



U.S. Department of Justice
Environment and Natural Resources Division

JJD:KEH
90-6-2-63c
Kelley E. Harris
Labat-Anderson, Inc.
999 Eighteenth Street
Suite 945, North Tower
Denver, Colorado 80202

Telephone (303) 312-7306
Facsimile (303) 312-7379

RECEIVED

SEP 19 2005

September 16, 2005

Department of Water Resources

via FedEx Mail

Diana R. Delaney, Chief Deputy Clerk
Snake River Basin Adjudication
DISTRICT COURT
253 Third Ave., North
Twin Falls, Idaho 83303-2707

Re: SRBA Case No. 39576
Subcase Nos. 25-4034, 25-4032, 25-14096, and New Claim.

Dear Ms. Delaney:

Enclosed for filing are the following original documents in the above mentioned subcases:

1. STANDARD FORM 4 – MOTION TO FILE: AMENDED NOTICE OF CLAIM
(Subcase No. 25-4034)
2. STANDARD FORM 4 – MOTION TO FILE: AMENDED NOTICE OF CLAIM
(Subcase No. 25-4032)
3. STANDARD FORM 4 – MOTION TO FILE: AMENDED NOTICE OF CLAIM
(Subcase No. 25-14096)
4. STANDARD FORM 4 – MOTION TO FILE: AMENDED NOTICE OF CLAIM
(Subcase No. New Claim)

Thank you for your time and attention in this matter.

Sincerely,

Kelley Harris
Paralegal

JAMES J. DUBOIS,
Attorney, Natural Resources Section
Environment and Natural Resources Division
U.S. Department of Justice
999 18th Street, Suite 945
Denver, Colorado 80202
(303) 312-7341

Counsel for the United States of America

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

In Re SRBA

Subcase A25-4034B

Case 39576

STANDARD FORM 4

**MOTION TO FILE:
AMENDED NOTICE OF CLAIM**

MOTION TO AMEND CLAIM

Claimant United States of America (U.S. Fish and Wildlife Service) (“United States”), by and through its undersigned attorneys, and pursuant to SRBA Administrative Order 1, Rules of Procedure, and I.R.C.P. 55(c), respectfully moves the Court to enter an Order granting permission to file an Amended Notice of Claim in this case, and as grounds therefor, states:

1. The United States must amend its Notices of Claim to the use of water in the SRBA because:

In 1993, 42 claims for water rights appropriated under state law were filed on behalf of the U.S. Fish and Wildlife Service for the Grays Lake National Wildlife Refuge. Further field review conducted by the Refuge staff and representatives of the Idaho Department of Water Resources (“IDWR”) identified several necessary corrections and changes. As a result of newly found

evidence that supports an earlier priority date than was originally claimed, and to correct and clarify the claimed place of use, quantity, and points of diversion (as discussed with IDWR), the United States seeks to amend this claim to accurately reflect historic practices and conditions under this water rights.

2. The factual information and documentation that support the amendment of this claim are attached hereto, and include:
 - a) A map of the claimed place of use;
 - b) An aerial photo showing the irrigated place of use;
 - c) The affidavits of Michael N. Fisher, Ralph Stoor, and David Langman
 - d) Letter to IDWR from Ray Ostler, former owner and operator of the land;
 - e) A copy of the applicable posted Notice of Water Location (Bingham County Recorder's Office); and
 - f) A plat map relevant to the original Notice of Water Location (Bonneville County Recorder's Office).
3. The claim amendments will not prejudice other parties to this litigation, as they more accurately reflect the historic use and operation of these water rights. This motion and the amended notices are timely. The Director's Report relating to Grays Lake National Wildlife Refuge has been issued, and no objection has been filed in this matter. No hearing has yet been held. Leave to amend shall be freely given where justice so requires.
4. The field review and discussion with IDWR which occurred after the filing of these claims and led to the discovery of the errors with regard to the description of this right are good cause for this Court to allow the amendment submitted herewith. The interests of justice require that leave to amend this claim be granted in order to properly reflect the historical operation of this water right.
5. The Amended Notice of Claim is attached hereto, and incorporated herein by reference.
6. Counsel for the United States of America (U.S. Fish and Wildlife Service) in this matter are designated below, and have read SRBA Administrative Order 1, Rules of Procedure (amended October 16, 1997).

James J. DuBois
Trial Attorney, General Litigation Section
Environment and Natural Resources Division
U.S. Department of Justice
999 18th Street, Suite 945
Denver, Colorado 80202
(303) 312-7341

WHEREFORE, for good cause shown, the United States of America (U.S. Fish and Wildlife Service) respectfully requests this Court to enter an Order granting leave to file the Amended Notice of Claim herein.

Respectfully submitted this 16th day of September, 2005.

KELLY A. JOHNSON
Acting Assistant Attorney General

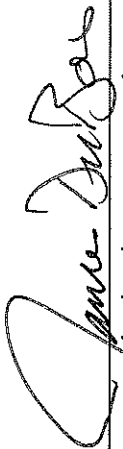

JAMES J. DUBOIS
Trial Attorney, Natural Resources Section
Environment and Natural Resources Division
U.S. Department of Justice
999 18th Street, Suite 945
Denver, Colorado 80202
(303) 312-7341

VERIFICATION

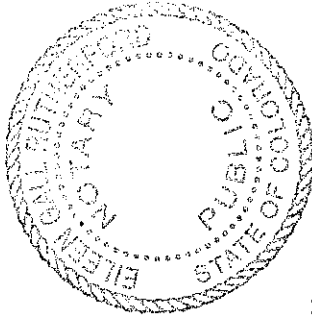
State of Colorado)
County of Denver)

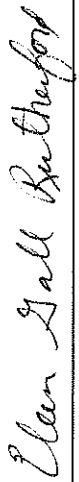
James J. DuBois, being first duly sworn, upon oath, deposes and says:

That I am the attorney for the party/claimant filing this motion for amended claim and that I have read this motion, know its contents, and believe that the statements are true to the best of my knowledge.


Attorney/signing in representative capacity

SWORN TO AND SUBSCRIBED BEFORE ME, in my presence, this 16th of September, 2005, a Notary Public in and for the City and County of Denver, State of Colorado.




NOTARY PUBLIC
STATE OF COLORADO

My Commission Expires: 8/23/2008

My Commission Expires 8/23/2008

CERTIFICATE OF MAILING

I certify that on September 16, 2005, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

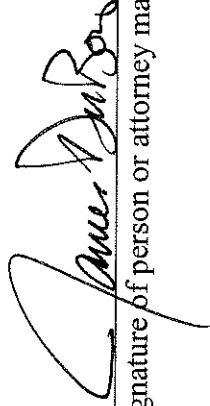
2. Copies to:

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

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

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

3. If you are filing an amended Notice of Claim in a subcase being heard before the Presiding Judge or a Special Master, you must serve a copy on all parties to that subcase.
(Insert Names/address of parties)



Signature of person or attorney mailing the form

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: A25-04034B

Date Received: _____

Receipt No.: _____

Received By: _____

AMENDED

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

AMENDED

1. Name: United States of America Phone: 503-231-6145
(Fish and Wildlife Service)
Address: Division of Engineering
911 NE 11th Avenue
Portland, OR 97232-4181

2. Date of Priority: January 28, 1886

3. Source: Eagle Creek Trib. to: Grays Lake

4. Point of Diversion:

Township 4S Range 43E Section 23, NE 1/4 of NE 1/4, B.M.,
County of Bonneville

Additional Point of Diversion from Eagle Creek: T04 S R 43E S23 SWNE

Point of Injection to Bridge Creek: T04S R43E S26 SWNE

Point of Re-diversion from Bridge Creek: T04S R43E S26 SWNE

5. Description of diverting works: **Earthen diversion and ditch, flood irrigation.**

6. Water is claimed for the following purposes:

Purpose	From	To	C.F.S. (or)	A.F.A.
Irrigation/Wildlife	Apr. 15	Oct. 15	2.40	
Stockwater/Wildlife	Mar. 15	Nov. 15	0.05	

United States of America
Fish and Wildlife Service

7. Total Quantity Claimed is: 2.40 C.F.S. (and/or) A.F.A.

8. Non-irrigation uses: 200 head cattle, wildlife.

9. Place of Use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
4S	43E	23	NE SW		Irr,S&W	38
4S	43E	23	SE SW		Irr,S&W	35
4S	43E	23	SW SW		Irr,S&W	7
4S	43E	26	SW NE		Irr,S&W	40

Total Number of Acres Irrigated 120

10. Place of use, county(ies): Bonneville.

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

12. Other Water Rights Used: A25-04032

13. Remarks: This amended claim reflects a priority date supported by a posted notice (see attachment) posted in Bingham County on January 28, 1886, and the addition of 40 acres in the SWNE of section 26. The cumulative diversions from Eagle Creek will not exceed 2.40 cfs. This water right combined with the water right claimed under A25-04032 (Bridge Creek) will not exceed 2.40 cfs. Water is diverted from Eagle Creek into the Dugway Ditch at the upstream Point of Diversion in the NENE section 23, then injected into Bridge Creek for diversion at the downstream Point of Diversion in the SWNE of section 26.

