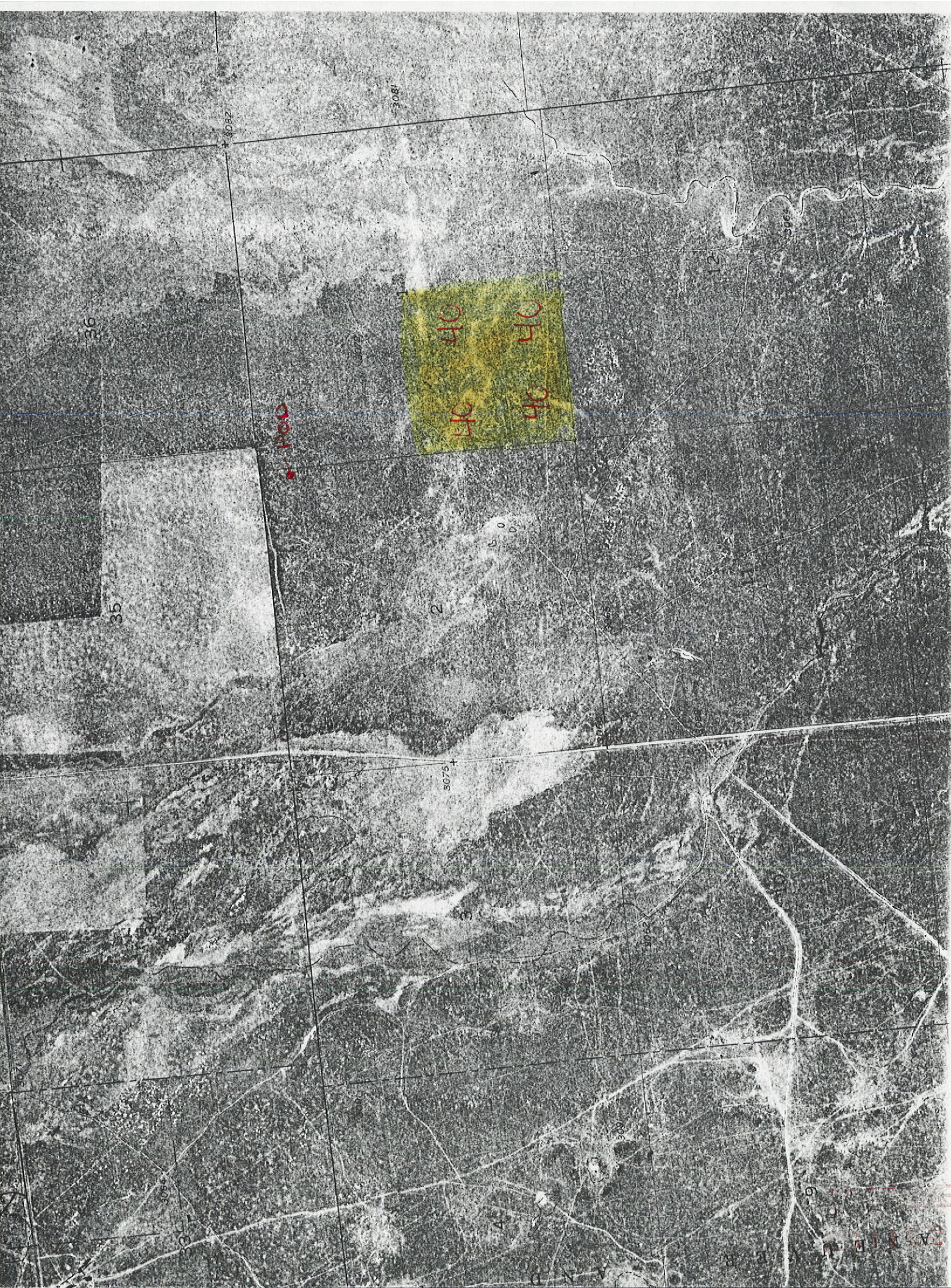




AG1-07399

160 Acres

35, 4E sec 1

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: 39516

Ident. Number: A61-07399
Date Received: 11-7-89
Receipt No: M005142
Received By: TS

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: CARL D. HICKEY
Address: P.O. BOX 243
MOUNTAIN HOME, ID 83647
208-796-2127

2. Date of Priority: APR 04, 1980

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
03S	04E	2	NE	NE	NE	1	ELMORE

5. Description of diverting works:
2 WELLS 406/16" 200HP; 400/6" 5HP PIVOT.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	03/15	11/15	3.200		
STOCKWATER	01/01	12/31	0.050		

7. Total Quantity Appropriated is:
3.250 C.F.S. (and/or) A.F.A.

8. Total consumptive use is 480.0 Acre Feet Per Annum.

9. Non-irrigation uses:
S/ 30 HEAD CATTLE

10. Place of Use:

Township	Range	Section	1/4 of	1/4 of	Lot	Use	Acres
03S	04E	1	NE	SW		IRR	40.0
			NW	SW		IRR	40.0

A61-07399

Page 1

Date: 11/07/89

RECORDED

AUG 11 1982

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
03S	04E	1	SW	SW		IRR	40.0
			SE	SW		IRR	40.0
Section Acres							160.0
Total Acres							160.0

11. Place of use in counties: ELMORE

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

13. Other Water Rights Used:
NONE

14. Remarks:

DLE #I-19871.

REINSTATED 7-21-1986.

2 POD'S ON THE NE, NE, NE SECT 2 T3S, R4E. THE SMALLER WELL
SUPPLIES THE STOCK WATER.

15. Basis of Claim: PERMIT

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: 1

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): Carl D. Kirby Date: 11-7-89

Date: _____

State of Idaho)
County of Elmore) ss.

