

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS - SRBA
TWIN FALLS CO., IDAHO

FILED _____

In Re the General Adjudication)
of the Rights to the Use of Water)
from the Snake River Basin)
Water System)

Case No. 34-07122A -0001

The State of Idaho, ex rel.)
R. Keith Higginson in his)
official capacity as Director)
of the Idaho Department of)
Water Resources,)

RESPONSE TO OBJECTION

Petitioner,)

vs.)

The United States; the State)
of Idaho; and all Claimants to)
the use of water from the Snake)
River Basin Water System,)

Respondents.)

I. GENERAL INFORMATION

1. Person responding to objection:

Name: R. KEITH HIGGINSON, DIRECTOR

Address: IDAHO DEPARTMENT OF WATER RESOURCES
P.O. BOX 44449
BOISE, ID 83711-4449

Briefly describe your interest in this water right:

IDWR is required to file a response to an objection to part
I of the director's report pursuant to I.C. section 42-1412(2).

(Over)

In response to Statement of the Objection items 9, 9.a, and 11, and all allegations of the objection regarding these items, IDWR responds as follows.

IDWR admits that right no. 34-07122 was originally appurtenant to 431 acres; this right, which is a portion of 34-07122 was originally appurtenant to 215.5 acres. IDWR admits that the recommended place of use includes 561 acres, which encompasses the original 215.5 acres. The recommended place of use is not, however, an expansion of this portion of the original right, because the recommendation includes a remark limiting use of this right to irrigation of 215.5 acres within the recommended

REASONS SUPPORTING EACH BOX CHECKED

9. ☒ Place of Use: I respond to the objection concerning:
- 9a. ☒ The legal description of the place of use.
11. ☒ Remarks: I respond to the objection concerning the "remarks" listed with the water right.
14. ☒ Other: I respond to the objection concerning:
- GENERAL PROVISIONS, including 4.c.iv, 5, 6.a, 8.b and 8.c

II. STATEMENT OF THE RESPONSE

2. Person who filed objection:
- Name: BIG LOST RIVER WATERUSERS ASSOC
Address: PO BOX 66
MOORE ID 83255
3. If this response is filed by an attorney:
- Attorney Name(s): A. LYNNE KROGH-HAMPE
Attorney Address: DEPUTY ATTORNEY GENERAL(S)
IDAHO DEPARTMENT OF WATER RESOURCES
P.O. BOX 44449
BOISE, ID 83711-4449
Attorney Phone No.: (208) 327-7900

place of use. The place of use was originally and continues to be approximately 5 miles from the point of diversion. IDWR denies this portion of the objection and any allegations regarding this portion of the objection not expressly admitted herein.

In response to Statement of the Objection item 14 and all allegations of the objection regarding this item, IDWR responds as follows:

This portion of the objection seeks to raise seven objections to the general provisions of the director's report. IDWR admits that some groundwater users have groundwater rights that are used in combination with surface water rights. IDWR admits the decree in *Utah Construction Co. v. Abbott*, Equity No. 222 (D.E. Id. 1923) provides, "[T]he users of water, whose points of diversion are by ... this decree fixed on said 'Back Channel', and their respective successors in interest, shall at their own expense under the direction of the Commissioner or other official charged with the administration of this decree provide and maintain a suitable dam and controlling works for the regulation of the flow of the waters in said 'Back Channel' as herein provided. Such expense to be pro-rated among said persons according to the respective amount of waters herein decreed to each." IDWR denies this portion of the objection and any allegations regarding this portion of the objection not expressly admitted herein.

CHANGES TO THE DIRECTOR'S REPORT

The director proposes no changes to the description of this claim in the Director's Report.

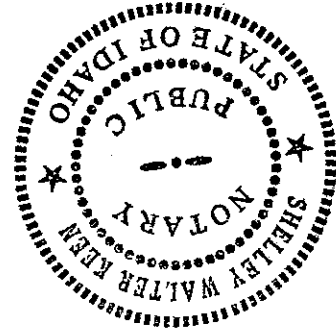
☒ Check here if you are submitting documents. Please list each document by the title and number of pages. You may use additional pages if necessary:

No. of
Pages

Notice of Claim No. A34-07122A

5

(Over)



Shelley Walter Keen
Notary Public for Idaho
Residing at: Boise, Idaho
My Commission expires: July 31, 1997

Subscribed and sworn to before me this 28th day of June, 1993.