The Grays Lake National Wildlife Refuge was established by the Migratory Bird Conservation Commission on June 15, 1965, for waterfowl nesting and production.

14. Basis of Claim (Check one) Beneficial Use ☒ Posted Notice ☐
License ☐ Permit ☐ Decree ☐
If applicable provide IDWR Water Right Number

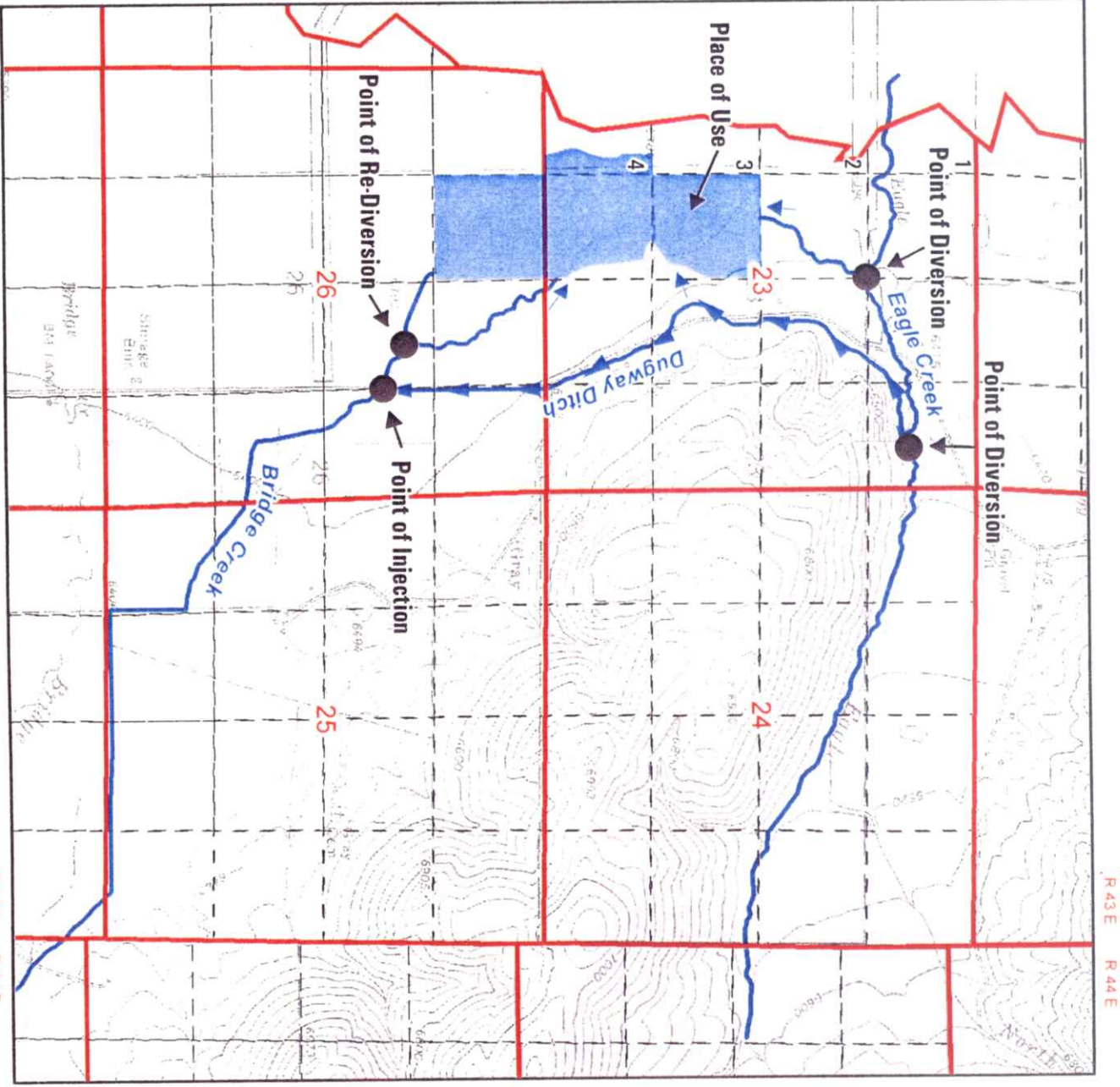
Court Case Number Decree Date



U.S. Fish & Wildlife Service
Grays Lake National Wildlife Refuge
Bonneville County, Idaho

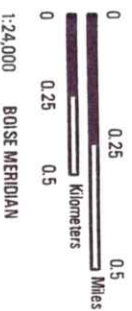
Amended Claim 25-04034B

SOURCE: EAGLE CREEK
QUANTITY: 2.40 CFS, 0.05 CFS
POINT OF DIVERSION: T04S R43E S23 NWSWNE & NENE
POINT OF INJECTION: T04S R43E S26 NESWNE
POINT OF REDIVERSION: T04S R43E S26 NESWNE
PURPOSE OF USE: IRRIGATION/WILDLIFE, STOCKWATER/WILDLIFE



THE PURPOSE OF THIS MAP IS TO IDENTIFY THE LOCATION OF THE WATER RIGHT. IT IS NOT INTENDED TO PROVIDE INFORMATION RELATIVE TO THE LOCATION OF PROPERTY OWNERSHIP BOUNDARY LINES.

Claim_Amended_25-04034B.MXD, 3/31/05



Water Resources Branch
R1 Division of Engineering
911 NE 11th Avenue
Portland, OR 97232-4191
503-231-6251



I, Michael N. Fisher, being first duly sworn, depose and testify as follows:

My name is Michael N. Fisher and I have been employed by the U.S. Fish and Wildlife Service (USFWS or Service) since 1986. I am currently employed as a Supervisory Wildlife Biologist at the Southeast Idaho National Wildlife Refuge Complex in Chubbuck, Idaho. I have been in this position since November, 2003. Previous to this position, from December, 1989 to November, 2003, I was the Refuge Manager at the Grays Lake National Wildlife Refuge (Refuge), near Wayan, Idaho.

In my role as Refuge Manager, I was responsible for administering and managing the daily operations of the Refuge. Besides routine Refuge administrative duties, a large portion of my time was spent managing important Refuge wildlife and habitat resources, including expansive wet meadows and uplands adjacent to the 22,000 acre lake bed. My duties included managing critical habitat management programs, such as: habitat enhancement, habitat restoration and water manipulation; burning; weed spraying; wildlife surveys; irrigation of agricultural lands and wetlands; and conducting farming, haying and grazing activities. Critical irrigation duties included ensuring that wet meadows were properly irrigated for use by wildlife during the critical breeding, nesting and migration seasons to produce cover and forage for wildlife and stock use: for filling shallow wetland ponds and sloughs for wildlife and stock use; irrigation of grain/alfalfa fields, grown for wildlife; and irrigation of Refuge hay meadows. Besides providing forage for permittees' livestock and for growing crops of hay, the flood irrigation methods used at the Refuge by me and my staff created valuable habitats such as wet meadows, dense grass stands and grain crops for nesting, foraging and migrating greater sandhill cranes, ducks, geese, trumpeter swans, shorebirds (i.e. willet, avocet, curlew), marshbirds (i.e. herons, egrets, white-faced ibis) and a wide assortment of other wildlife species dependant on these types of wetland habitats (meadows, grain fields, ponds, shallow sloughs).