Subscribed and sworn (or affirmed) before me this 7th day
of November 19 89

Anna Baunhoff
Notary Public

Seal

Residing at Anna Baunhoff, Notary Public
Residing at Boise, Idaho
My Commission Expires December 7, 1994



35, 4E sec 1

160 acres

AG1-07399

west

[REDACTED]

Conclusions

15-00000-17-SRBA
 TWIN FALLS CO., IDAHO
 FILED 24

In Re SRBA

Subcase 61-07399

Case No. 39576

**ORDER GRANTING MOTION TO SET
ASIDE PARTIAL DECREE;**

**ORDER REQUESTING DIRECTOR'S
REPORT FOR WATER RIGHT 61-07399;**

ORDER OF RECOMMITMENT TO SPECIAL MASTER CUSHMAN

I.

Brief Procedural and Factual Background

This matter came before the Court pursuant to a *Motion to Set Aside a Partial Decree* heard in open court on December 18, 2001. Travis Thompson appeared on behalf of Claimant Carl D. Hickey. Susan Hamlin-Nygard appeared on behalf of the Idaho Department of Water Resources. No party appeared in opposition to the *Motion*. At the conclusion of the hearing the matter was taken under advisement.

II.

Standard of Review for Setting Aside a Partial Decree Based on Newly Discovered Evidence and/or Fraud and Misrepresentation.

In the SRBA, a motion to set aside a partial decree is treated similar to a motion to set aside a default judgment and determined in accordance with the criteria set forth in I.R.C.P. 60(b). *AOI* § 14d. ("Parties seeking to modify a partial decree shall comply with I.R.C.P. 60(a) or 60(b)"). I.R.C.P. 60(b)(2) permits a court to relieve a party from a final judgment, order or proceeding because of newly discovered evidence which by due diligence could not have been

discovered in time to move for a new trial." I.R.C.P. 60(b)(2); *Simonovich v. Simonovich*, 110 Idaho 9, 10 (Ct. App. 1985).

In addition, I.R.C.P 60(b)(3) permits a court to relieve a party from a final judgment based on a showing of fraud, misrepresentation or other misconduct of an adverse party.

The movant must also allege facts which, if established, would constitute a meritorious defense. *McFarland v. Curtis*, 123 Idaho 931, 854 P.2d 274 (1993). The policy being that "it would be an idle exercise for a court to grant a default judgment if there in fact is no justifiable controversy." *McFarland* 123 Idaho at 934, 854 P.2d at 277 (quoting *Heart Corp. v. Keller*, 100 Idaho 10, 592 P.2d 66 (1979)).

I.R.C.P 60(b)(2) and (3) both require that a motion to set aside be made not more than six months after the judgment, order, or decree. The Idaho Supreme Court has held that the time limits in Rule 60(b) are mandatory and, consequently, any attempt to modify or set aside a judgment or order pursuant to subdivisions (2) or (3) will not be allowed where the applicable time limit under the rule has clearly expired. *Gordon v. Gordon*, 118 Idaho 804, 800 P.2d 1018 (1990) (citing *Catledge v. Transport Tire Co.*, 107 Idaho 602, 691 P.2d 1217 (1984)). The time limit is also applied as a matter of course in the SRBA.

III.

Findings of the Court

Based on the briefing and exhibits filed in support of the *Motion*, the representations made in open court and the Court's review of the file, the Court finds the following:

1. That water right claim 61-07399 was filed on November 11, 1989. The claim was based on a permit. This Court issued an *Order Disallowing the Claim* on March 27, 2001. On August 8, 2001, IDWR issued a license for water right 61-07399.
2. That the original permit for water right 61-07399 was initially assigned to the Claimant's ex-spouse. That misrepresentations regarding the status of the permit and claim were made to the Claimant by the ex-spouse, to the detriment of the Claimant. That upon learning of the correct status of the claim and permit, the Claimant sought to reinstate the permit and perfect a license.
3. That the *Motion to Set Aside the Partial Decree* was timely filed.
4. That the Claimant has demonstrated good cause for setting aside the partial decree issued for water right 61-07399 based on misrepresentation and newly discovered evidence.

5. That the Claimant has demonstrated a meritorious defense based on the issuance of the license.

6. That no party appeared in opposition to the *Motion* or has demonstrated any prejudice resulting from the Court granting the *Motion*.

V.

Order Setting Aside Partial Decree

Based on the foregoing; the *Partial Decree* issued for water right 61-07399 is hereby set aside.

VI.

Order Requesting Director's Report

Based on the foregoing, and the representations made in open court by counsel for IDWR, it is hereby ordered that water right claim 61-07399 be re-reported in a Director's Report in accordance with established SRBA and statutory procedures.

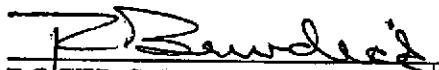
VII.

Order of Recommitment

The above-captioned matter is hereby recommitted to Special Master Cushman for further proceedings consistent with this *Order*.

IT IS SO ORDERED.

DATED: 12-20-01



ROGER S. BURDICK
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

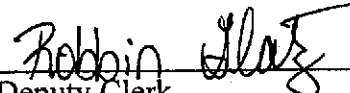
I certify that a true and correct copy of the ORDER GRANTING MOTION TO SET ASIDE PARTIAL DECREE; ORDER REQUESTING DIRECTOR'S REPORT FOR WATER RIGHT 61-07399; ORDER OF RECOMMITMENT TO SPECIAL MASTER CUSHMAN was mailed on December 20, 2001, with sufficient first-class postage to the following:

Carl D Hickey
PO Box 243
Mountain Home, ID 83647

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

United States Department of Justice
Environment & Nat'l Resources Div
550 W Fort Street, MSC 033
Boise, ID 83724

Chief, Natural Resources Division
Office of Attorney General
PO Box 44449
Boise, ID 83711-4449


