 25 the winters, maintenance, and a few things at the Teton

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1 Ridge Ranch.
 2 Q. You've farmed for quite a number of years,
 3 haven't you, in the valley?
 4 A. Yeah, I've farmed pretty much all my life, I
 5 mean, you know, involved with Tilt there on this place we're
 6 talking about. And I went into business on my own, it's
 7 right about '85 farming on my own.
 8 Q. Okay. I'm going to say "all of your life" has
 9 got to be at least twenty-nine years?
 10 A. Thank you, double that; right?
 11 Q. Well --
 12 A. Some mornings it feels triple that.
 13 Q. I understand.
 14 But it's been actually -- you've actually farmed
 15 land in the basin for several decades?
 16 A. Right. I'm forty-four and I probably, well,
 17 like I say, I started farming pretty much as an occupation
 18 when I was twenty-two, twenty-one.
 19 Q. Well, let's come to this map that I'm showing
 20 you here. It's been marked as Deposition Exhibit One. It's
 21 the only exhibit we're going to have today. You've had a
 22 chance to look at it a little bit.
 23 I'm going to represent to you that it's a
 24 photocopy, a color copy of a section of a United States
 25 geological survey seven and a half minute quadrant angle map

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1 from the Clauson quadrant angle. And you'll see that some
 2 colors have been shown here. There is land that is shown in
 3 yellow and -- in the squares. And each of the squares
 4 represents -- is supposed to represent a quarter quarter
 5 section. Wherever that isn't a government lot, it would be
 6 about forty acres approximately.
 7 And you can see where the roads would be, I
 8 think, located on this map. And you can see some land
 9 that's in an orange color. Actually, I tried to make it a
 10 different color, but when you put a pink marker on the
 11 yellow, it turned orange. But you can see the difference in
 12 the colors, can't you?
 13 A. Uh-huh.
 14 Q. How long have you been familiar with this land?
 15 A. Many years. I used to, you know, pick potatoes
 16 on this place for Briggs when I was seven, eight years old,
 17 so since then, you know.
 18 Q. And then at some point in time you actually
 19 operated the property, didn't you?
 20 A. Yeah, I managed it for Albert, you know, for
 21 close to ten years, this piece here (indicating).
 22 Q. You're pointing at the land in yellow that's --
 23 A. Right.
 24 Q. -- that's south.
 25 A. South of --

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1 Q. South of that road. Is that road, am I accurate
 2 in saying that road is called 600 North?
 3 A. Well, I believe it would be because we've got
 4 500 here, I know. Yeah, that would be 600, sure.
 5 Q. And 600 North is a road that's shown as going
 6 east and west right about through the center of the map and
 7 through the center of this property. And so land south of
 8 that road was the land that was owned by, did you say his
 9 name was Tilt?
 10 A. Well, Briggs, worked for Briggs, then a fellow
 11 by the name of Andrew Little bought it and I worked for
 12 them.
 13 Q. Okay.
 14 A. And then Albert Tilt bought it from them and I
 15 worked for Albert there so --
 16 Q. So you've actually operated it for more people
 17 than just Tilts?
 18 A. Yeah, four different people. Well, I didn't
 19 operate it. I mean, I worked on the place for Briggs and
 20 Andrew Little.
 21 Q. Okay.
 22 A. His foreman was John Rogers and we built fences
 23 there and I moved a lot of pipe when I was young.
 24 Q. All right.
 25 A. Then I planted the grass that's there now for

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1 Ned Twining when he owned it, so four or five different
 2 owners.
 3 Q. And you're familiar with the owner now?
 4 A. Yeah, sure.
 5 Q. And that's --
 6 A. Boyd, Boyd Smith.
 7 Q. And that's the client that I'm representing as
 8 you're aware of.
 9 A. Sure, uh-huh.
 10 Q. Let me ask you this. During the time that you
 11 were familiar with this property and working there or
 12 operating it, let's try to pin down, you said about ten
 13 years?
 14 A. Uh-huh.
 15 Q. Do you know about which ten years that would be?
 16 A. Yeah, I went to work for Albert as pretty much,
 17 you know, farm manager in '78.
 18 Q. Okay.
 19 A. It was two years after I graduated, I believe,
 20 the spring of '78. And pretty much actively operated it, we
 21 started plowing the place fourteen years. And this
 22 (indicating) what we call the Brown place that Darwin Brown
 23 owned, I think we run it about five years of that ten.
 24 Q. That would be the property that's shown here in
 25 orange?

Page 10

Page 12

1 A. Yeah.
 2 Q. At the time that you were operating the property
 3 for Mr. Tilt then, this property was owned by Darwin?
 4 A. Darwin Brown, uh-huh.
 5 Q. And Mr. Tilt or you rented that from Mr. Brown?
 6 A. Well, Albert did, yeah.
 7 Q. Albert did, okay.
 8 How was that land irrigated when you were there?
 9 A. Well, it was irrigated by ditches and then, you
 10 know, for supplemental water, you know, as we talked, we
 11 come across 600 to the north.
 12 Q. Tell me just how you did that. How did you get
 13 across the road?
 14 A. As I recall Del Bainbridge dug the trench. And
 15 we just put a pipe, a steel metal pipe in the road. And, of
 16 course, not knowing at the time that, you know, you can
 17 legally do that or not. I mean, nobody said anything and we
 18 just thought it was, you know, part of the thing to do.
 19 It's the way Clampets farm around here.
 20 Q. You looked at Mr. O'Brien who's here today. And
 21 he was at that time the deputy water master. He knew about
 22 it as far as you know?
 23 A. I presume. I don't recall us having any
 24 conversations, but we may have done, yeah. It's been awhile
 25 ago obviously.