I have personal knowledge and 14 years of field experience in diverting, and allowing Refuge permittees to beneficially divert, water for irrigation and wildlife purposes onto Refuge lands covered under SRBA claims A25-00229A, A25-02161, A25-04032, A25-04034B, A25-04045, A25-13722, A25-14084, A25-14096 and the new Bridge Creek, Eagle Creek, and unnamed stream (locally known as Hawkins Creek) claims. I personally irrigated Refuge meadows and fields, using diversion structures, canvas dams, irrigation ditches and irrigation laterals. In addition, ponds and sloughs were manipulated by me for stock and wildlife use. The Refuge staff and I have documented and quantified this use by using staff gauges, water flow meters, fixed flumes, portable flumes, water brooms and water volume measurement methods. Specifically, water was diverted for irrigation, stock and wildlife purposes as indicated below:

1) CLAIM: A25-00229A

SOURCE: Herman Creek (also known as Meyers Creek)

PLACE OF USE: T.3 S., R.43 E., Sec. 28, NWNW, SWNW, and Sec. 29, NENE, SENE, Bonneville Co., B.M

POINT OF DIVERSION: T.3 S., R.43 E., Sec. 28, NWNW, Bonneville Co., B.M.

IRRIGATION OF PLACE OF USE: As shown by the enclosed title documents, the Service acquired the land associated with this claim in 1976. After acquisition of the property, the Refuge Manager was often annually involved in attempts to coordinate water use on the property with neighbors. In 1992, I attempted to divert water in old ditches to the Place of Use, but flows were too low. Refuge staff replaced headgates and cleaned ditches in fall of 1992. Since 1993, the Refuge staff have irrigated the Place of Use (the Rich Tract, which consists of the west grain field, the northwest meadow and the northeast meadow) annually. Waters from Herman Creek are used to irrigate the west grain field, the meadows and to provide stock water along the main Herman Creek channel within the Rich Tract. A series of irrigation ditches and canvas dams are used to distribute Herman Creek flows to the Place of Use described above. The Refuge has measured irrigation water flows on the Refuge through instantaneous flow measurements, flumes and by other methods since 1995. To the best of my knowledge, the Service manages irrigation of the Rich Tract similar to the previous owners.

2) CLAIM: A25-02161

SOURCE: A well near Headquarters

PLACE OF USE: T.4 S., R.43 E., Sec. 35, SENE, Bonneville Co., B.M.

POINT OF DIVERSION: T.4 S., R.43 E., Sec. 35, SENE, Bonneville Co., B.M.

IRRIGATION OF PLACE OF USE: As shown by the enclosed documents, the Service acquired the lands associated with this claim in 1969 and this replacement well was drilled in 1976. Previously, there was a well at this site that could no longer be used for domestic uses. Since 1976, the Refuge has used the well to: supply water to a residence headquarters office, shop, bunkhouse, guard station, three hydrants and three recreational vehicle/travel trailer pads; irrigate the lawn surrounding the office area; and provide water for livestock and wildlife. During my 14-year tenure as Refuge Manager of Grays Lake NWR, I supervised the application of, or personally applied, the well water to these uses.

3) CLAIM: A25-04032 and new claim to Eagle Creek

PAGE 2 OF 2: Affidavit of Michael N. Fisher

SOURCE: Bridge Creek (A25-04032) and Eagle Creek (new claim)

PLACE OF USE: T.4 S., R.43 E., Sec. 26, NENW, Bonneville Co., B.M

POINT OF DIVERSION:

A25-04032: T.4 S., R.43 E., Sec. 26, SWNE, and T.4 S, R.43 E, Sec. 25, SESE and SWSW, Bonneville Co., B.M.

New Claim: T.4 S., R.43 E., Sec. 23, NENE; Point of Injection: T.4 S., R.43 E., Sec. 26, NESWNE; Point of Re-diversion: T.4 S., R.43 E., Sec. 26, NESWNE

IRRIGATION OF PLACE OF USE: As shown by the enclosed title documents, the Service acquired the land associated with these claims in 1973. After acquisition of the property, the Refuge Manager was involved in attempts to coordinate water use on the property with upstream and downstream neighbors. To the best of my knowledge, since the Service acquired the lands, Refuge permittees irrigated all of the lands every year until 1995. Since 1995, Refuge staff has irrigated the lands every year. The Place of Use includes meadows in the South 40 field which produce hay. The Refuge staff cleaned all upstream delivery ditches and channels located on Ewart Muir Estate land, with the permission of the heirs, to the point of diversion in 1992. The Refuge staff also maintained and improved ditches on the Refuge in 2002.

Water from Bridge Creek and Eagle Creek water, coming through the Dugway Ditch and into the Bridge Creek channel, is used on these lands for irrigation, wildlife, and stock. Water from the point of diversion moves north and west to irrigate meadows in the South 40 fields. Water from these diversions also provides livestock water and flood irrigation for hay production to create wet meadow habitats for wildlife. Wildlife use in these wet meadows is high, including use by sandhill cranes, waterfowl and shorebirds for breeding, nesting and migration. Spring, summer and early fall water from Bridge Creek and flows from Eagle Creek provide water that I have diverted (via structures, ditches and using canvas dams) and monitored, or measured, while Refuge Manager at Grays Lake. I have also directed Refuge staff to conduct the diversions and measurements. Water measurements were made at least once per month and after flow adjustments were made, since 1995, at the north ditch flume (Sec. 26, SWNE) (by flume gauge or water flow meter prior to the flume) and the west water control structure (Sec. 26, SWNE) along the Bridge Creek channel on the Refuge.

4) CLAIM: A25-04034B and new claim to Bridge Creek

SOURCE: Eagle Creek (A25-04034B) and Bridge Creek (new claim)

PLACE OF USE: T.4 S., R.43 E., Sec. 23, NESW, SESW, and SWSW, Bonneville Co., B.M.

POINT OF DIVERSION:

PAGE 3 OF 3: Affidavit of Michael N. Fisher

~~A25-04034B~~: T.4 S., R.43 E., Sec. 23, NENE, and NWSWNE, Bonneville Co., B.M.; Point of Injection: T.4 S., R.43 E., Sec. 26, NESWNE; Point of Re-diversion: T.4 S., R.43 E., Sec. 26, NESWNE;
~~New Claim~~: T.4 S., R.43 E., Sec. 26, SWNE, and T.4 S., R.43 E., Sec. 25, SESE and SWSW, Bonneville Co., B.M.

IRRIGATION OF PLACE OF USE: The Service acquired the land associated with these claims in 1986. After acquisition of the property, the Refuge Manager was involved in attempts to coordinate water use on the property with neighbors. To the best of my knowledge, since the Service acquired the lands, Refuge permittees irrigated all of the lands every year until 1995. Water from Eagle Creek and Bridge Creek is diverted onto these lands. The Place of Use includes the North 40 Field and Center 40 Field. From 1995 to 2003, the Refuge staff and I continued the historic practice of diverting water from the Main Eagle Creek diversion structure (Sec. 23, NWSWNE) on the Refuge. Water was diverted south and west across the Ewart (Stoddard) Field to the Place of Use in the North 40 Field and the Center 40 Field. The Refuge staff and I also diverted water from 1995 to 2003 across the Sibbett Field to the Center 40, as had been done historically. Irrigation water on this Place of Use is used for stock and wildlife watering and to provide hay production to create diverse wet meadow habitats for sandhill cranes, waterfowl and shorebirds.

From 1995 to 2003, Refuge staff have taken water measurements at specific water diversion points to quantify flows using water flow meters and, more recently, fixed flumes in two locations. In 1995, the Refuge staff cleaned the delivery ditch across private land, with the permission of the owner, from the Point of Diversion to the Place of Use. The distribution ditch within the Place of Use was cleaned at the same time. Maintenance and improvements to ditches were done again in 2002 to improve flows.

5) CLAIM: A25-04045 and new claim to unnamed stream (known as Hawkins Creek)

SOURCE: Willow Creek (A25-04045) and Unnamed Stream (a.k.a. Hawkins Creek) (new claim)

PLACE OF USE: T.4 S., R.43 E., Sec. 11, SENE, SWNE, NESW, NWSE, Bonneville Co., B.M.