Deputy Clerk

Western

Page 1

State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 61-07399

RECEIVED

AUG 09 2001

WATER RESOURCES
WESTERN REGION

Priority: April 05, 1980

Maximum Diversion Rate: 2.20 CFS
Maximum Diversion Volume: 440.0 AF

It is hereby certified that CARL D HICKEY
PO BOX 243
MOUNTAIN HOME ID 83647 has complied with the terms and
conditions of the permit, issued pursuant to Application for Permit dated April 04, 1980; and has
submitted Proof of Beneficial Use on November 03, 1990. An examination indicates that the works have
a diversion capacity of 2.26 cfs of water from:

SOURCE

GROUND WATER

and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL DIVERSION VOLUME</u>
IRRIGATION	03/15 to 11/15	2.20 CFS	440.0 AF

LOCATION OF POINT(S) OF DIVERSION:GROUND WATER L1 NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 2, Twp 03S, Rge 04E, B.M. ELMORE County**PLACE OF USE:** IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
03S 04E 1									40.0	40.0	40.0	40.0					160.0
03S 04E 2	43.0	46.0	40.0	40.0													169.0
	L1	L2															

Total Acres: 329

CONDITIONS OF APPROVAL

1. This right is appurtenant to land designated as DLE I-19871.
2. This right is for the use of trust water and is subject to review 20 years after the issuance of the permit to determine availability of water and to re-evaluate the public interest.
3. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the lands above.
4. This right is limited to the irrigation of 110 acres within the place of use described above in a single irrigation season.
5. Right 61-7203 is also diverted through the point of diversion described above.

State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 61-07399

6. Rights 61-7203 and 61-7399 when combined shall not exceed a total diversion rate of 2.30 cfs, a total annual diversion volume of 1103 af, and the irrigation of 279 acres.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed and sealed this 8TH day of AUGUST, 2001.

Acting for


KARL J. DREHER
Director

DISALLOWED DECREES ISSUED BY
COURT ON 4-27-01 BASIN 61

SEE ATTACHED LIST FOR REASONS, ETC.

7001 APR 27 AM 11:16

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

In Re SRBA

Subcase: See Exhibit A

Case No. 39576

PARTIAL DECREE OF DISALLOWED
WATER RIGHT CLAIMS

On February 15, 1999, the Director of the Idaho Department of Water Resources filed a *Director's Report for Irrigation and Other, Reporting Area 6 (Basin 61)* recommending that the water right claims listed on the attached Exhibit A be disallowed. No objections were filed to these recommendations, and the time period for filing objects has expired.

As this Court has previously determined, all claims reported to the Court by the Director of IDWR shall appear in a decree. This is required so that there is no confusion over action taken by the Court on all claims reported to it.

THEREFORE IT IS ORDERED AND ADJUDGED that the water right claims listed on Exhibit A are hereby disallowed with prejudice and shall not be confirmed in any partial decree or in any final decree entered in the SRBA, Case No. 39576, in whatever form that final decree may take or be styled.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DATED April 27, 2001

Roger Burdick

ROGER S. BURDICK
Presiding Judge
Snake River Basin Adjudication

EXHIBIT A

Subcase Nos:

61-00010
61-00051A
61-00144
61-00288A
61-00288B
61-00295A
61-02011
61-02014B
61-02017
61-02020
61-02021
61-02028
61-02033
61-02226A
61-02248A
61-04055
61-04066
61-04081
61-07069D
61-07074
61-07211
61-07387B
61-07399
61-10020
61-10094
61-10137
61-10347
61-10382
61-10468
61-10488
61-10518
61-10535
61-10557
61-10558
61-10611
61-10656
61-10760
61-10854
61-10860
61-11758
61-11894
61-11895