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1 Q. And the pipe that was across the road, how big a
 2 pipe was it?
 3 A. I'm thinking it had to house a four-inch hand
 4 line is what we stuck under there, so it's probably six
 5 inch, five or six inch well casing type.
 6 Q. Steel pipe?
 7 A. Uh-huh.
 8 Q. And so you basically just put this pipe to run
 9 another pipe through it?
 10 A. To protect an aluminum four-inch hand line is
 11 what it was.
 12 Q. And that's how you got water under pressure, I
 13 assume, to the other side?
 14 A. Right. And we had some port mains we scattered
 15 out over here (indicating). Fairly ineffective as far as
 16 covering the acreage, but it seemed to help --
 17 Q. But it supplemented?
 18 A. -- in the dry years.
 19 Q. What kinds of crops were grown there?
 20 A. Well, we was growing barley when we was farming
 21 that.
 22 Q. Okay. Now the water that was used on it without
 23 taking it across the road, was from what source?
 24 A. Well, it was out of North Lee. And we didn't --
 25 we dry farmed this a little over in here. It's better dirt

1 back over in here (indicating) and there's not much farm
 2 ground there anyway.
 3 Q. You're saying the northern portion of this land
 4 in orange?
 5 A. Right, uh-huh. This was all, you know, we tried
 6 to supplement or irrigate. And we come off this ditch that
 7 heads, you know, back up in the North Lee a ways.
 8 Q. Okay.
 9 A. What do you call that on the map? It's not
 10 Little. It's a ditch that comes right through.
 11 Q. Yeah, I think "Little" refers to Little Dry
 12 Creek.
 13 A. Uh-huh. See, this ditch, (indicating) I'm
 14 surprised it isn't on the map. It comes in right here
 15 (indicating). That old canal that goes through the Galloway
 16 Hill subdivision.
 17 Q. Will it might -- would it be this one?
 18 MR. O'BRIEN: It's shown as the Weaver ditch.
 19 Q. (BY MR. FOSTER) It doesn't --
 20 A. This ditch come in right here. It's not showing
 21 it on the map.
 22 Q. Okay.
 23 A. This may have been at one time, I see, that's a
 24 drainage there of some sort, isn't it?
 25 Q. It shows as a broken line. I understand that's

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1 an intermittent kind of stream.
 2 A. This is where it headed in with what we
 3 irrigated this area with anyway (indicating).
 4 Q. And then what was the purpose of bringing water
 5 -- where did the water come from that was brought across the
 6 road?
 7 A. Well, it was out of this irrigation system that
 8 Albert had put in, I believe about '78 or -- well, no.
 9 Let's see. It was prior to that because Briggs had it in
 10 there and they had hand lines.
 11 Q. Okay.
 12 A. And that headed right here (indicating), ducted
 13 into the main line right here (indicating).
 14 Q. You're showing about the --
 15 A. This is where the houses are right now where --
 16 Q. Okay. Near the houses?
 17 A. Ducted in that main line right there and run the
 18 length of the place (indicating). And we just come off a
 19 riser right here somewhere (indicating) and headed that
 20 direction.
 21 Q. And went north up under the road. What's the
 22 source of that water?
 23 A. South Lee.
 24 Q. And under what kinds of conditions, just
 25 describe the conditions generally, if you can, when the

Page 14

Page 16

1 water from South Lee was used on the north side of the road?
 2 A. Well, one, when this ditch that fed this area
 3 here (indicating), this canal that heads back up here in
 4 Wyoming, had a lot of problems. You can see by the topo
 5 here it was steep. It would wash out.

6 Q. And that's the one from North Lee Creek?

7 A. Uh-huh. We always had trouble with it washing
 8 out. Trying to keep water in it was a big hassle. So those
 9 sorts of circumstances. Generally, when, you know, it was
 10 real drought, it was cut off anyway, but we would use it too
 11 because we had plenty of water here (indicating) and the
 12 ditches would suffer.

13 Q. When you say "here," plenty of water south of
 14 the road on the land that had the South Lee Creek water?

15 A. Yeah, we seemed to have plenty of water there.
 16 And actually, we diverted it over there in them sort of
 17 situations.

18 Q. Now, let's just try as close as we can to try to
 19 pin down the time frame which that might have happened. If
 20 you operated the property for Mr. Tilt between about '78 and
 21 '88 approximately?

22 A. Yeah, or '85 or '6, right in there.

23 Q. Okay.

24 A. Eight to ten years. And I've thought about that
 25 some. I really think we probably operated Darwin's place

1 until '85 or '86 or that time frame, do you know who did it
 2 after you?

3 A. Well, my brother, see, I started farming on my
 4 own right at the '85 area. So I wasn't farming, you know,
 5 we could look through the records and see when Twining
 6 bought this from Tilt. That would tell us when, you know, I
 7 was done there. And then I planted it. I think I planted
 8 it for Albert that spring, and then Twining bought it.

9 And then the following year Twining wanted back
 10 the grass so he hired me to plant the grass. And that would
 11 be, you know, in that -- look through the records and see
 12 when Twining bought it from Albert and know when.

13 Q. Okay. So it would have been the spring after
 14 Twining bought it that you planted --

15 A. Planted it back to grass.

16 Q. And that would have been the land in orange?

17 A. No.

18 Q. The land south of the road?

19 A. Yeah, let's see. Yeah, the land south of the
 20 road. I'm trying to think. It's been a long time, a lot of
 21 ground under the bridge since then, water too. We may have
 22 just barley'd this (indicating) and kept this in hay too as
 23 far as --

24 Q. You're speaking of the land north?

25 A. Right, north. I know I planted all this to

Page 15

Page 17

1 three to five years.

2 Q. Do you know which would have been on that one
 3 end or the other of that ten year period?

4 A. It's probably been toward the earlier end. I'm
 5 thinking, I'm trying to think of who -- let's see. Twining
 6 bought that from Darwin. I just, you know, to recall that,
 7 I'm going to be honest about it, I won't know. And there
 8 again, it would be within that time frame and we would have
 9 operated it between three and five years, three more
 10 realistic probably than five, might be long, somewhere in
 11 there, maybe four years.

12 Q. And you're thinking that would have been nearer
 13 the '78 or '82 or '81 or '82 time period?

14 A. No. It would have been two or three years after
 15 I was there. I doubt we started farming that until -- I was
 16 just trying to think of some events there that would help me
 17 recollect because it took us -- we run the cattle here
 18 (indicating), until probably '81 or '2 and then we started
 19 plowing. So it would be the tail end of my tenure there as
 20 far as, you know.

21 Q. Would it have been prior to 1987?

22 A. For sure.

23 Q. So you feel confident it was prior to '87?

24 A. I've got think so. Sure. Yeah.

25 Q. And if you were there operating the property

1 grass for Twining.