POINT OF DIVERSION:

~~A25-04045~~: T.4 S., R.44 E., Sec. 6, SESW, Bonneville Co., B.M.; Point of Injection: T.4 S., R.43 E., Sec. 1, SESW; Points of Re-diversion: T.4 S., R.43 E., Sec. 11 SESENE.
~~New Claim~~: T.4 S., R.43 E., Sec. 11 SESENE, and additional in SESENE.

IRRIGATION OF PLACE OF USE: The Service acquired the land associated with these claims in 1975. After acquisition of the property, the Refuge Manager was involved in attempts

to coordinate water use on the property with neighbors. For the first five years following purchase, an agreement was in place, as a condition of purchase, allowing the original owner to continue to manage the property for haying and grazing as he had done previously, including water management which supported haying, grazing and wildlife. This water management was considered beneficial to the Refuge. To the best of my knowledge the former owner irrigated all of the lands in the Place of Use until 1980; after the five year agreement expired in 1980, the Refuge permittee continued to irrigate all of the lands every year until 1995. The Place of Use consists of meadows, also known as Hayfield and Hawkins Creek fields, which are part of tract #32. Since 1995, the Refuge staff and I have taken an active role in irrigating the Place of Use every year. I coordinated closely with the adjacent landowner upstream to ensure the Refuge receives sufficient flows through Willow Creek and Hawkins Creek. This water is used for hay production and stock water and provides important wildlife habitat for sandhill cranes, waterfowl and shorebirds. Maintenance and improvements to ditches were done in 2002.

6) CLAIM: A25-13722

SOURCE: Eagle Creek

PLACE OF USE: T.4 S., R.43 E., Sec. 23, Lots 2 & 3, Bonneville Co., B.M.

POINT OF DIVERSION: T.4 S., R.43 E., Sec. 23, NENW, Bonneville Co., B.M.

IRRIGATION OF PLACE OF USE: The Service acquired the land associated with this claim in 1988. After acquisition of the property, the Refuge Manager was involved in attempts to coordinate water use on the property with neighbors. To the best of my knowledge, since the Service acquired the lands, the Refuge permittee irrigated all of the lands in the Place of Use every year from 1988 to 1995. Refuge staff cleaned the ditches and laterals in the Place of Use in 1992. Since 1995, the Refuge staff has continued to irrigate all of the lands every year. The Place of Use is also known as Boathouse Field (Tract 40).

As Refuge Manager I diverted water into the Boathouse Field (Tract 40) annually via a ditch from the main Eagle Creek ditch. This water irrigated the Boathouse Field, to the south and west of the Point of Diversion, for hay production, while also providing wildlife and stock water. From 1995 through 2003, I measured water flows using flow meters and, more recently, a Parshall flume to quantify Eagle Creek flows used to irrigate this Place of Use. Maintenance and improvements to ditches were done in 2002.

7) CLAIM: A25-14084

SOURCE: Bridge Creek

PLACE OF USE: T.4 S., R.43 E., Sec. 35, SWNW and Sec. 34, NENE, NWNE, SWNE, SENE, NESE, NWSE, Bonneville Co., B.M.

POINT OF DIVERSION: T.4 S., R.43 E., Sec. 35, NWNW, B.M.

IRRIGATION OF PLACE OF USE: The Service acquired the land associated with this claim in 1980. After acquisition of the property, the Refuge Manager was involved in attempts to coordinate water use on the property with neighbors. Since the Service acquired the lands, irrigation flows have reached the Place of Use every year. The Place of Use is the Tingey Tract, #51. The Refuge staff has irrigated these lands every year since 1980. Water is used for hay production, stock water and for important wildlife use by sandhill cranes, waterfowl and shorebirds. Since 1995, I have measured water flows down the Bridge Creek channel using flow meters. Maintenance and improvements to ditches were done in 2002.

8) CLAIM: A25-14096

SOURCE: Willow Creek

PLACE OF USE: T.3 S., R.43 E., Sec. 34, NWSE, SWSE, SESE, and Sec. 35 SWSW, Bonneville Co., B.M.

POINT OF DIVERSION: T.3 S., R.43 E., Sec. 35, NESW, Sec. 34, NESE, Bonneville Co., B.M.

IRRIGATION OF PLACE OF USE: The Service acquired the land associated with this claim in 1975. After acquisition of the property, the Refuge Manager was involved in attempts to coordinate water use on the property with neighbors. For the first five years following purchase, an agreement was in place, as a condition of purchase, allowing the original owner to continue to manage the property for haying and grazing as he had done previously, including water management to support the haying, grazing, and wildlife. This water management was considered beneficial to the Refuge. To the best of my knowledge, the former owner irrigated all of the lands in the Place of Use until 1980; when the five year agreement expired in 1980, the Refuge permittee irrigated all of the lands every year until 1995. After 1995, Refuge staff continued to irrigate the Place of Use every year. Water from Willow Creek irrigates the Place of Use, known as Willow Creek Field (Tract #32). Uses include stockwater and watering of meadows for important wildlife habitat for sandhill cranes, waterfowl and shorebirds. I have been measuring Willow Creek flows since 1995 using water flow meters. Maintenance and improvements to Willow Creek ditches were done in 2002.

Further affiant saith not. DATED this 11 th day of January 2005.

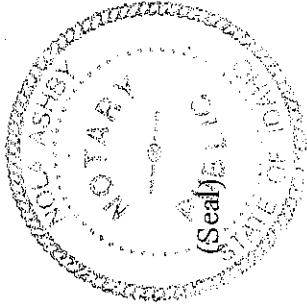
Michael N. Fisher

Michael N. Fisher
U.S. Fish and Wildlife Service
4425 Burley Drive, Suite 4
Chubbuck, ID 83202

STATE OF Idaho
COUNTY OF Bannock

The affiant, Michael N. Fisher, being first duly sworn by me, hereby declares that he has read the foregoing Affidavit and that the information contained therein is true and accurate to the best of his knowledge and belief.

Subscribed and sworn to me by Michael N. Fisher this 11 th day of January 2005.



Nicola Ashby
NOTARY PUBLIC

Residing at Bannock County, ID

My Commission Expires: 12-25-10

I, Ralph Stoor, being first duly sworn, depose and testify as follows:

My name is Ralph E. Stoor and I am currently employed by the U.S. Fish and Wildlife Service (USFWS or Service) as an Engineering Equipment Operator at the Grays Lake National Wildlife Refuge (Refuge), near Wayan, Idaho. I have been employed by the USFWS since 1966. In my role as an Engineering Equipment Operator, I am assigned responsibility and duties for, operating and maintaining heavy equipment, maintaining government owned buildings, grounds, and facilities, maintaining refuge fencing, refuge farming operations, checking on refuge haying and grazing permittees, maintaining water levels, managing refuge water gauging controls, irrigating refuge lands, assisting in installation of water measurement flumes, coordinating Regional Office Service Personnel and other refuge programs, and attending water training sessions.

In addition to working at the refuge, I have lived in the Wayan and Soda Springs, Idaho, area for 60 years. I am familiar with irrigation practices both on- and off-refuge lands, before and after the refuge was established. I have owned my own ranching operation in the Wayan area (Grays Lake Valley) since 1962, and was also born and raised on the same ranch which I have worked for approximately 50 years.

I have personal knowledge and experience in diverting water for irrigation and wildlife purposes onto the Grays Lake Refuge lands covered under claims A25-00229A, A25-02161, A25-04032, A25-04034B, A25-04045, A25-13722, A25-14084, A25-14096, and the new Bridge Creek, Eagle Creek, and unnamed stream (locally known as Hawkins Creek) claims. Specifically, water was diverted for irrigation and wildlife purposes as indicated below:

1) CLAIM: A25-00229A

SOURCE: Herman Creek (also known as Meyers Creek)

PLACE OF USE: T.3 S., R.43 E., Sec. 28, NWNW, SWNW, and Sec. 29, NENE, SENE, Bonneville Co., B.M

POINT OF DIVERSION: T.3 S., R.43 E., Sec. 28, NWNW, Bonneville Co., B.M.