(Subcase list: 61I&ODIS)
Page 2 4/27/01

SRBA COURT BASIN 61 DISALLOWED CLAIM LETTER

WR No.	Current Owner Lname,Fname/Organization	Street Address	City	ST	Zip	Status	Type	TextBlock
61-10	HOFER,VICTORIA	710 SOUTH 10TH EAST	MOUNTAIN HOME	ID	83647	Disallowed	Remark	NO BENEFICIAL USE FOUND. ^{AAA}
61-51A	HOFER,VICTORIA	710 SOUTH 10TH EAST	MOUNTAIN HOME	ID	83647	Disallowed	Remark	NO BENEFICIAL USE FOUND. ^{AAA}
61-144	HILLIARD,BARBARA G HILLIARD,JAMES C	4401 S OCEAN BLVD 4401 S OCEAN BLVD	HIGHLAND BEACH HIGHLAND BEACH	FL FL	33487 33487	Disallowed	Remark	NO BENEFICIAL USE FOUND. ^{AAA}
61-288A	HALF MOON RANCH	6874 FAIRVIEW AVE	BOISE	ID	83704	Disallowed	Remark	RECOMMENDED AS RIGHT NO. 61-11899. ^{AAA}
61-288B	HALF MOON RANCH	6874 FAIRVIEW AVE	BOISE	ID	83704	Disallowed	Remark	RECOMMENDED AS RIGHT NO. 61-11899. ^{AAA}
61-295A	MAGIC WEST INC	PO BOX 425	RUPERT	ID	83350	Disallowed	Remark	RECOMMENDED AS RIGHT NO. 61-00294. ^{AAA}
61-2011	ARELLANO,COREY K ARELLANO,JUANITA R ARELLANO,KIMBERLY DANIELLE ARELLANO,REBECCA VICTORIA MAY ARELLANO,ROSS S ARELLANO,RYAN E	201 LUPIN DR 3060-1 201 LUPIN DR 3060-1 201 LUPIN DR 3060-1 201 LUPIN DR 3060-1 201 LUPIN DR 3060-1 201 LUPIN DR 3060-1	BATTLE MOUNTAIN BATTLE MOUNTAIN BATTLE MOUNTAIN BATTLE MOUNTAIN BATTLE MOUNTAIN BATTLE MOUNTAIN	NV NV NV NV NV NV	89820 89820 89820 89820 89820 89820	Disallowed	Remark	FORFEITED/ABANDONED. ^{AAA} DUE TO NON-USE FROM 1974 TO 12/12/1995. ^{AAA} NO BENEFICIAL USE OR DIVERSION FOUND. ^{AAA}
61-2014B	BECKMAN,CARLA B BECKMAN,MICHAEL KENN	156 SOUTH 45TH WEST 156 SOUTH 45TH WEST	IDAHO FALLS IDAHO FALLS	ID ID	84303 84303	Disallowed	Remark	NO BENEFICIAL USE FOUND. ^{AAA}
61-2017	BECKMAN,CARLA B BECKMAN,MICHAEL KENN	156 SOUTH 45TH WEST 156 SOUTH 45TH WEST	IDAHO FALLS IDAHO FALLS	ID ID	84303 84303	Disallowed	Remark	NO BENEFICIAL USE FOUND. ^{AAA}
61-2020	CHARTER MOUNTAIN RANCH INC	RT 1 BOX 451	GLENNS FERRY	ID	83623	Disallowed	Remark	NO BENEFICIAL USE FOUND. ^{AAA} RECOMMENDED AS 61-11844
61-2021	KNUDSON,RAYMOND G	HC 87 BOX 10	MOUNTAIN HOME	ID	83647	Disallowed	Remark	FORFEITED/ABANDONED. ^{AAA} DUE TO TERMINATION OF RIGHT-OF-WAY BY BLM ON 11-12-1992. ^{AAA} VERIFIED BY CLAIMANT ON 8/27/1998. ^{AAA}
61-2028	SIMPLOT LIVESTOCK CO	PO BOX 27	BOISE	ID	83707	Disallowed	Remark	A PORTION OF THIS RIGHT HAS BEEN RECOMMENDED FOR STOCKWATER PURPOSES UNDER 61-10439. THE REMAINDER OF THIS RIGHT HAS BEEN FORFEITED FOR NON-USE FROM 1978 TO 1999. ^{AAA}
61-2033	BASQUE RANCHES	315 E 5 N.	MOUNTAIN HOME	ID	83647	Disallowed	Remark	FORFEITED/ABANDONED. ^{AAA} DUE TO NON-USE FROM 1974 TO 1998. ^{AAA}
61-2226A	HILLIARD,JAMES C	4401 S OCEAN BLVD #7	HIGHLAND BEACH	FL	33487	Disallowed	Remark	FORFEITED/ABANDONED. ^{AAA} DUE TO NON-USE FROM 1990-1995. ^{AAA} CLAIMANT VERIFIED NON-USE. ^{AAA}
61-2248A	CUNNINGHAM,ELAINE I CUNNINGHAM,ROBERT C	PO BOX 760 PO BOX 760	GLENNS FERRY GLENNS FERRY	ID ID	83623 83623	Disallowed	Remark	RECOMMENDED AS RIGHT NO. 61-11900. ^{AAA}
61-4055	MELLEN ESTATE,T H	C/O CAROL A MOONEY TRUSTEE 5095 N 24 3	MOUNTAIN HOME	ID	83647	Disallowed	Remark	NO BENEFICIAL USE FOUND. ^{AAA}

SRBA COURT BASIN 61 DISALLOWED CLAIM LETTER

WR No.	Current Owner Lname,Fname/Organization	Street Address	City	ST	Zip	Status	Type	TextBlock
61-4066	RAMSEY, TONY G	RT 1 BOX 835	MOUNTAIN HOME	ID	83647	Disallowed	Condition	o water that is not public water subject to appropriation. This is also included where a right was determined not to exist in a prior adjudication. NO LAWFUL APPROPRIATION SHOWN. ^{AAA}
		RT 1 BOX 835	MOUNTAIN HOME	ID	83647	Disallowed	Remark	
61-4081	ALLISON, VIOLA A	STAR RT BOX 62	HAMMETT	ID	83627	Disallowed	Remark	NO LAWFUL APPROPRIATION SHOWN. ^{AAA}
						Disallowed	Condition	o water that is not public water subject to appropriation. This is also included where a right was determined not to exist in a prior adjudication.
61-7069D	HONEYCUTT JR, H P	PO BOX 451	MOUNTAIN HOME	ID	83647	Disallowed	Remark	FORFEITED/ABANDONED DUE TO NON-USE FROM 1989 TO 1998. ^{AAA}
61-7074	LYMAN, CHARLES M LYMAN, LILAH B	RT 1 BOX 843	MOUNTAIN HOME	ID	83647	Disallowed	Remark	PERMIT VOIDED. ^{AAA}
		RT 1 BOX 843	MOUNTAIN HOME	ID	83647			
61-7211	DOHERTY, JOHN R	228 MARGARITA DR	SAN RAFAEL	CA	94901	Disallowed	Remark	RECOMMENDED AS RIGHT NO. 61-04013. ^{AAA}
61-7387B	NEMETH, STEVE F	RT 1 BOX 817	MOUNTAIN HOME	ID	83647	Disallowed	Remark	RECOMMENDED AS RIGHT NO. 61-02115B. ^{AAA}
61-7399	HICKEY, CARL D	PO BOX 243	MOUNTAIN HOME	ID	83647	Disallowed	Remark	PERMIT RELINQUISHED. ^{AAA}
61-10020	DILLINGHAM, LINA J	PO BOX 961	GLENNS FERRY	ID	83623	Disallowed	Remark	NO BENEFICIAL USE FOUND. ^{AAA}
61-10094	JAMESON, BARBARA LEE	1610 BLUFF ST	BOISE	ID	83706	Disallowed	Remark	NO BENEFICIAL USE FOUND. ^{AAA}
61-10137	BOOTH, MILTON C	RT 1 BOX 770	MOUNTAIN HOME	ID	83647	Disallowed	Condition	o water that is not public water subject to appropriation. This is also included where a right was determined not to exist in a prior adjudication. NO LAWFUL APPROPRIATION SHOWN. ^{AAA}
						Disallowed	Remark	
61-10347	PAYNE, JACKIE PAYNE, ROBERT	1800 SUNSET STRIP	MOUNTAIN HOME	ID	83647	Disallowed	Remark	NO LAWFUL APPROPRIATION SHOWN. ^{AAA}
		1800 SUNSET STRIP	MOUNTAIN HOME	ID	83647	Disallowed	Remark	
61-10382	BATRUEL, MARY	RT 1 BOX 428	GLENNS FERRY	ID	83623	Disallowed	Condition	o water that is not public water subject to appropriation. This is also included where a right was determined not to exist in a prior adjudication. NO LAWFUL APPROPRIATION SHOWN. ^{AAA}
	BATRUEL, PAUL	RT 1 BOX 426	GLENNS FERRY	ID	83623	Disallowed	Remark	
	BATRUEL, PETER	RT 1 BOX 426	GLENNS FERRY	ID	83623			
61-10468	HIDDLESTON & SON INC	RT 3 BOX 610D	MOUNTAIN HOME	ID	83647	Active	Condition	THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.
61-10488	CARTER, NETA	1514 WARM SPRINGS	BOISE	ID	83712	Disallowed	Remark	RECOMMENDED AS RIGHT NO. 61-10487. ^{AAA}
	FOLWELL, BETTY	1555 W WRIGHT ST	BOISE	ID	83705	Disallowed	Remark	
	LEMMON, DAVID	1555 W WRIGHT ST	BOISE	ID	83705	Disallowed	Remark	