2 Q. That's the land south of the road?

3 A. Uh-huh. And then I think I planted some of this
 4 too (indicating).

5 Q. Okay. And that was just before you went on your
 6 own?

7 A. Yeah.

8 Q. Didn't operate it?

9 A. Right.

10 Q. Okay. I can't really think of any more
 11 questions, Jim. If you can think of anything --

12 A. I wished I could be more thorough in my
 13 recollection, but I understand -- did you try to get a hold
 14 of Darwin?

15 Q. Yes.

16 A. I've had a hard time finding him.

17 Q. Have you ever been able to find him?

18 A. Huh-uh.

19 Q. I haven't been successful in reaching him
 20 either.

21 A. And Albert, he said, without looking through all
 22 his records, and I'd hate to bother him with it, but he
 23 could pin down some time frames, I suppose. I don't know
 24 Albert well, but is he getting somewhat elderly?

25 A. His mind is still together, I mean, pretty well.

1 He's, what, the same age as pa, I think, 72, but his mind is
2 good. He could probably recollect maybe even better than me
3 as to what went on.

4 Q. Okay. I have spoken with him and nothing was
5 inconsistent with what you've said. He kept insisting that
6 you'd be the guy that knew.

7 A. Well, okay. I don't know maybe --

8 Q. You've done a good job. I appreciate that. I
9 think I don't have any further questions.

10 (Off the record.)

11 (The deposition of JIM BEARD was

12 adjourned at 1:10 p.m., December 19, 2002.)
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1 OFFICER'S CERTIFICATE

2 STATE OF IDAHO }

3 County of Bonneville)

4 I, Katherine McCoy, CSR, do hereby certify
5 JIM BEARD, P. O. Box 300, Tetonia, Idaho 83452, was sworn to
6 testify the truth in the within-entitled cause; that said
7 deposition was taken at the time and place therein named;
8 that the testimony of said witness was reported by myself,
9 Notary Public and Certified Court Reporter; that the
10 deposition is a true record of the testimony given by the
11 witness, as recorded on the foregoing 17 pages.

12 And I further certify that I am not related to any of
13 the parties nor do I have any financial interest in the
14 matter.

15 IN WITNESS WHEREOF, I have hereunto set my hand and
16 affixed my seal of office this 30th day of December, 2002.
17

18 Katherine McCoy
19 Certified Shorthand Reporter
Notary Public for Idaho

20 Commission expires 3/12/2008
21
22
23
24
25

1 VERIFICATION

2 STATE OF IDAHO }

3 County of Teton }

4 I, JIM BEARD, P. O. Box 300, Tetonia, Idaho 83452,
5 depose and say that I am the witness referred to in the
6 foregoing deposition, consisting of 17 pages, that I have
7 read the same and know the contents thereof; that the same
8 are true to my knowledge, or corrections, if any, as noted.