IRRIGATION OF PLACE OF USE: The Service acquired the 160 acres of land associated with this claim in 1976. I refer to these lands as the Rich Tract. Since the Service acquired the lands, Refuge staff have made efforts to irrigate every year. Since that date, I was involved in constructing wildlife and stockwater ponds in areas tied directly to this specific diversion and in approving irrigation. During 1977, I was involved in the construction of a low elevation dike off the diversion and in October of

1994 a new west ditch was constructed in the Rich Tract. In August of 1982, I was involved in the construction of a pond for wildlife and stockwater use off the Herman Creek Channel. On July 1, 1993, the area was surveyed for culvert installation and water control structures were in place by August 4, 1993. During the period from 1976 through 2004 ditches and water control structures were cleaned and maintained on a regular basis (as needed). Since the installation of the water control structures, water levels have been actively managed in that area when water was available. In October (25th and 26th) of 1994 two new ditches were created off the Herman Creek Channel to improve irrigation and on November 3rd and 4th of that same year additional work was done on the ditches, including surveys. Throughout the time the Service has owned the property, water has been used for irrigation, wildlife and stockwater.

From a historical perspective, obvious evidence of old natural water and diversion channels exists in that same area today (within the Rich Tract and on BLM property just east of the County Road - Grays Lake Road).

2) CLAIM: A25-02161

SOURCE: A well near Headquarters

PLACE OF USE: T.4 S., R.43 E., Sec. 35, SENE, Bonneville Co., B.M.

POINT OF DIVERSION: T.4 S., R.43 E., Sec. 35, SENE, Bonneville Co., B.M.

IRRIGATION OF PLACE OF USE: The Service acquired the land associated with the claim in 1969. Since the Service acquired the lands, the Refuge has used this well to: supply water to a residence, headquarters office, shop, bunkhouse, guard station, 3 hydrants, an RV pad; irrigates lawn surrounding the office area; and provide water for livestock.

3) CLAIM: A25-04032 and new claim to Eagle Creek

SOURCE: Bridge Creek (A25-04032) and Eagle Creek (new claim)

PLACE OF USE: T.4 S., R.43 E., Sec. 26, NENW, Bonneville Co., B.M

POINT OF DIVERSION:

A25-04032: T.4 S., R.43 E., Sec. 26, SWNE, and T.4 S, R.43 E, Sec. 25, SESE and SWSW, Bonneville Co., B.M.

New Claim: T.4 S., R.43 E., Sec. 23, NENE; Point of Injection: T.4 S., R.43 E., Sec. 26, NESWNE; Point of Re-diversion: T.4 S., R.43 E., Sec. 26, NESWNE

IRRIGATION OF PLACE OF USE: The Service acquired the 40 acres of land associated with this claim in 1973. I refer to these lands as the South 40. Since the Service acquired the lands, Refuge staff have made efforts to irrigate every year. Bridge Creek water serves the entire place of use. However, water from Eagle Creek (coming through the ditch east of the County Road and into the Bridge Creek channel) is also used. Since Service ownership, I have observed that water from these diversions primarily served to provide irrigation, stockwater, and to supply wildlife wetlands during the Spring, Summer, and Fall. As long as I can remember, and before the Service acquired the property, waters from these diversions irrigated pasture lands, provided livestock water, and supplied water to wetlands. On August 29, 1988, the north diversion channel of Bridge Creek was cleaned to improve irrigation, stock, and wildlife water delivery to the South and Middle 40 Units and southern edge of the North 40 Unit.

4) CLAIM: A25-04034B and new claim to Bridge Creek

SOURCE: Eagle Creek (A25-04034B) and Bridge Creek (new claim)

PLACE OF USE: T.4 S., R.43 E., Sec. 23, NESW, SESW, and SWSW, Bonneville Co., B.M.

POINT OF DIVERSION:

A25-04034B: T.4 S., R.43 E., Sec. 23, NENE, and NWSWNE, Bonneville Co., B.M.;

Point of Injection: T.4 S., R.43 E., Sec. 26, NESWNE; Point of Re-diversion: T.4 S., R.43 E., Sec. 26, NESWNE;

New Claim: T.4 S., R.43 E., Sec. 26, SWNE, and T.4 S, R.43 E, Sec. 25, SESE and SWSW, Bonneville Co., B.M.

IRRIGATION OF PLACE OF USE: The Service acquired the 80 acres of land associated with this claim in 1986. I refer to these lands as the North 40 (NESW) and Middle 40 (SESW). Since the Service acquired the lands, Refuge staff have made efforts to irrigate every year. The primary source of water for this tract is Eagle Creek. However, there are times when Bridge Creek water is additionally diverted onto these lands. Prior to Service ownership, I observed early-Spring through mid-Summer and Fall irrigation of crops located in the "North 40" and "Middle 40" for haying and pasture. Since Service ownership of this property, the lands continue to receive irrigation water for haying crops, pasture and wildlife. Beginning with the establishment of the refuge in

1965, work to improve water delivery from the main Eagle Creek channel was initiated. On September 22, 1976, work was done on the Eagle Creek water control structure and main diversion to improve water delivery to the refuge and lands owned by adjacent neighboring landowners (now the refuge). I have documented additional work to maintain this particular water delivery system beginning in 1987 to present; this work has occurred almost on an annual basis. In addition, at least six diversion culverts out of the Dugway Ditch supply Eagle Creek water to the Ewart Field (or Stoddard Field) and the Middle and North 40 Units. These diversions from the Dugway Ditch divert water prior to running onto the adjacent private landowner to the south. Historically, these fields were flood irrigated on almost an annual basis prior to refuge ownership. Since refuge ownership of these same parcels, they have been irrigated in the same manner almost annually for the purposes of proving irrigation of croplands, stockwater and wildlife. Refuge staff has done, and continues to do, a considerable amount of maintenance work on the Dugway Ditch (as needed); including filling leaks, upkeep of culverts, and cleaning ditches. On August 29, 1988 the north diversion channel of Bridge Creek was cleaned to improve irrigation, stock, and wildlife water delivery to the South and Middle 40 Units and southern edge of the North 40 Unit.

5) CLAIM: A25-04045 and new claim to unnamed stream (known as Hawkins Creek)

SOURCE: Willow Creek (A25-04045) and Unnamed Stream (a.k.a. Hawkins Creek) (new claim)

PLACE OF USE: T.4 S., R.43 E., Sec. 11, SENE, SWNE, NESW, NWSE, Bonneville Co., B.M.

POINT OF DIVERSION:

A25-4045: T.4 S., R.44 E., Sec. 6, SESW, Bonneville Co., B.M.; Point of Injection: T.4 S., R.43 E., Sec. 1, SESW; Points of Re-diversion: T.4 S., R.43 E., Sec. 11 SESENE

New Claim: T.4 S., R.43 E., Sec. 11 SESENE, and additional in SESENE.

IRRIGATION OF PLACE OF USE: The Service acquired the 69.2 acres of land associated with this claim in 1975. I refer to these lands as the Hawkin's Field (NWSE) and the Hay Field (SENE, SWNE, and NESW). Since the Service acquired the land, Refuge staff have taken an active role in irrigating on regular basis as water is available for croplands, livestock and wildlife. Since approximately November 30, 1977, the refuge has coordinated with the neighboring private landowner to maintain the initial diversion from the Willow Creek Channel into Hawkins's Creek. The refuge has also

spent a significant amount of time throughout the years coordinating with the same private landowner to ensure the refuge receives sufficient water for irrigation of hay fields, pasture lands and for wildlife habitat. The original Hawkin's Creek Channel was changed by the landowner from the Hay Field to the fence line diverting water into the Hawkin's 40 Field. Refuge staff have since cleaned, improved and cut new ditches in order to more adequately provide irrigation water to the Hawkin's 40 Field. Refuge staff have coordinated with the adjacent landowner for several years to divert water to the North Ditch in order to provide irrigation and wildlife water to the Hay Field. I have documented additional work on the Hawkin's Creek Channel for both September 21 and October 17, 1995. It is my understanding that this same property was historically irrigated prior to Service acquisition.