By: D. Lynn Krok-Kump
(Attorney signing in
representative capacity)

Signature of person filing response

That R. Keith Higginson, in his official capacity as director of the Idaho Department of Water Resources, is a party to this proceeding, as defined by I.C. 42-1401A(1) and (7); that I am the Adjudication Bureau Chief for IDWR and am authorized by R. Keith Higginson, in his official capacity as director of IDWR, to verify this response; and that I have read the foregoing response, know its contents and that the statements contained therein are true to the best of my knowledge and belief.

David B. Shaw, being first duly sworn, upon oath, deposes and says:

State of IDAHO
County of ADA

VERIFICATION (Must be Completed)

CERTIFICATE OF MAILING

I hereby certify that on the 30th day of June, 1993, I mailed the original and copies of the foregoing response, including all attachments, to the following persons, by mailing the original and/or true and correct copies, postage prepared 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. One copy to the owner of the water right, and you must fill in the following information:

Name: KENT FOSTER
Address: PO BOX 50130
IDAHO FALLS ID 83405

3. One copy to the party who filed the objection, or if represented by an attorney, to their attorney; and you must fill in the following information:

Name: WILLIAM R HOLLIFIELD
Address: PO BOX 66
TWIN FALLS ID 83303-0066

4. One copy to:

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, Box 33
Boise, Idaho 83734

D. Lyane Kogh-Hampse
Signature of Respondent or attorney
mailing on Respondent's behalf

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 434-07122A
Date Received 1/12/90
Receipt Number E011709