9 Page Line Should Read Reason

10 _____
11 _____
12 _____
13 _____
14 _____
15 _____

16 (Signed) _____
Deponent

17 Subscribed and sworn to before me on this _____ day
18 of _____,
19 _____.

20 (Seal) Notary Public for _____

21 Commission expires _____
22
23
24
25

-I- '2 [1] 15:18 '6 [1] 14:22 '78 [5] 9:17,20 13:8 14:20 15:13 '81 [2] 15:13,18 '82 [2] 15:13,13 '85 [4] 6:7 14:22 16:1,4 '86 [1] 16:1 '87 [1] 15:23 '88 [1] 14:21	-A- able [1] 17:17 above-entitled [1] 3:9 accurate [2] 5:18 8:1 accurately [1] 5:22 acreage [1] 11:16 acres [1] 7:6 actively [1] 9:20 address [1] 5:11 adjourned [1] 18:12 affixed [1] 20:16 again [1] 15:8 age [1] 18:1 ago [1] 10:25 Albert [11] 7:20 8:14,15 9:16 10:6,7 13:8 16:8,12 17:21,24 aluminum [1] 11:10 always [1] 14:7 Andrew [2] 8:11,20 angle [2] 6:25 7:1 answer [1] 5:22 anyway [3] 12:2 13:3 14:10 appreciate [1] 18:8 area [3] 13:3 14:2 16:4 assignment [1] 5:20 assume [1] 11:13 attorney [1] 3:4 Attorneys [1] 3:16 Avenue [1] 3:16 aware [1] 9:8 awhile [1] 10:24	bringing [1] 13:4 broken [1] 12:25 brother [1] 16:3 brought [1] 13:5 Brown [4] 9:22,22 10:4,5 built [1] 8:22 business [1] 6:6	Del [1] 10:14 Deponent [1] 19:16 depose [1] 19:5 deposition [10] 2:14 3:2 3:3 5:6,13 6:20 18:11 19:6 20:7,10 deputy [1] 10:21 describe [1] 13:25 Diagram [1] 4:13 difference [1] 7:11 different [3] 7:10 8:18 9:1 difficult [1] 5:19 direction [1] 13:20 dirt [1] 11:25 DISTRICT [2] 2:1,1 ditch [6] 12:6,10,13,18 12:20 14:2 ditches [2] 10:9 14:12 diverted [1] 14:16 doesn't [1] 12:19 done [3] 10:24 16:7 18:8 double [1] 6:10 doubt [1] 15:15 down [3] 9:12 14:19 17:23 drainage [1] 12:24 Driggs [2] 2:16 3:5 drought [1] 14:10 dry [3] 11:18,25 12:11 ducted [2] 13:12,17 dug [1] 10:14 During [1] 9:10	farming [6] 6:7,17 11:20 15:15 16:3,4 fed [1] 14:2 feels [1] 6:12 fellow [1] 8:10 fences [1] 8:22 few [1] 5:25 FIFTH [1] 2:1 figure [1] 5:21 financial [1] 20:13 finding [1] 17:16 five [6] 9:1,23 11:5 15:1 15:9,10 Floor [1] 3:17 following [1] 16:9 follows [1] 5:5 foregoing [2] 19:6 20:11 foreman [1] 8:22 forty [1] 7:6 forty-four [1] 6:16 Foster [4] 3:15 4:5 5:10 12:19 four [3] 8:18 9:1 15:11 four-inch [2] 11:3,10 fourteen [1] 9:21 frame [3] 14:19 15:8 16:1 frames [1] 17:23 full [1] 5:11
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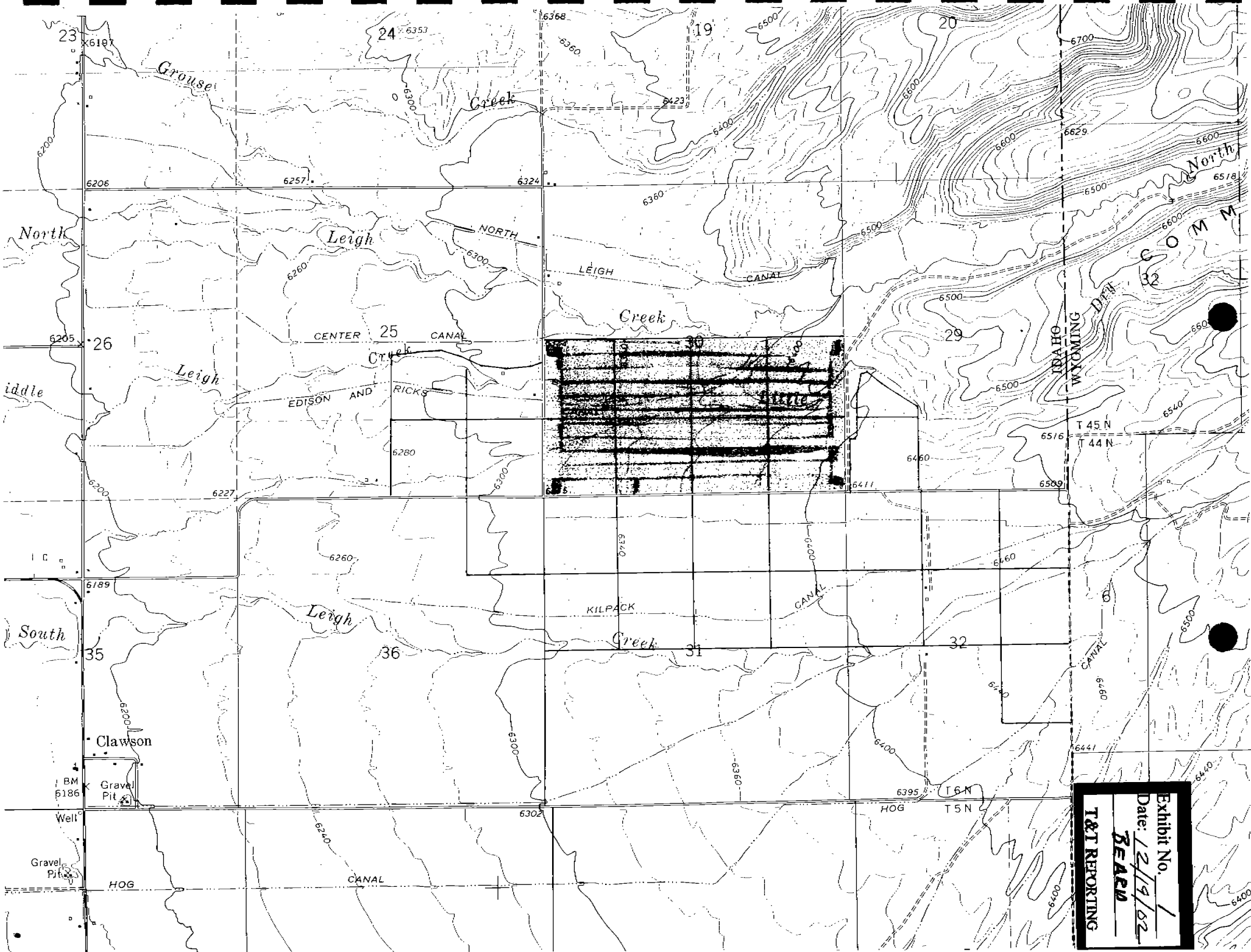


Exhibit No. 1
Date: 12/19/02
BEARD
T&T REPORTING

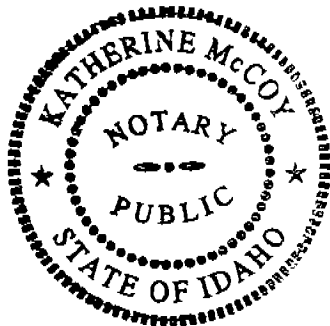
OFFICER'S CERTIFICATE

STATE OF IDAHO)
)
County of Bonneville)

I, Katherine McCoy, CSR, do hereby certify
JIM BEARD, P. O. Box 300, Tetonia, Idaho 83452, was sworn to
testify the truth in the within-entitled cause; that said
deposition was taken at the time and place therein named;
that the testimony of said witness was reported by myself,
Notary Public and Certified Court Reporter; that the
deposition is a true record of the testimony given by the
witness, as recorded on the foregoing 17 pages.

And I further certify that I am not related to any of
the parties nor do I have any financial interest in the
matter.

IN WITNESS WHEREOF, I have hereunto set my hand and
affixed my seal of office this 30th day of December, 2002.



Katherine McCoy
Katherine McCoy
Certified Shorthand Reporter
Notary Public for Idaho
Commission expires 3/12/2008

Page 1

1 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT

2 STATE OF IDAHO, COUNTY OF TWIN FALLS

3

4

5 In Re: SEBA) Subcase Nos. 22-160
Case No. 39576) 22-545
6) 22-616
7)

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14 DEPOSITION OF DEE O'BRIEN

15 Thursday, December 19, 2002, 1:15 p.m.

16 Driggs, Idaho

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25 Katherine McCoy

Page 2

1 CSR No. 678

2 DEPOSITION OF DEE O'BRIEN

3 BE IT REMEMBERED that the deposition of

4 DEE O'BRIEN was taken by the attorney for Boyd Smith at the

5 Super 8 Motel Conference Room, 133 S. Highway 33, Driggs,

6 Idaho, before Katherine McCoy, Court Reporter and Notary

7 Public in and for the State of Idaho, on the 19th day of

8 December 2002, commencing at the hour of 1:15 p.m., in the

9 above-entitled matter.