6) CLAIM: A25-13722

SOURCE: Eagle Creek

PLACE OF USE: T.4 S., R.43 E., Sec. 23, Lots 2 & 3, Bonneville Co., B.M.

POINT OF DIVERSION: T.4 S., R.43 E., Sec. 23, NENW, Bonneville Co., B.M.

IRRIGATION OF PLACE OF USE: The Service acquired the 44.5 acres of land associated with this claim in 1988. Since the Service acquired the land, Refuge staff have irrigated almost every year. Prior to Service ownership, I observed the primary source of water supply to these tracts coming from Eagle Creek. Prior to Service ownership, I observed early-Spring through mid-Summer, and when water was available, throughout the Fall, irrigation of the Boat House Field for hay crops, pasture units, wetlands, and for a stockwater pond. Since Service ownership of this property, the lands continue to receive irrigation water for haying crops, pasture and wetlands for wildlife. Beginning with the establishment of the refuge in 1965, work to improve water delivery from the main Eagle Creek channel was initiated. On September 22, 1976, work was done on the Eagle Creek water control structure and main diversion to improve water delivery to the refuge and lands then owned by adjacent neighboring landowners (now the refuge). I have documented additional work to maintain this particular water delivery system from 1976 to present; which has occurred almost on an annual basis. In addition, since November 9th, 1987, the refuge also has records of irrigating the Boat House Field with waters from the Eagle Creek Channel on a fairly regular basis, for purposes of irrigating croplands, and providing water for livestock and wildlife.

7) CLAIM: A25-14084

SOURCE: Bridge Creek

PLACE OF USE: T.4 S., R.43 E., Sec. 35, SWNW and Sec. 34, NENE, NWNW, SWNE, SENE, NESE, NWSE, Bonneville Co., B.M.

POINT OF DIVERSION: T.4 S., R.43 E., Sec. 35, NWNW, B.M.

IRRIGATION OF PLACE OF USE: The Service acquired the 140.84 acres of land associated with this claim in 1980. I refer to these lands as the Tingy Field. Since the Service acquired the lands, Refuge staff have irrigated as often as possible when water is available, which usually occurs during Spring and early-Summer and occasionally mid-Summer, using water from the Bridge Creek Channel (also know as the Fulton Creek Channel). Prior to Service ownership, the Service installed on July 28, 1977, culverts along, and within, the Service right-of-way (Bridge Creek Access Road) for the purposes of diverting water. On November 5, 2001, additional lateral ditches were constructed and the creek channel cleaned. On June 27, 1988, the Service replaced the original water control structure (on Ewart Muir property). The stock ponds, currently used for livestock and wildlife, were established prior to these parcels being purchased by the Service. Prior to refuge establishment in 1965, the Tingy Field was irrigated and Bridge Creek water was the source of irrigation for these areas while under private ownership. Since that time, the refuge has assisted in operating the water control structure to divert waters either west or north for the purposes of irrigation and providing water for livestock and wildlife. Since 1988, the Service has also maintained and cleaned (as needed) the Bridge Creek delivery channel and water control structure to ensure water delivery to private landowners and the refuge. Bridge Creek waters are used annually by the refuge, during the Spring and Summer, to fill several ponds and for irrigation at the west end of Bridge Creek Lane for stockwater, croplands, and wildlife.

8) CLAIM: A25-14096

SOURCE: Willow Creek

PLACE OF USE: T.3 S., R.43 E., Sec. 34, NWSE, SWSE, SESE, and Sec. 35 SWSW, Bonneville Co., B.M.

POINT OF DIVERSION: T.3 S., R.43 E., Sec. 35, NESW, Sec. 34, NESE, Bonneville Co., B.M.

IRRIGATION OF PLACE OF USE: The Service acquired the 100 acres of land associated with this claim in 1975. Since the Service acquired the lands, Refuge staff in association with a neighboring landowner, have irrigated almost every year. Prior to Service ownership, existing ditches and creek channels were used by the previous landowner to deliver water for irrigation, stockwater and wetlands. Since November 30, 1977, the refuge (in cooperation with the adjacent landowner) has continued to maintain the diversion and flow water from the Willow Creek channel for irrigation, and for providing water for livestock and wildlife. On October 21, 2002 ditches off the main Willow Creek Channel were cleared and additional diversion channels added for purposes of providing increased flows for irrigation, livestock and wildlife.

Further affiant saith not. **DATED** this 12 th day of January, 2005.

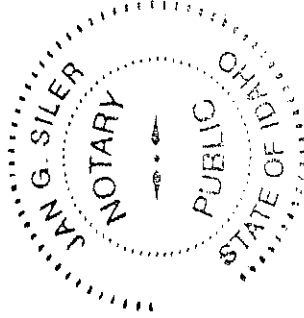
Ralph E. Stoor
Ralph E. Stoor
U.S. Fish and Wildlife Service
911 NE 11th Avenue
Portland, Oregon 97232-4181

STATE OF Idaho

COUNTY OF Bonanza

The affiant, Ralph Stoor, being first duly sworn by me, hereby declares that he has read the foregoing Affidavit and that the information contained therein is true and accurate to the best of his knowledge and belief.

Subscribed and sworn to me by Ralph Stoor this 12 th day of January, 2005.



NOTARY PUBLIC

Residing at: 1-12-05

(Seal)

My Commission Expires: 4-3-05

DESCRIPTIVE SUMMARY

This document is an affidavit by David J. Langman regarding the management of water from various sources at the Grays Lake National Wildlife Refuge (Refuge).

AFFIDAVIT

I, David J. Langman, being first duly sworn,

1. I am a resident of Battle Ground, Washington, and am employed by the U. S. Fish and Wildlife Service (FWS), Region 1 as a Regional Hydrologist in the Water Resources Branch of the Division of Engineering in Portland, Oregon.
2. I am a trained hydrologist with an Associate of Applied Science Degree in Water Resources from Spokane Community College, Spokane, Washington and a Bachelor of Science Degree in Geology from Eastern Washington University, Cheney, Washington. Since college, I have received additional advanced training in hydraulics and hydrology.
3. I have been employed by the FWS as a hydrologist since October 1989. Previous to my current position, I was employed by the U. S. Geological Survey as a Hydrologic Technician (1981 - 1983) and as a Hydrologist (1983 - 1989) before transferring to the U. S. Fish and Wildlife Service in October 1989. My responsibilities include the areas of hydrology and water rights management for the six states comprising Region 1, which includes Idaho. These duties also include among others, recommending measurement devices for specific sites and situations, designing and installing water measurement devices, making water flow measurements, providing training in water measurement procedures to other personnel in the Region, reviewing and interpreting water-measurement data, and researching water rights.
4. I also have a thorough understanding of the 48 Snake River Basin Adjudication (SRBA) claims pertinent to the Refuge. I have been the point of contact for the FWS regarding these claims since 1994, and have worked with Refuge staff to ensure the validity of each claim described below.
5. Between 1994 and 2003, I have installed/overseen the installation of approximately 16 water-use monitoring systems at the Refuge. The purpose of these monitoring sites is to quantify the amount of water diverted to the place of use covered under the Refuge's irrigation water rights claims filed in the SRBA. Specifically, these irrigation claims include A25-00229A, A25-04032, A25-04034B, A25-04045, A25-13722, A25-14084, A25-14096, and three new claims for Bridge Creek, Eagle Creek, and an unnamed stream locally known as Hawkins Creek. The monitoring sites relevant to these claims are:

Station Name: Herman Creek near Collins Ranch - East Channel
Station Number 461201
Monitors water-use under claim no. A25-0229A

Source - Herman Creek
Period of record - July 1995 to present

Station Name: Herman Creek near Collins Ranch - West Channel
Station Number 461202
Monitors water-use under claim no. A25-0229A
Source - Herman Creek
Period of record - July 1995 to present

Station Name: Bridge Creek & Eagle Creek at Sibbett Field
Station Number 461203
Monitors water-use under claim no. A25-4032 and A25-4034B
Source - Bridge Creek and Eagle Creek
Period of record - July 1995 to present

Station Name: Willow Creek near Mann Ranch
Station Number 461204
Monitors water-use under claim no. A25-4046B
Source - Willow Creek
Period of record - July 1995 to present