SRBA COURT BASIN 61 DISALLOWED CLAIM LETTER

WR No.	Current Owner Lname,Fname/Organization	Street Address	City	ST	Zip	Status	Type	TextBlock
61-10518	KOCH,KARL E	PO BOX 4	HAMMETT	ID	83627	Disallowed	Condition	o water that is not public water subject to appropriation. This is also included where a right was determined not to exist in a prior adjudication.
						Disallowed	Remark	NO LAWFUL APPROPRIATION SHOWN. ^{AAA}
61-10535	REYNOLDS,ANNE M	HC 63 BOX 18	HAMMETT	ID	83627	Disallowed	Remark	RECOMMENDED AS RIGHT NO. 61-07569
61-10557	IDAHO MIGRANT COUNCIL	C/O MICHAEL H SMITH 317 HAPPY DAY BLVD #325	CALDWELL	ID	8360581	Disallowed	Remark	NO BENEFICIAL USE FOUND. ^{AAA}
61-10558	IDAHO MIGRANT COUNCIL	C/O MICHAEL H SMITH 317 HAPPY DAY BLVD #325	CALDWELL	ID	8360581	Disallowed	Remark	NO BENEFICIAL USE FOUND. ^{AAA}
61-10611	BECKLUND,TONI R	RT 1 BOX 763	MOUNTAIN HOME	ID	83647	Disallowed	Condition	o water that is not public water subject to appropriation. This is also included where a right was determined not to exist in a prior adjudication.
	BECKLUND JR,WILLIAM B	RT 1 BOX 763	MOUNTAIN HOME	ID	83647	Disallowed	Remark	NO LAWFUL APPROPRIATION SHOWN. ^{AAA}
61-10656	LYMAN,CHARLES M	RT 1 BOX 843	MOUNTAIN HOME	ID	83647	Disallowed	Condition	o water that is not public water subject to appropriation. This is also included where a right was determined not to exist in a prior adjudication.
	LYMAN,LILAH B	RT 1 BOX 843	MOUNTAIN HOME	ID	83647	Disallowed	Remark	NO LAWFUL APPROPRIATION SHOWN. ^{AAA}
61-10760	BEAN,ANNABETH N	315 S HARDING	BOISE	ID	83705	Disallowed	Remark	RECOMMENDED AS RIGHT NO. 61-02031. ^{AAA} NO BENEFICIAL USE FOUND. ^{AAA}
61-10854	BATES,ROBERT L	3860 CANYON CREEK	MOUNTAIN HOME	ID	83647	Disallowed	Remark	NO BENEFICIAL USE FOUND. ^{AAA}
	BATES,SHERRY J	3860 CANYON CREEK	MOUNTAIN HOME	ID	83647	Disallowed	Remark	NO BENEFICIAL USE FOUND. ^{AAA}
61-10860	HILLIARD,BARBARA G HILLIARD,JAMES C	4401 S OCEAN BLVD 4401 S OCEAN BLVD	HIGHLAND BEACH HIGHLAND BEACH	FL FL	33487 33487	Disallowed	Remark	RECOMMENDED AS RIGHT NOS. 61-07097, 61-07262B & 61-07299. ^{AAA}
61-11758	HEATH,DARLENE HEATH,RALPH	PO BOX 432 PO BOX 432	MOUNTAIN HOME MOUNTAIN HOME	ID ID	83647 83647	Disallowed	Remark	NO BENEFICIAL USE FOUND. ^{AAA}
61-11894	COMPTON,ROCKY A	PO BOX 25	MOUNTAIN HOME	ID	83647	Disallowed	Condition	NO BENEFICIAL USE FOUND: This is included for a claim based on beneficial use that is PROPOSED to be disallowed because beneficial use of water was not confirmed by IDWR's field examination or by other evidence submitted by the claimant.
						Disallowed	Remark	NO BENEFICIAL USE FOUND. ^{AAA}
61-11895	BRINEGAR,ROBERT L	4675 S 18TH EAST	MOUNTAIN HOME	ID	83647	Disallowed	Condition	NO BENEFICIAL USE FOUND: This is included for a claim based on beneficial use that is PROPOSED to be disallowed because beneficial use of water was not confirmed by IDWR's field examination or by other evidence submitted by the claimant.
	BRINEGAR,VICKI L	4675 S 18TH EAST	MOUNTAIN HOME	ID	83647	Disallowed	Remark	NO BENEFICIAL USE FOUND. ^{AAA}