10

11

12 A P P E A R A N C E S

13

14

15 For Boyd Smith: HOLDEN, KIDWELL, HARN & CRAPO
By KENT W. FOSTER, ESQ.
Attorneys at Law
330 Shoup Avenue
Third Floor
P. O. Box 50130
Idaho Falls, Idaho 83405

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Page 3

1 I N D E X

2 E X A M I N A T I O N

3

4 WITNESS EXAMINATION BY PAGE

5 Dee O'Brien Mr. Foster 4

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11 E X H I B I T S

12 NUMBER PAGE

13 1. Diagram 4

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Page 4

1 December 19, 2002 1:15 p.m.

2 P R O C E E D I N G S

3 D E E O ' B R I E N ,

4 Produced as a witness at the instance of Boyd Smith,

5 was sworn, examined and testified as follows:

6 (Deposition Exhibit Number

7 One was marked

8 for identification.)

9 E X A M I N A T I O N

10 BY MR. FOSTER:

11 Q. Sir, will you please state your name?

12 A. John D. O'Brien.

13 Q. And your address?

14 A. 58 South 3rd East, Driggs.

15 Q. What is your occupation, Mr. O'Brien?

16 A. I'm a school teacher.

17 Q. Here in Teton Valley?

18 A. Teton County, right.

19 Q. Mr. O'Brien, in prior years you had another

20 occupation that took your summers up, and you remember that?

21 A. Yes, I got rid of that one.

22 Q. What was that?

23 A. I was the deputy water master for Water District

24 Number One.

25 Q. Okay. And your assignment was specifically

1 Teton basin --
 2 A. Right.
 3 Q. -- area.
 4 You were here during the deposition of Mr. Jim
 5 Beard?
 6 A. Yes.
 7 Q. And, of course, you've seen the map that was
 8 marked as Deposition Exhibit One for his deposition. We'll
 9 just use the same map. There is no point in using another
 10 one.
 11 A. Okay.
 12 Q. You've looked at it long enough to orient
 13 yourself on it?
 14 A. Yes.
 15 Q. And you heard his testimony about a time period
 16 when he operated the property shown in yellow and orange?
 17 A. (Witness nods head.)
 18 Q. As I understood his testimony, he described that
 19 when some of this land was owned by people prior to
 20 Mr. Tilt, Mr. Briggs and others. He worked there so he was
 21 familiar with the land. And then I think he said that about
 22 maybe 1978 or approximately that time, he began to operate
 23 the property for Mr. Tilt as a farm manager?
 24 A. Yes.
 25 Q. And sometime during, approximately eight to ten

1 years, if I understood his testimony correctly, Mr. Tilt
 2 rented the land shown in orange here as the south half of
 3 Section 30 which is across the road to the north from his
 4 other land, he rented that from Darwin Brown?
 5 A. Uh-huh.
 6 Q. And Mr. Beard also operated that property.
 7 A. (Witness nods head.)
 8 Q. As I understood it, at some point in time in
 9 order to supplement the irrigation of the land north of the
 10 road that is shown in orange here, Mr. Beard said that he
 11 put a steel pipe across the road that permitted him to
 12 insert an aluminum, four-inch aluminum pipe through so he
 13 could sort of use it as main line to then sprinkle land
 14 north of the road with South Lee Creek water.
 15 A. Uh-huh.
 16 Q. Now you are familiar with that practice? Did
 17 you ever see that happening and know that it was happening?
 18 A. Did I condone it? You had talked with me about
 19 records. And I looked through to see if in my regulating
 20 South Lee or North Lee water, if there had been any record.
 21 Initially, I didn't see anything. However, going back
 22 through, in fact, about the third time through, 1984.
 23 July 11, 1984, I have a note, "Talked to Lyle"
 24 referring to Lyle Swank at the water office, "about
 25 Harlanders" (phonetic). Harlanders were people that owned

1 this land down here (indicating).
 2 Q. You're speaking of --
 3 A. -- the land that is west of the orange property.
 4 Q. About the southeast quarter of 25 then?
 5 A. Uh-huh.
 6 Q. Okay.
 7 A. And just -- I have a note, talk to Lyle, "Talked
 8 to Lyle about Harlanders and Tilts watering out of South Lee
 9 pump" which would be even though it doesn't say North Lee
 10 ground, it does say "Harlanders" where these -- ran this
 11 place (indicating). And Tilt was running this place at the
 12 time (indicating). And so the practice was going on in '84.
 13 I had a question about it so I talked to Lyle
 14 Swank. I didn't write down the conversation Lyle and I had,
 15 but I made a note in the top of the next page, "Talked to"
 16 meaning action to be taken, "Tilt needs to transfer right
 17 and talk to Don Harlander."
 18 And there is no follow-up information, but I'm
 19 sure I did talk to Albert Tilt about -- and had he done that
 20 at the time, we wouldn't be having this conversation.
 21 Q. That's correct.
 22 A. But -- so it was a practice. It was going on
 23 that I had questions about in 1984.
 24 Q. Okay.
 25 A. So that pinpoints the date somewhat.

1 Q. It does, and I very much appreciating taking the
 2 time to go through your records again, Mr. O'Brien. That's
 3 very helpful. So it's clear that the practice began prior
 4 to 1987 because we know it was happening in the year of
 5 1984.
 6 Do you have any clear recollection it happened
 7 other years prior to 1987 or during that time period?
 8 A. Well, apparently as early as '84, but I don't
 9 have any records, my main concern was about diversions, not
 10 about places of use.
 11 Q. Uh-huh.
 12 A. And knowing that they did have a South Lee
 13 right, I was -- because I checked for water, I had to drive
 14 right by this place so I was aware that the practice was
 15 going on, but definitely had some concerns. And I don't
 16 have any information about the years specifically that it
 17 went on.
 18 Q. But you think it was more than one?
 19 A. Oh, I know it was more than one year. It
 20 definitely went on a number of years.
 21 Q. Do you remember anyone ever questioning it or
 22 you were concerned about the fact it was --
 23 A. I questioned it.
 24 Q. You questioned it because it was water coming
 25 out of South Lee?