Station Name: Hawkins Creek near Linstrom Ranch
Station Number 461205
Monitors water-use under claim no. A25-4045
Source - Hawkins Creek
Period of record - July 1995 to present

Station Name: Eagle Creek Ditch near Boathouse
Station Number 461206
Monitors water-use under claim no. A25-13722
Source - Eagle Creek
Period of record - July 1995 to present

Station Name: Herman Creek near Collins Ranch - Main Channel
Station Number 461208
Monitors water-use under claim no. A25-0229A
Source - Herman Creek
Period of record - July 1995 to present

Station Name: Bridge Creek near Tingey Ranch
Station Number 461212
Monitors water-use under claim no. A25-14084
Source - Bridge Creek
Period of record - unknown

Station Name: Eagle Creek at Ewart Field - East Ditch
Station Number 461213
Monitors water-use under claim no. A25-4005 and A25-4034B
Source - Eagle Creek
Period of record - May 2002 to present

Station Name: Eagle Creek at Ewart Field Field - West Ditch
Station Number 461214
Monitors water-use under claim no. A25-4005 and A25-4034B
Source - Eagle Creek
Period of record - May 2002 to present

Station Name: Dugway Ditch at East Ewart Field - Upper Site
Station Number 461215
Monitors water-use under claim no. A25-4034B
Source - Eagle Creek
Period of record - May 2002 to present

Station Name: Dugway Ditch at East Ewart Field - Lower Site
Station Number 461216
Monitors water-use under claim no. A25-4034B
Source - Eagle Creek
Period of record - May 2002 to present

7. I have included copies of the FWS's Annual Water Use records for specified years for the above stations. These reports demonstrate the amount of water diverted for the specified year(s).
8. Since 1994 I have made over 35 trips to the Refuge. These trips were made to recommend and/or install measuring systems and to become familiar with the various water resources of the Refuge. Over the past 11 years, I have gained an understanding of water sources, delivery, and management under the claims referenced above at paragraph #4, including: where and how the Refuge receives its water under its SRBA claims and how it is managed.
9. Based on the data collected at FWS monitoring stations and my familiarity with the water systems on the Refuge, I provide the following conclusions:

CLAIM: A25-00229A

The source of water for this claim is Herman Creek (also known as Meyers Creek). The water is first diverted from its source in the NWNW, Sec.28, T.3S., R.43E., B.M. and is diverted for wildlife, stock and irrigation purposes onto the NWNW, SWNW, Sec. 28, and NENE, SENE, Sec. 29, T.3S., R.43E., B.M. It is my understanding that since the Service acquired the Place of Use (POU) in 1976,

Refuge staff have diverted the water for irrigation, stock and wildlife purposes. Water use under this claim has been measured at Stations No(s).461201, 461202, and 461208 since July of 1995. The attached FWS's Annual Water Use Records, 1996-1997 Water Years, show that the claimed amount was diverted, and the Ralph Stoor and Michael Fisher affidavits show that the water was beneficially used.

CLAIM:A25-04032 (Bridge Creek) & New Claim (Eagle Creek)

The primary source of water for the POU covered by these claims is Bridge Creek. When sufficient water is not available from Bridge Creek, water is used from Eagle Creek, coming through the Dugway Ditch into the Bridge Creek channel for use on the Refuge. I have observed this several times on my visits to the Refuge. Water use under these claims has been measured at Station No. 461203 since July of 1995. It is my understanding that since the Service acquired the POU in 1975, Refuge staff have diverted the water for irrigation, stock and wildlife purposes every year. The attached FWS's Annual Water Use Records, 1996-1997 Water Years, show that the claimed amount was diverted, and the Ralph Stoor and Michael Fisher affidavits show that the water was beneficially used.

CLAIM:A25-04034B (Eagle Creek) & New Claim (Bridge Creek)

The primary source of water for the POU covered by these claims is Eagle Creek. However, Bridge Creek water is also diverted onto these lands. Eagle Creek water reaches the POU from a ditch approximately one quarter mile north of the POU and from the Dugway Ditch to the east. Eagle Creek also co-mingles with Bridge Creek and reaches the POU through the Bridge Creek channel. Bridge Creek reaches the POU of use from the southeast. I have observed this several times on my visits to the Refuge. Water diverted under these claims can be monitored at Stations Nos. 461203, 461213, 461214, 461215, and 461216. It is my understanding that since the Service acquired in the POU in 1986, Refuge staff have diverted the water for irrigation, stock and wildlife purposes every year. The attached FWS's Annual Water Use Records, 1996-1997 Water Years, show that the claimed amount was diverted, and the Ralph Stoor and Michael Fisher affidavits show that the water was beneficially used.

CLAIM:A25-04045 (Willow Creek) & New Claim [(Unnamed Stream (a.k.a. Hawkins Creek))]

The sources of water for the POU covered by these claims are Willow Creek and an unnamed stream (a.k.a. Hawkins Creek). Water from Willow Creek is injected into an unnamed stream (a.k.a. Hawkins Creek). It is my understanding that since the Service acquire the POU in 1975, Refuge staff have diverted the water and it has been used for irrigation, stock and wildlife purposes every year.

Since 1994, on two occasions I have observed water being diverted to the POU. Water-use under these claims have been monitored at one of its two points of re-diversion at Station No. 461205 since July 1995. The attached FWS's Annual Water Use Records, 1996-1997 Water Years, show that most of the water claimed was diverted through the first point of re-diversion. There is also a second point of diversion which is not measured. As stated in the affidavits of Ralph Stoor and Michael Fisher, the Refuge uses all of the water made available to it.

CLAIM:A25-13722

The source of water for this claim is Eagle Creek. It is my understanding that since the Service acquired the POU in 1988, Refuge staff have diverted the water for irrigation, stock and wildlife purposes every year. Since 1995 on several occasions, I have observed water being diverted to the POU. Water use under this claim has been monitored at Station No. 461206 since July 1995. The attached FWS's Annual Water Use Records, 1996-1997 Water Years, show that the claimed amount was diverted, and the Ralph Stoor and Michael Fisher affidavits show that the water was beneficially used.

CLAIM:A25-14084

The source of water for this claim is Bridge Creek. It is my understanding that since the Service acquired the POU in 1980, Refuge staff have diverted the water for irrigation, stock and wildlife purposes every year. Since 1995 on several occasions, I have observed water being diverted to the POU. Water use under this claim is monitored at Station No. 461212. The attached FWS's Annual Water Use Records, 1996-2003 Water Years, show that the claimed amount was diverted, and the Ralph Stoor and Michael Fisher affidavits show that the water was beneficially used.

CLAIM:A25-14096

The source of water for this claim is Willow Creek. It is my understanding that since the Service acquired the POU in 1975, Refuge staff have diverted the water for irrigation, stock and wildlife purposes every year. Since 1995 on several occasions, I have observed water being diverted to the POU. Water use under this claim has been monitored at Station No. 461204 since July 1995. The attached FWS's Annual Water Use Records, 1996-1997 Water Years, show that the claimed amount was diverted, and the Ralph Stoor and Michael Fisher affidavits show that the water was beneficially used.

Further affiant saith not. DATED this 11 th day of January 2005
David Langman

David Langman
U.S. Fish and Wildlife Service
911 NE 11th Avenue
Portland, Oregon 97232-4181

STATE OF Oregon)
COUNTY OF Multnomah)

The affiant, David Langman, being first duly sworn by me, hereby declares that he has read the foregoing Affidavit and that the information contained therein is true and accurate to the best of his knowledge and belief.

Subscribed and sworn to me by David Langman this 11 th day of January 2005.