November 20, 1998

RECEIVED

DEC 03 1998

**NOTICE OF ERROR
REPLY**

Department of Water Resources

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: December 18, 1998

RECEIVED

DEC 04 1998

WATER RESOURCES
WESTERN REGION

Water right number: 61-07399

CARL D HICKEY
PO BOX 243
MOUNTAIN HOME ID 83647

Daytime Telephone Number:

Evening Telephone Number:

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):
2. Describe the changes you wish to make in the proposed recommendation:
3. Give a brief explanation as to why you disagree with these portions:

IDWR STAFF IS CURRENTLY REVIEWING THIS
RELINQUISHED PERMIT FOR POSSIBLE REINSTATEMENT.

___ I AGREE with this proposed recommendation; no changes need to be made.

DATE: 12-3-98 SIGNATURE: Carl Hickey

Please print your name: Carl Hickey

RECEIVED

DEC 03 1998

AJ5853NP
1206

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

Department of Water Resources
1998
PAGE: 1

RIGHT NUMBER: 61-07399

NAME AND ADDRESS: CARL D HICKEY
PO BOX 243
MOUNTAIN HOME ID 83647

CLAIM NOT RECOMMENDED PERMIT RELINQUISHED.

Water Right Number - R61-07399

Prefix Translation: RESEARCH

Old (D) Number -

+ - - - - Last Name - - - - + + - First Name - - + + - - - - - Address - - - - - +

*** C - CURRENT OWNER ***
HICKEY

CARL D

1 - PO BOX 243

2 -

3 -

City- MOUNTAIN HOME

State- ID Zip- 83647

Phone - 208-796-2127

*** O - ORIGINAL OWNER ***
HICKEY

CONNIE M.

1 -

2 -

3 -

City- NA

State- ID Zip- 00000

Phone - 208-000-0000

+ - - Priority Date - - + + - - Region - - - + + - - Stage - - - + + - - Status - - - +
04/04/1980 14 WESTERN I - DISALLOWED+ - - - - Source - - - - - + + - - - - Tributary - - - - - +
GROUNDWATER+ - - - - Point of Diversion - - - - - +
Twn Rng Sec Tract Lot RFlg County

03S 04E 2 NE NE NE 1 (39) ELMORE

+ - - - - Water Use - - - - - +
Code Description Period From Period To Diversion Rate Diversion Volume
01 - IRRIGATION 03/15 11/15 3.200
04 - STOCKWATER 01/01 12/31 0.050+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Consumptive Use - + + - KW Usage - +
3.250 480.0+ - - - - Place of Use - - - - - +
Twn Rng Sec Tract Lot Acres Code Description County
03S 04E 1 NE SW 40.0 01 IRRIGATION (39) ELMORE
03S 04E 1 NW SW 40.0 01 IRRIGATION (39) ELMORE
03S 04E 1 SW SW 40.0 01 IRRIGATION (39) ELMORE
03S 04E 1 SE SW 40.0 01 IRRIGATION (39) ELMORE

Total Acres: 160.0

+ - - Diversion Means - 2 WELLS 406/16" 200HP; 400/6" 5HP PIVOT.

+ - - Non-Irrigation Use - S/ 30 HEAD CATTLE

+ - - Other Rights for Same Use - NONE

Water right number - R61-07399

Prefix Translation: RESEARCH

+ - - - - Remarks - - - - - +
PERMIT RELINQUISHED.

+ - - - - Old Water Right Numbers - - - - - +
No Old Water Right Numbers Found

+ - - - - Conditions of Approval - - - - - +
No Conditions of Approval found.

+ - - - - Decree Plaintiff - - - + + - - - - Decree Defendant - - - + + - Decree Date - +
00/00/0000

+ - - - - Comments - - - - - +

Date: 08/22/1994 User Id: KWALKER Subject: COPIED FROM REMARKS
DLE #I-19871.

REINSTATED 7-21-1986.

SUPPLIES THE STOCK WATER.

2 POD'S ON THE NE, NE, NE SECT 2 T3S, R4E. THE SMALLER WELL

Date: 08/22/1994 User Id: KWALKER Subject: STATUS OF CLAIM

THIS CLAIM HAS BEEN RECOMMENDED AS DISALLOWED DUE TO PERMIT BEING RELINQUISHED ON JULY 6, 1993.

+ - - Audit Fields - - +

08/22/94 KWALKER

+ - - - - Adjudication Rights Dates and Flags Area - - - - - +

Court Report Filing	- 00/00/0000	Field Inspection Made	- 08/22/1994	Civil Case Number	- 39576
Objection Filed Date	- 00/00/0000	Field Inspection Flag	-	Old Case Number	-
Response Filed Date	- 00/00/0000	Verified Date	- 08/22/1994	Old Judicial District	-
Claim Received Date	- 11/07/1989	Last Amended Date	- 00/00/0000	Temporary Right	- P
		Receipt Number	- M005142	Water District	-
		POU Ownership Flag	- Y	Federal/State Indicator	- S
		Name Connector	-	Presumption Flag	-
				Notice of Error Flag	-

State of Idaho

DEPARTMENT OF WATER RESOURCES

1361 N. Orchard St., Statehouse Mall, Boise ID 83726-0060
Phone: (208) 327-7900 FAX: (208) 327-9046

**RELINQUISHMENT
OF
PERMIT**

I, Connie M. Hickey, hereby relinquish to the State of Idaho, all
my right, title and interest in and to Permit to Appropriate the Public
Waters of the State of Idaho, No. 61-07399.