1 A. Out of South Lee.
 2 As Mr. Beard mentioned in his testimony, there
 3 were all sorts of problems with what I call in my records,
 4 the Weaver ditch or Weaver Canal.
 5 Q. And that was the canal that had water --
 6 A. Out of North Lee.
 7 Q. -- coming out of North Lee?
 8 A. Right. That's the canal they had horrible
 9 maintenance problems. It comes along a rocky hillside. And
 10 I do recall a number of times the farm managers calling and,
 11 saying our canal is in trouble, can we use this water and
 12 the pipe to irrigate while we get this place fixed, while we
 13 get this canal fixed up, or there were beaver problems up in
 14 the main creek, North Lee the branch where the Weaver
 15 headgate was.
 16 And if it didn't, in my opinion, damage water
 17 rights downstream and, you know, I made sure that they knew
 18 they were to stay within their existing amount of their
 19 water right, then I allowed it to go on. But there were
 20 times that -- when water was short on South Lee that I would
 21 go up and tell them to shut off that portion.
 22 Q. Okay. So in your mind you had at least some
 23 conditions under which you felt it could be used and
 24 conditions under which it shouldn't be used?
 25 A. Right.

1 Q. And did the water users pretty much adhere to
 2 your recommendations?
 3 A. For the most part.
 4 Q. Okay.
 5 A. You know, if I went up and said, okay, the
 6 decrees are off, you've got to shut off, or we're having
 7 trouble getting water down South Lee, you know, you've got
 8 to shut that off until we get things -- if there was plenty
 9 of water, if it was during high water time early in the
 10 irrigation season, I didn't have any problems with it. Or
 11 if anybody from downstream complained that they were running
 12 short of water, then I immediately went to them and said,
 13 shut off.
 14 Q. Okay.
 15 A. So it was something that I was aware of.
 16 Q. Do you, first of all, I probably ought to ask
 17 you, what years did you serve as the deputy water master?
 18 A. From 1978 to 2000, through 2000.
 19 Q. Okay. So you just recently terminated --
 20 A. Retired.
 21 Q. -- that job?
 22 A. Yeah.
 23 Q. Retired from that job. Okay.
 24 We've talked about this use prior to 1987. To
 25 your recollection have you seen that use occur since 1987?

1 A. Uh-huh. I couldn't pinpoint exact years, but it
 2 has occurred since then.
 3 Q. Any more than one year?
 4 A. More than one year.
 5 Q. Okay. As I recall 1997 was a fairly high water
 6 year. In fact, I seem to recall hearing that that year,
 7 there was some additional serious damage that occurred on
 8 the Weaver ditch to the point it couldn't even be used after
 9 that. Do you know if water was used after '97 from --
 10 A. On this ground?
 11 Q. Yeah, from the South Lee source.
 12 A. I couldn't say for sure, you know, from my
 13 records, but there is a good likelihood.
 14 Q. Okay. I think I've covered all the things I can
 15 think about. Can you think of anything else that's
 16 important?
 17 A. I think points that are -- that probably need to
 18 be made, you know, I feel a lot like Mr. Beard as far as
 19 wanting to protect existing water rights on South Lee,
 20 concern that there not be any damage done there.
 21 And I think one point that was always made to
 22 the users was that there were two pumps that were diversion
 23 points for this South Lee property up here along the state
 24 line. And anytime water was being used over here
 25 (indicating) --

1 Q. Speaking of the orange?
 2 A. -- speaking of the land over on North Lee, my
 3 records indicate, and I don't mention anything again about
 4 point of use, but I made notes in my records about only one
 5 pump being used.
 6 And early on when this was started, they
 7 maintained a meter so that there was no question. Later,
 8 under later owners it became more difficult for me to make
 9 sure they maintained that meter so I knew exactly how much
 10 water was being used, but I did make note that there was
 11 only one pump which I felt was at least protecting the
 12 downstream users by limiting the amount they could pump.
 13 Q. So you wanted to make certain that no more
 14 water --
 15 A. Right, that they just weren't running both pumps
 16 wide open to irrigate land that was outside.
 17 Q. So the amount of water that was used there never
 18 increased the diversion rate --
 19 A. Right.
 20 Q. -- that was allowed under the water rights --
 21 A. Right.
 22 Q. -- that you were administering from the South
 23 Lee source?
 24 A. Right. And the way I saw their set up, I didn't
 25 feel like it was, you know, that they were even reaching the

1 capacity of their water right on South Lee.
 2 Q. Okay.
 3 A. Which made it a little easier to justify,
 4 they're having trouble with this other canal, okay, they're
 5 staying within -- they're cutting down some of their use
 6 here to use that there (indicating).
 7 Q. So they were primarily using the water from
 8 south Lee on the land in orange as a supplemental source?
 9 A. Right.
 10 Q. All right. I can't think of any other
 11 questions.
 12 A. Okay.
 13 Q. Maybe we ought to do the same thing and let
 14 Mr. O'Brien review it.
 15 THE REPORTER: Do you have a P. O. Box?
 16 THE WITNESS: P. O. Box 331.
 17 THE REPORTER: Driggs?
 18 THE WITNESS: Driggs.
 19 (Off the record.)
 20 (The deposition of DEE O'BRIEN was
 21 adjourned at 1:25 p.m., December 19, 2002.)
 22
 23
 24
 25

1 OFFICER'S CERTIFICATE
 2 STATE OF IDAHO)
 3 County of Bonneville)
 4 I, Katherine McCoy, CSR, do hereby certify
 5 DEE O'BRIEN, P. O. Box 331, Driggs, Idaho 83422, was sworn
 6 to testify the truth in the within-entitled cause; that said
 7 deposition was taken at the time and place therein named;
 8 that the testimony of said witness was reported by myself,
 9 Notary Public and Certified Court Reporter; that the
 10 deposition is a true record of the testimony given by the
 11 witness, as recorded on the foregoing 13 pages.
 12 And I further certify that I am not related to any of
 13 the parties nor do I have any financial interest in the
 14 matter.
 15 IN WITNESS WHEREOF, I have hereunto set my hand and
 16 affixed my seal of office this 30th day of December, 2002.
 17
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 22
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Katherine McCoy
 Certified Shorthand Reporter
 Notary Public for Idaho