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

RECEIVED

JAN 12 1990

Department of Water Resources
Eastern District Office

1. Name of Claimant(s) Michael Aikele Phone (208) 527-3611

Mailing Address P.O. Box 63, Moore, Idaho Zip 83255

2. Date of Priority (Only (1) per claim) January 16, 1976

3. Source of water supply (a) Groundwater

which is tributary to (b) _____

4.a. Location of existing

point of diversion is: Township 4N. Range 26E. Section 5 ,

1/4 of SE 1/4 of NW , Govt. Lot, _____ B.M., County of Butte

Additional points of diversion if any: _____

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

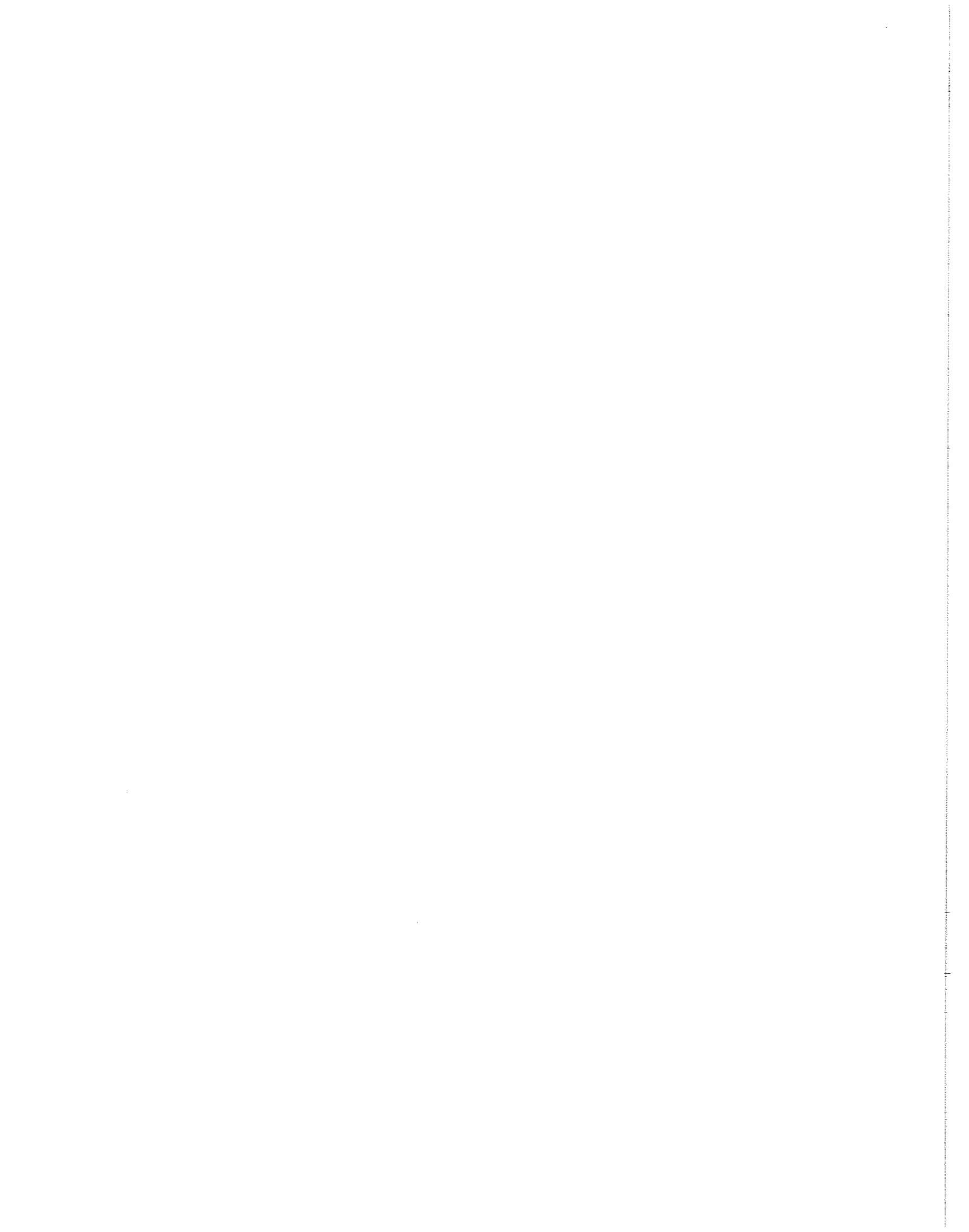
_____ 1/4 of _____ 1/4 Govt. Lot _____ B.M., County of _____

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. _____

Well and pump. _____

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6. Water is claimed for the following purposes:

(Both dates are inclusive) (cfs) (acre feet)

For Irrigation purposes from 04/01 to 11/01 amount 4.31 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 4.31 (cfs) and/or (b) _____ (acre feet)

8. Total consumptive use claimed is 834 acre feet per annum.

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

10. Description of place of use:

- a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- b. 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:	NE1/4	:	NW1/4	:	SW1/4	:	SE1/4	:	TLS
:	:NE 'NW 'SW 'SE	:	:NE 'NW 'SW 'SE	:	:NE 'NW 'SW 'SE	:	:NE 'NW 'SW 'SE	:	:
4N:25E: 25:	' ' ' ' : 33' 33' 33' 40:	:	40' 33' 33' 33:	:	33' 40' 33' 33:	:	33' 40' 33' 33:	:	417
3N:25E: 1:	33' 33' 33' 33:	:	' ' ' ' :	:	' ' ' ' :	:	' ' ' ' :	:	132
:	' ' ' ' :	:	' ' ' ' :	:	' ' ' ' :	:	' ' ' ' :	:	:
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:	' ' ' ' :	:	' ' ' ' :	:	' ' ' ' :	:	' ' ' ' :	:	:

Total number of acres irrigated 549

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

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.
34-7035 or None ()

14. Remarks:

Last Name Aikele Ident. Number 34-7122

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15. Basis of Claim (Check one) Beneficial Use _____ Posted Notice _____
Per t _____ Decree _____ Lic se X

If applicable provide IDWR Water Right Number 34-7122
Court _____ Case Number _____ Decree Date _____
Plaintiff vs 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 X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments 1

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

Signature of Claimant(s) Mike Aikele Date 1-8-90
Michael Aikele

Date _____

For Organizations: I do solemnly swear or affirm that I am _____ of _____, that I have signed the
Title Organization

foregoing document in the space below as _____
Title
of _____ and that the statements contained in the
Organization

foregoing document are true and correct.