Signed this 4th day of July, 1993.

Connie M. Hickey
Permit Holder

Carl D. Hickey
Spouse of Permit Holder

10/25/1992

After reviewing the field exams for 61-07203 and 61-07399 and before sending them on to state office for licensing, Dave Tuthill requested proof that Carl Hickey had actually irrigated all 329 acres at one time. Mr. Hickey was unable to dig up any type of proof. I then set up a meeting between Mr. Hickey, Jim Johnson, and myself on August 25, 1992. Since Mr. Hickey did not have the capacity to irrigate all 329 acres at the time of the field exam, Jim Johnson concluded that permissible place of use should be allowed in this situation to reflect the system's actual use.

ANALYSIS

The 200 hp well has a system capacity of 2.26 cfs. Permit 61-07203 was filed for domestic use and 172 acres, of which 169 are developed with 130 of those inactive (CRP). Permit 61-07399 was filed on the same well for 160 additional acres. The entire system consists of 329 active and inactive acres.

Since the system capacity of 2.26 cfs is not sufficient to irrigate 329 acres at one time, the field exam recommendations are based on permissible place of use.

Because the same permissible place of use is recommended for both 61-07203 and 61-07399 and the total system capacity does not exceed the earlier permit's cfs amount, Dave Tuthill recommended that 61-07203 should represent both rights and 61-07399 be relinquished for simplicity.

(or cancelled)

61-07203: $329 \times 4.5 = 1480.5$ AFA REQUIRED
 $2.26 \times 1.9835 \times 246 = 1102.3$ AFA CAPABLE

Within the 329 acres described in the field exam report, this right is limited to the irrigation of 169 acres in a single irrigation season, 2.26 cfs system capacity, and 1102.3 afa diversion volume.

This right represents 61-07203 and 61-07399.

Permit 61-07399 should be relinquished *or cancelled*.

*Copy of Lori Graves' analysis -
attached to exam of 61-07203.*

*kw
8/22/94*

Water Right Number - 61-07399 ✓

Prefix Translation: WATER RIGHT

Old (D) Number -

+ - - - - Last Name - - - - + + - First Name - - + + - - - - - Address - - - - - +

*** C - CURRENT OWNER ***
HICKEY

CONNIE M.

1 - BOX 243

2 -

3 -

City- MTN. HOME

State- ID Zip- 83647

Phone -

*** O - ORIGINAL OWNER ***
HICKEY

CARL

1 -

2 -

3 -

City-

State- Zip-

Phone -

HICKEY

CONNIE M.

1 -

2 -

3 -

City-

State- Zip-

Phone -

+ - - Priority Date - +
04/05/1980 ✓+ - - Region - - - +
14 WESTERN+ - - Stage - - - +
P - PERMIT ✓

+ - - Status - - - - +

+ - - - - Source - - - - - +
GROUNDWATER

+ - - - - Tributary - - - - - +

Tw	Rng	Sec	Tract	Lot	RFlg	County	Point of Diversion	Diversion Name	Diversion Rate	Diversion No.
03S ✓	04E ✓	2 ✓	NE NE ✓	1 ✓		(39) ELMORE ✓				

Code	Description	Period From	Period To	Water Use	Diversion Rate	Diversion Volume
01 - IRRIGATION ✓		03/15 ✓	11/15 ✓		3.200 ✓	
04 - STOCKWATER ✓		01/01 ✓	12/31 ✓		0.050 ✓	

+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Div. Capacity - +
3.250 ✓

Tw	Rng	Sec	Tract	Lot	Acres	Code	Description	County
03S ✓	04E ✓	1 ✓	NE SW ✓		40.0 ✓	01	IRRIGATION ✓	(39) ELMORE
03S ✓	04E ✓	1 ✓	NW SW ✓		40.0 ✓	01	IRRIGATION ✓	(39) ELMORE
03S ✓	04E ✓	1 ✓	SW SW ✓		40.0 ✓	01	IRRIGATION ✓	(39) ELMORE
03S ✓	04E ✓	1 ✓	SE SW ✓		40.0 ✓	01	IRRIGATION ✓	(39) ELMORE

Total Acres: 160.0 ✓

+ - - Diversion Means - WELL, PUMP & PIPELINE

+ - - Non-Irrigation Use -

Prefix Translation: WATER RIGHT

Proof Due Date	- 11/01/1990	Field Exam Made	- 07/31/1991	Field Exam Fee	-
Approved/Denied	- 05/07/1981	Protested Date	- 00/00/0000	Swan Falls	- 5
Proof Made Date	- 11/02/1990	Hearing Date	- 00/00/0000	Temporary Right	- P
Exam to S.O. Date	- 12/07/1992	Verified Date	- 00/00/0000	DLE/Carey Act	- D
Order Show Cause	- 00/00/0000	Receipt Number	-	Water District	-
Licensed Date	- 00/00/0000	Appl Received	- 00/00/0000	Transfer/Amended	-
Decree Date	- 00/00/0000	Presumption Flag	-		

MEMORANDUM

TO: FILE

FROM: STEVE LESTER *SL*

DATE: APRIL 27, 1994

RE: TRANSFER NO. 4328 FOR 61-07203B (HICKEY)

This is a memo of explanation. The applicant seeks to provide irrigation water for 100 acres pending resolution of the validity of a portion of a permit on the 100 acres in question.

The application will change right 61-07203 from a permissible place of use practice to a "normal right" whereby irrigation of 169 acres in a 329 acre base becomes irrigation of 169 acres only. Note that licensing of 61-07203 incorporated acres under 61-07399 (a permit for SW 1/4 S01). Permit 61-07399 has been relinquished. Therefore, it appears that the owner intends to abandon any irrigation in SW 1/4 S01 by limiting irrigation to NE 1/4 S02 via 61-07203A and Lots 2 & 5, S01 via 61-07203B. Also see application remarks.