Commission expires 3/12/2008

1 VERIFICATION
 2 STATE OF IDAHO)
 3 County of Teton)
 4 I, DEE O'BRIEN, P. O. Box 331, Driggs, Idaho 83422,
 5 depose and say that I am the witness referred to in the
 6 foregoing deposition, consisting of 13 pages, that I have
 7 read the same and know the contents thereof; that the same
 8 are true to my knowledge, or corrections, if any, as noted.
 9 Page Line Should Read Reason
 10 _____
 11 _____
 12 _____
 13 _____
 14 _____
 15 _____
 16 (Signed) _____
 17 Deponent
 18 Subscribed and sworn to before me on this _____ day
 19 of _____,
 20 (Seal) Notary Public for _____
 21 Commission expires _____
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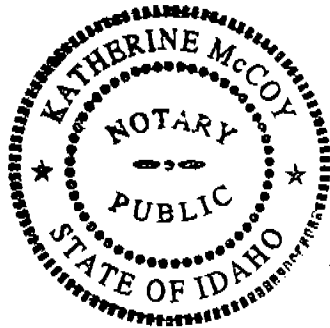
OFFICER'S CERTIFICATE

STATE OF IDAHO)
)
County of Bonneville)

I, Katherine McCoy, CSR, do hereby certify
DEE O'BRIEN, P. O. Box 331, Driggs, Idaho 83422, was sworn
to testify the truth in the within-entitled cause; that said
deposition was taken at the time and place therein named;
that the testimony of said witness was reported by myself,
Notary Public and Certified Court Reporter; that the
deposition is a true record of the testimony given by the
witness, as recorded on the foregoing 13 pages.

And I further certify that I am not related to any of
the parties nor do I have any financial interest in the
matter.

IN WITNESS WHEREOF, I have hereunto set my hand and
affixed my seal of office this 30th day of December, 2002.



Katherine McCoy
Katherine McCoy
Certified Shorthand Reporter
Notary Public for Idaho
Commission expires 3/12/2008

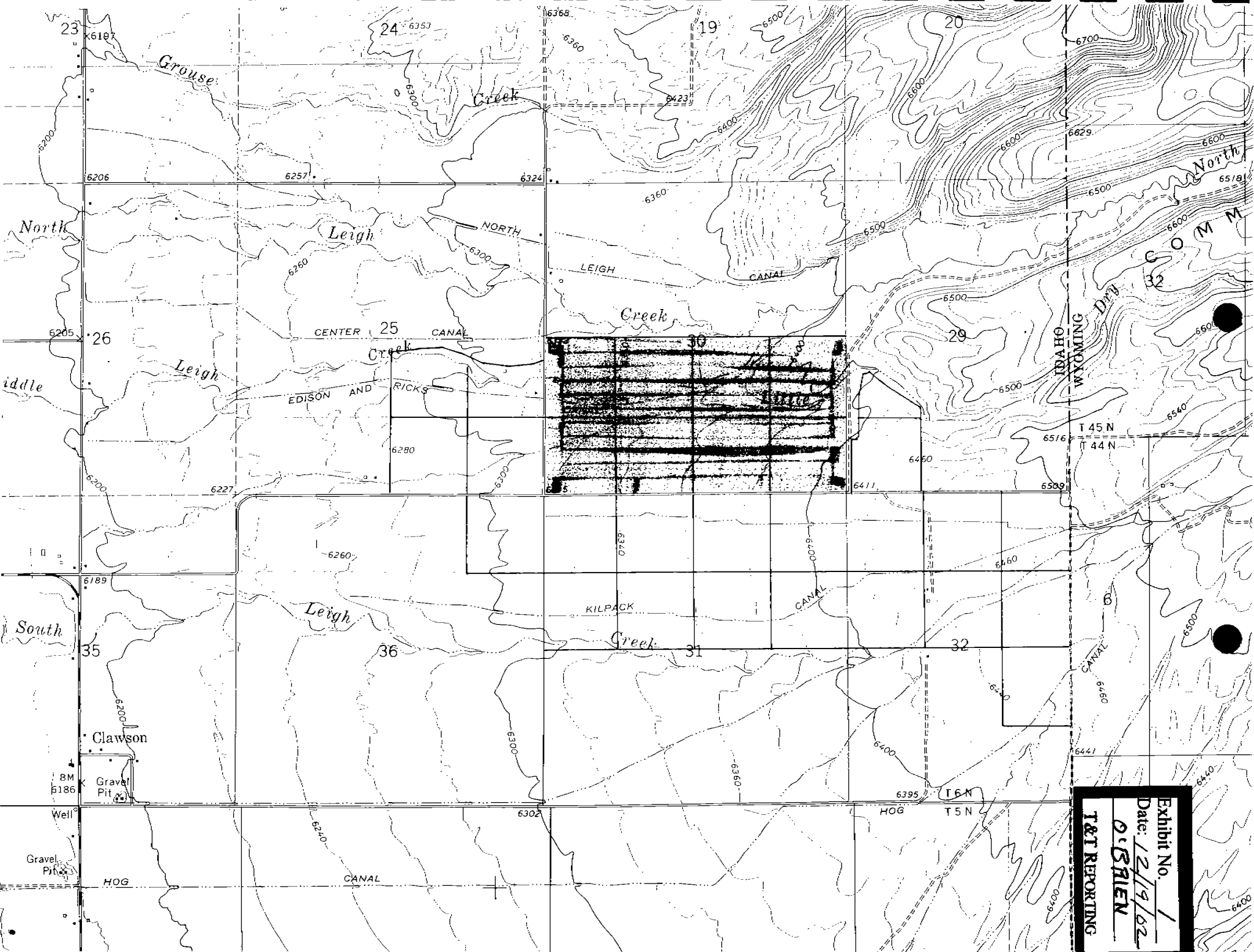


Exhibit No. 1
Date: 12/19/02
O. BRIEN
T&T REPORTING

AFFIDAVIT OF DELMAR SCROUGHAMS

RECEIVED
JAN 09 2003
Department of Water Resources
Eastern Region

STATE OF IDAHO)
)ss
County of Teton)

Delmar Scroughams being first duly sworn, on his oath deposes and says:

1. Affiant is, and has been, a resident of Teton County, Idaho, for the past 22 and one-half years.
2. Affiant is currently employed by the Boyd Charles and Jill Johnson Smith Trust, as manager of the Teton Ranch near Tetonia, Idaho, and has served in such capacity since the acquisition of the ranch lands by the Smith Trust in the fall of 1996. Affiant's duties include the irrigation and operation of the ranch lands.
3. At the time of the acquisition of the ranch lands by the Smith Trust, such lands included the south half of Section 30 and the north half of Section 31 in Township 6 north, Range 46 E.B.M., most of which were irrigated agricultural lands. There is an east-west road dividing these two (2) half sections. The south half of Section 30, which is located north of the road, has historically been irrigated primarily with water from the North Leigh Creek Drainage, and the north half of Section 31, which is located south of the road, has historically been irrigated with water under rights to the waters of South Leigh Creek. However, when affiant began operation of these lands, there were two (2) steel pipes located underneath the road, one near the eastern side of the two (2) half sections, and the other near the western side, through which main line could be placed to permit sprinkler irrigation of the land in the south half of Section 30, north of the road, with water diverted from South Leigh Creek. The South Leigh Creek source is usually a significantly more dependable source of water supply than the North Leigh Creek source, and affiant learned by his own experience and from former operators of

the property, that there were occasions when the land north of the road in Section 30 were short of water from the North Leigh Creek Drainage, when water had historically been brought from South Leigh Creek by means of the mainline placed under the road through the pipes, and used to supplement the irrigation of the land in Section 30 on the north side of the road. Affiant has continued this practice whenever needed since he began operation of these lands for the Smith Trust in the spring of 1997.

4. In the spring of 1997, the ditch (known locally as the Weaver Ditch) which diverted water from North Leigh Creek and transported the same to the lands in the south half of Section 30, was seriously damaged by wash outs because of the high run off early in the irrigation season of that year. The damage to the Weaver Ditch was so severe, that it was impractical to repair it, and it became necessary for the Smith Trust to substantially alter the diversion and delivery system from the North Leigh Creek drainage, and to apply to the Idaho Department of Water Resources for a transfer in point of diversion for the water rights from that source. This process took quite some time to complete, and for that and most of the next two (2) irrigation seasons, it was even more essential to rely on the water from South Leigh Creek to supplement the irrigation of the lands in the south half of Section 30 north of the road. Even after the new diversion and delivery system were completed, there have been substantial drouths during the irrigation seasons of 2000, 2001 and 2002, and there have been times when essentially no water was available from the North Leigh Creek source, and it was necessary to supplement the irrigation of the lands in the south half of Section 30 with water from South Leigh Creek, brought under the road through the pipes described.
5. In 1999, affiant replaced the western most pipe under the road with eight (8) inch double wall steel pipe because the old pipe was so badly rusted and deteriorated. Affiant had understood from the former Deputy Water Master for the Teton Basin,

Mr. Dee O'Brien, that the practice had been in effect from the late 70's or early 80's, whenever there was inadequate water from North Leigh Creek and adequate water from South Leigh Creek, and the lands in the south half of Section 30 required the supplemental irrigation, so long as no more water was diverted from South Leigh Creek than authorized under the existing rights of the ranch lands south of the road to the use of the waters of South Leigh Creek.

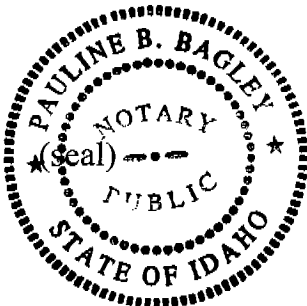
IN WITNESS WHEREOF, affiant has hereunto set his hand this 26 day of November, 2002.

Delmar Scroughams
Delmar Scroughams

STATE OF IDAHO)
)ss.
County of Teton)

On this 26 day of November, in the year 2002, before me a notary public in and for said State, personally appeared Delmar Scroughams known or identified to me (or proved to me on the oath of Delmar Scroughams to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Pauline Bagley
Notary Public for Idaho
Residing at: Victor
My commission expires: 8/2005

Kent W. Foster, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.
P.O. Box 50130
330 Shoup Avenue, Third Floor
Idaho Falls, Idaho 83405
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Idaho State Bar Number 1198

RECEIVED
DEC 12 2002
Department of Water Resources
Eastern Region

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
Case No. 39576

Subcase Nos. 22-160, 22-545 and
22-616

SUBPOENA TO APPEAR AT
DEPOSITION (DUCES TECUM)

TO: DEE O'BRIEN

YOU ARE HEREBY COMMANDED to appear at Super 8 Motel Conference Room, 133 S. Highway 33, Driggs, Idaho, on the 19TH day of December, 2002, at 1:00 p.m., as a witness in the above entitled action for the purpose of your deposition being taken at the request of Boyd C. and Jill J. Smith Trust.

YOU ARE FURTHER COMMANDED to bring with you the following items and documents:

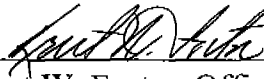
1. Any written records in your possession regarding use of water rights nos. 22-160, 22-545 and 22-616 o lands North of the road in Section 30, T. 6N., R. 46E.

COPY

YOU ARE FURTHER NOTIFIED that if you fail to appear at the place and time specified above, you may be held in contempt of court, and the aggrieved party may recover from you the sum of \$100.00 and all damages which he/she may sustain by your failure to attend as a witness.

BY ORDER OF THE COURT.

Dated this 14th day of December, 2002.



Kent W. Foster, Officer of the Court
By Virtue of Idaho State Bar Membership

G:\WPDATA\KWF\8527 SMITH, BOYD\Subpoena, O'Brien.wpd:edv

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Robert B. Holden
(1911-1971)
Terry L. Crapo
(1939-1982)
William S. Holden
(1907-1988)

July 24, 2001

RECEIVED

JUL 26 2001

Department of Water Resources
Eastern Region

IDAHO DEPARTMENT
OF WATER RESOURCES
900 N. Skyline
Idaho Falls, ID 83402-1718

Dear Ladies and Gentlemen:

We are enclosing with this letter a late claim on behalf of the Boyd C. and Jill J. Smith Trust. This water right appears to have been used on land also claimed under water right number 22-160 and so the acreage fee was already paid with that claim. We are enclosing our check in amount of \$100.00 (\$50.00 for the claim and \$50.00 for the late claim fee). If anything else is required please contact us at your convenience.

Very truly yours,



Kent W. Foster

Enclosure

G:\WPDATA\KWF\8527\IDWR072401.ltr.wpd:ljm