Signature of Authorized Agent _____

Title and Organization _____ Date _____

State of Idaho/or _____)
County of Bonneville) SS.

Subscribed and sworn (or affirmed) before me this 1/8/90 day
of January, 1990.

Notary Public Kent W. Foster
Residing at Idaho Falls, Idaho
My Commission Expires 11/10/92

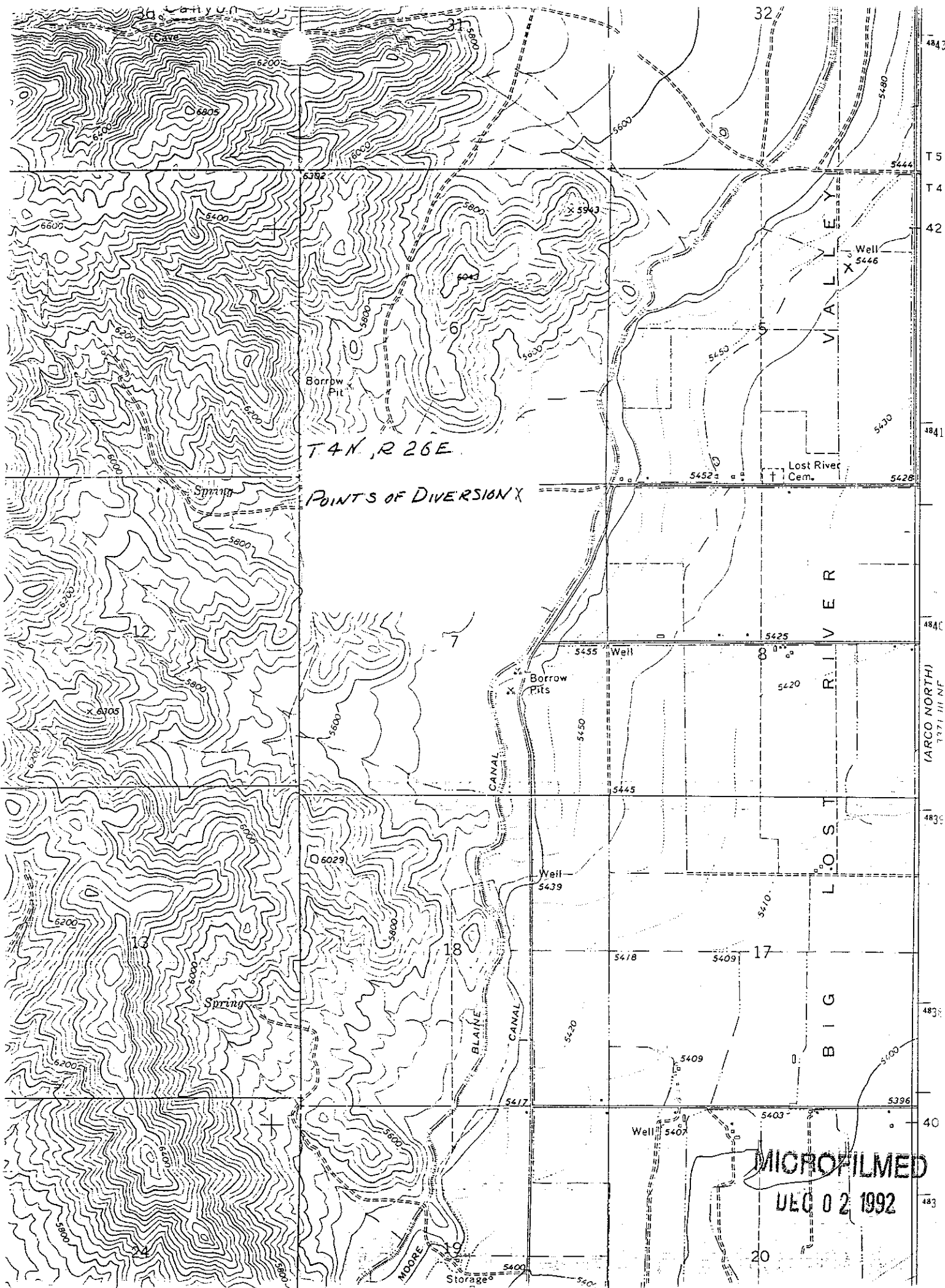
17. Notice of Appearance:

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.