61-07203A will remain for use on 69 acres in NE 1/4 S02 (39 ac. continued irrigation & 30 ac. in CRP) while 61-07203B will be moved from the other 100 acres in CRP in S02 to irrigate 100 acres in Lots 2 & 5 in S01. Page 8 of the application is an ASCS photo showing the 130 acres in CRP in S02, and this should suffice for verification of such enrollment. See Attachment D for my map portraying the situation.

Since 61-07203 was examined in 1991, no additional verification of use is needed. No change will occur in the rate of flow or volume per acre. Actual irrigation in S01 lots per gov't. lot plat is 99.54 acres. Rounding this up to 100 acres is acceptable.

The land to which water will be moved is now covered by questionable right 61-07247D as a result of a recent split documented at the S.O. (contact Jim Johnson if need info). Some background will be helpful.

I conducted the B.U. exam for 61-07247A in 1991. This was for land irrigated by Sabin (Hergert Farms) in the NW 1/4 and a few bordering acres just to the east in NE 1/4 S01 (center pivot). It was difficult to be exact about the extent of use via the center pivot for the few acres in NE 1/4, but it definitely appeared that the pivot reached into NE 1/4 per topo & ASCS photo while doing the exam.

Mr. Sabin told me that he did not own the non-irrigated acres in Lots 2 & 5 in S01. He was not sure who owned those acres. It appeared at the time of the exam that Lots 2 & 5 were forfeited land (incorrectly labelled as "abandoned" in exam report - forfeited is probably a better term). Subsequent research did not yield any data to show that those acres were irrigated in the five years prior to the exam (ASCS and NAPP information). However, I did not determine who owned the land and thus inadvertently deprived the owner of involvement in settling the forfeiture issue.

MICROFILMED

JUL 22 1994

*Copy for
A61-07399*

- SL

T. 4328
April 27, 1994
Page 2

This oversight is being corrected by the recent split of 61-07247A into C (Hergert Farms/Sabin) and D (Hickey). Mr. Hickey is working with Jim Johnson on the issue of forfeiture for D, and I suspect that licensing of C will be delayed pending resolution of the question.

It appears that Mr. Hickey wants to be able to irrigate Lots 2 & 5 while the issue is settled, thus the transfer application was filed.

c: S.O. files 61-07247C & D
 61-07399

Region files 61-07247C & D
 61-07399 & A61-07399

MICROFILMED
JUL 22 1994

ATTACHMENT A

SRBA CLAIM CHECK PER BENEFICIAL USE EXAM

EXAMINER W DATE SUBMITTED 9/5/91

ADJUDICATION AGENT _____ RESPONSE DUE DATE _____

COUNTY _____ OWNER'S NAME _____

PERMIT DATA T R S Q/Q T R S Q/Q

P/D 35 4E 02 NENENE _____

P/U 35 4E 01 SWSW _____

PROOF SUBMITTED DATE 11/2/1990

ADJUDICATION DATA RELATING TO THIS PERMIT NUMBER

A. Check Permit Number for Adjudication Claim Filing:

- ☐ Claim required for permit but not filed
(examiner needs to notify permit holder during exam)
☒ Claim filed for permit and copy attached *
☒ Claim filed although not required (proof filed after 11-19-87)
☐ No claim filed or required.

B. Check Adjudication Claims Relating to the Permit Holder but are Different Claims (new number - different right)

- ☐ Name index search
☐ Legal description search
☐ Non-data entry claims search
☐ Claim found but large system no exam required *

Claims found requiring exam	Date field exam conducted	Exam data is in, Permit file	Attached	Exam not Conducted
--------------------------------	------------------------------	---------------------------------	----------	-----------------------

<u>A61-07399</u> Adj No.	<u>7/30/91</u>	☒	☐	☐
--------------------------	----------------	-------------------------------------	--------------------------	--------------------------

<u>A61-07203</u> Adj No.	<u>7/30/91</u>	☒	☐	☐
--------------------------	----------------	-------------------------------------	--------------------------	--------------------------

_____ Adj No.	_____	☐	☐	☐
---------------	-------	--------------------------	--------------------------	--------------------------

☒ Exam completed date(s) data entered 9/5/91 (initial & date)

* copies included only if pertinent to permit field exam

RECEIVED

SEP 11 1991

ATTACHMENT A

SRBA CLAIM CHECK PER BENEFICIAL USE EXAM

EXAMINER LORE WHITE DATE SUBMITTED _____

ADJUDICATION AGENT _____ RESPONSE DUE DATE _____

COUNTY _____ OWNER'S NAME CARL HICKEY

PERMIT DATA T R S Q/Q T R S Q/Q

P/D 35 46 02 Nene _____

P/U 35 46 01 SW _____

PROOF SUBMITTED DATE _____

ADJUDICATION DATA RELATING TO THIS PERMIT NUMBER

A. Check Permit Number for Adjudication Claim Filing:

- ☐ Claim required for permit but not filed
(examiner needs to notify permit holder during exam)
☒ Claim filed for permit and copy attached *
☐ Claim filed although not required (proof filed after 11-19-87)
☐ No claim filed or required.

B. Check Adjudication Claims Relating to the Permit Holder but are Different Claims (new number - different right)

- ☒ Name index search
☐ Legal description search
☐ Non-data entry claims search
☐ Claim found but large system no exam required *

Claims found requiring exam	Date field exam conducted	Exam data is in, Permit file	Attached	Exam not Conducted
<u>A61-07203</u> Adj No.	<u>7/31/91</u>	☒	☐	☐
<u>A61-07399</u> Adj No.	<u>7/31/91</u>	☒	☐	☐
_____ Adj No.	_____	☐	☐	☐

☒ Exam completed date(s) data entered lw 8/15/91 (initial & date)

* copies included only if pertinent to permit field exam

RECEIVED
AUG 11 1991