OFFICIAL SEAL
CATHY BERNHARDT
NOTARY PUBLIC-OREGON
COMMISSION NO. 385041
MY COMMISSION EXPIRES OCTOBER 18, 2008

Cathy Bernhardt
NOTARY PUBLIC
Residing at Portland, Oregon

(Seal)

My Commission Expires: October 18, 2008

RAY OSTLER
226 GRAYS LAKE ROAD
WAYAN, ID 83285

November 5, 2004

Idaho Department of Water Resources
SRBA Eastern Region Unit
900 N. Skyline Drive
Idaho Falls, Idaho 83402-1714
Attn: Ernie Carlsen

Dear Mr. Carlsen:

I have lived and ranched cattle in the Grays Lake Basin, Wayan, Idaho, since the Spring of 1961. Prior to the refuge acquiring lands up here in 1965, I owned approximately 130 acres of property just west of Bridge Creek Lane and approximately 120 acres west of Grays Lake Road; just across from my residence. During my time as a landowner at Grays Lake, I relied on the waters from Bridge Creek to provide stockwater and irrigation for both parcels of my property. I used Bridge Creek waters almost annually to irrigate pastures (the "South" and "Middle 40" pastures) and provide stockwater for 10 to 12 years; prior to selling these lands to the bird refuge (U.S. Fish & Wildlife Service) in about 1986. Around the mid-1960's, I had surveys done and constructed a ditch in the "South 40" and "Middle 40" pasture to facilitate increased water flows to that area. In addition, waters from the south Eagle Creek Channel were also used to irrigate the "North 40" pasture and an adjacent neighboring Stoddard property to the north. The Stoddard (or Ewart) Field was flood irrigated almost every year to provide water for crops, livestock and wildlife.

In addition to the property across from my residence, Eagle Creek waters were used to irrigate and the Bridge Creek Channel was also used on my southern parcels located off Bridge Creek Lane. Property neighboring the Bridge Creek Lane parcel (at that time owned by the Tingy family) was hayed almost annually and was flood irrigated during the Spring and early-Summer. The Bridge Creek channel, on these parcels, was used as a main source for providing water to livestock and wetlands, as well as early irrigation water for the Tingy property. As far back as I can remember, the Fulton Creek and Bridge Creek Channels never merge naturally, and the north diversion of the Bridge Creek Channel existed prior to us purchasing property up here. Today, there is a minor diversion off the Fulton Creek which flows into a diversion on the Muir property, and the Bridge Creek waters now flow to supplement the Fulton Creek waters across the Tingy property. Both creek channels provided an important source of water for my northern and southern properties.

In 1972, my wife and I purchased additional property and house in Thatcher, Idaho, but continued grazing our cattle up in the Grays Lake Basin every Spring through Fall from 1961 to present. About 1972 is when I sold 130 acres of property west of Bridge Creek Lane to the bird refuge.

During the time that I owned it, and since the bird refuge took it over, waters from Bridge Creek were used to irrigate and provide stockwater and Eagle Creek was used to provide water when Bridge Creek was dry.

Ray Ostler

A handwritten signature in cursive script, reading "Ray Ostler". The signature is written in dark ink and is positioned below the printed name.

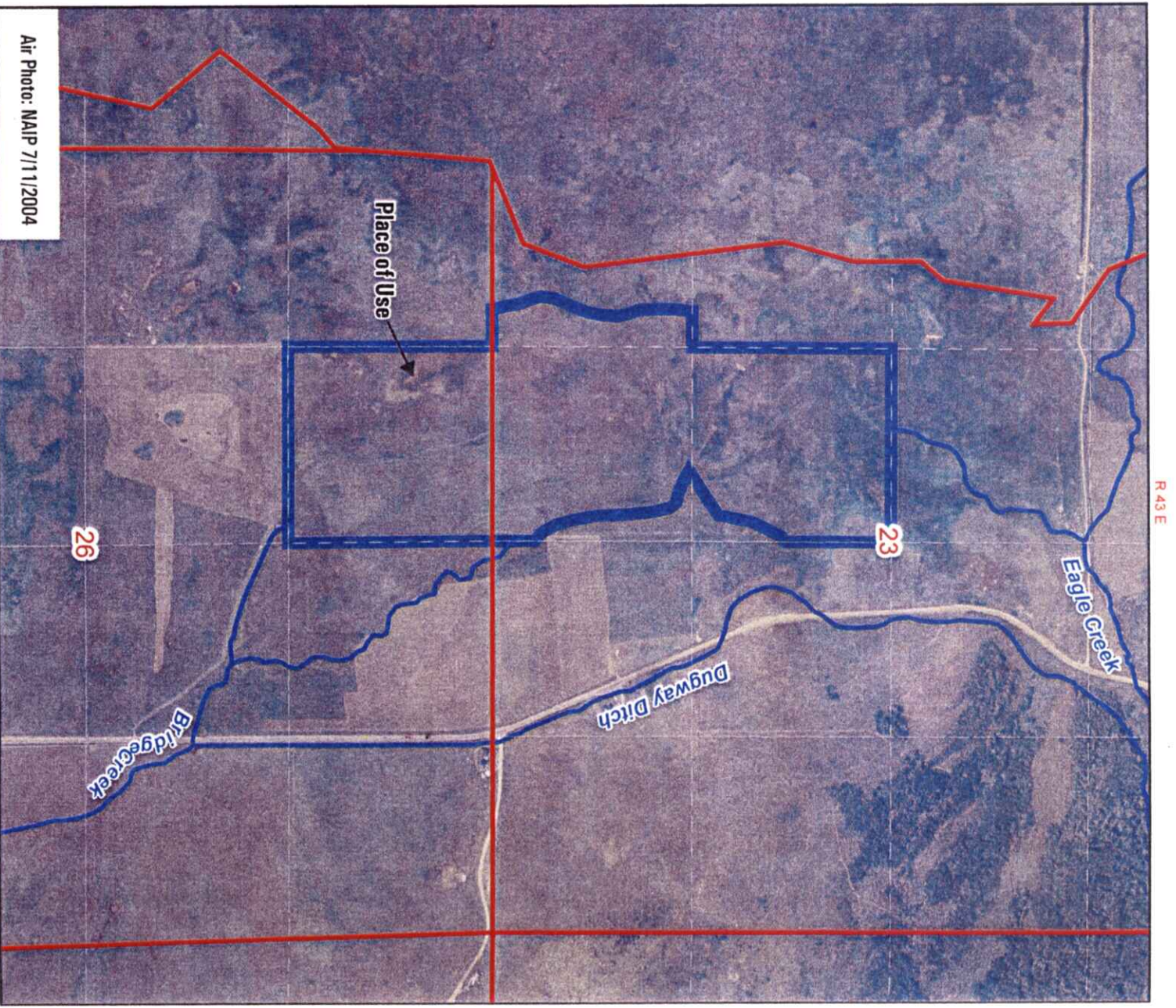


U.S. Fish & Wildlife Service

Grays Lake National Wildlife Refuge

Bonneville County, Idaho

Claim Number 25-04034B Place of Use



Air Photo: NAIP 7/11/2004

THE PURPOSE OF THIS MAP IS TO IDENTIFY THE LOCATION OF THE WATER RIGHT. IT IS NOT INTENDED TO PROVIDE INFORMATION RELATIVE TO THE LOCATION OF PROPERTY OWNERSHIP BOUNDARY LINES.

Claim_25-04034B_20040711_Amended.MXD, 3/31/05



Water Resources Branch
R1 Division of Engineering
911 NE 11th Avenue
Portland, OR 97232-4191
503-231-6261



WATER LOCATION

—01—

James Whitcomb

Notice of Water Location

January 20th 1886

Notice is hereby given that I the undersigned have this day claimed & appropriated and do hereby claim and appropriate five hundred inches of water measured under a four inch pressure or so much thereof as there may be on the waterway Eagle Creek remaining unclaimed.

Said water is to be diverted from said creek by placing a dam across the creek at a point about one mile in a North easterly direction from the house now owned and occupied by the undersigned James Whitcomb.

The water is to be used for domestic and Agricultural purposes on the land now settled on and claimed by the undersigned James Whitcomb. The water is to be conducted to said land by means of a ditch four feet wide and one foot deep with a full equal to the natural fall of the land Territory of Idaho } as James Whitcomb.
County of Daguerre }

James Whitcomb first being duly sworn deposes and says that he posted a full true and correct copy of the foregoing Notice in a conspicuous place at the place stated therein as the first day of publication on the 20th day of February A.D. 1886.

Subscribed and sworn to before me this 3rd day March, 1886.

John A. Foster
Justice of the Peace

Recorded March 5th 1886
at 11 o'clock AM.

J. M. Colby
as Recorder
by Frank H. Dwyer
Deputy.