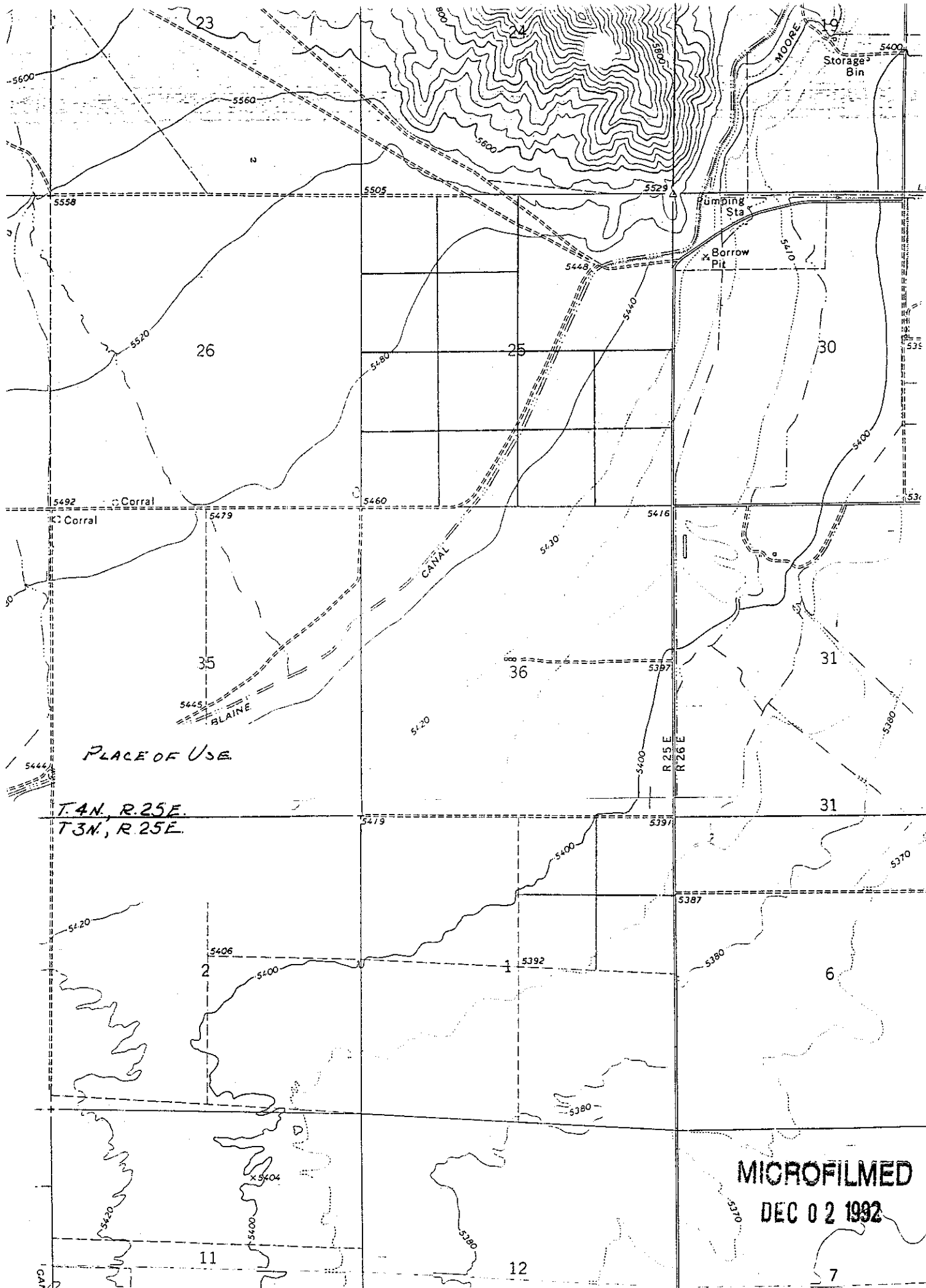
Signature Kent W. Foster
Address P.O. Box 50130, Idaho Falls, Idaho 83405
Date 1/8/90

Last Name Aikele Ident. Number 34-7122

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