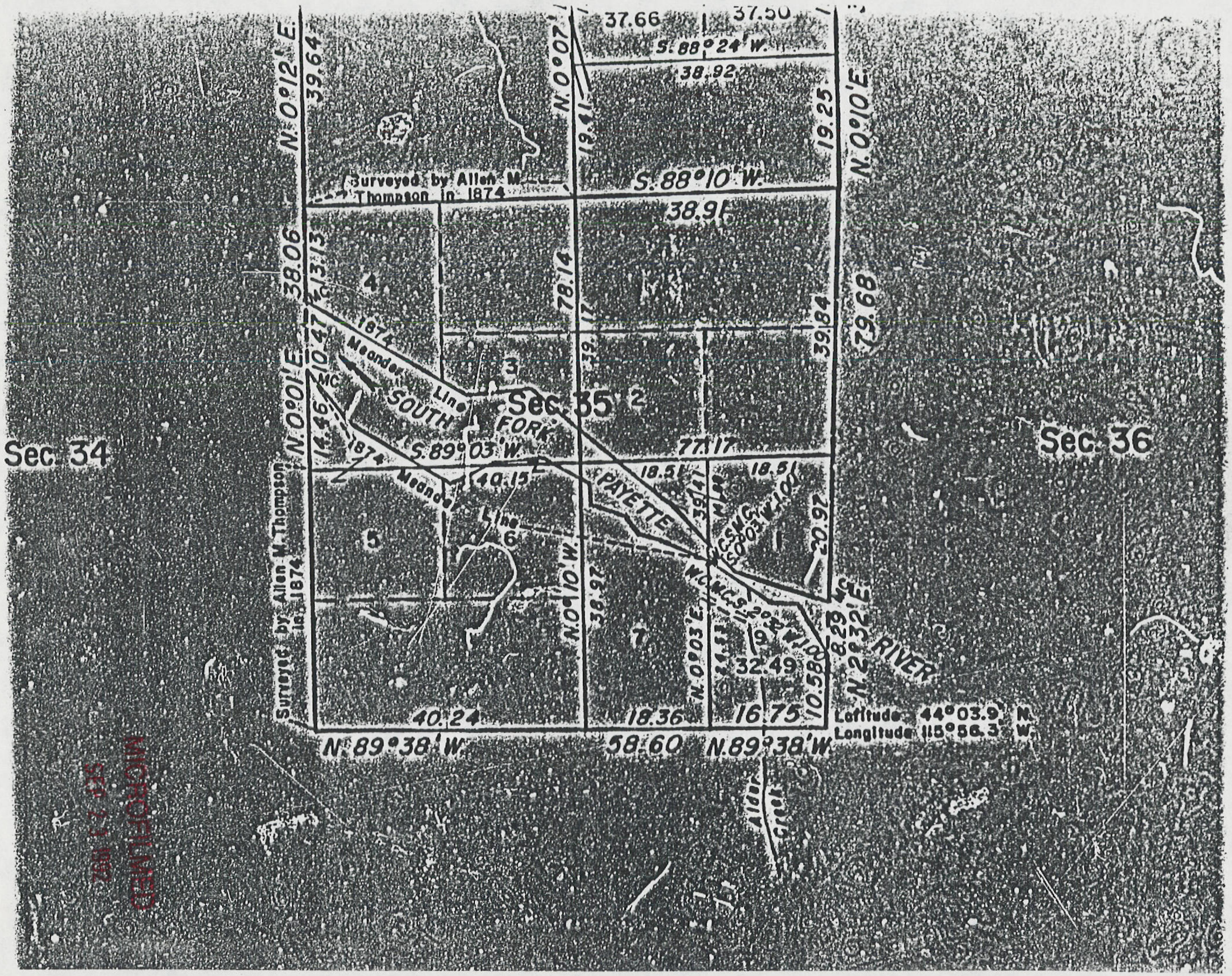
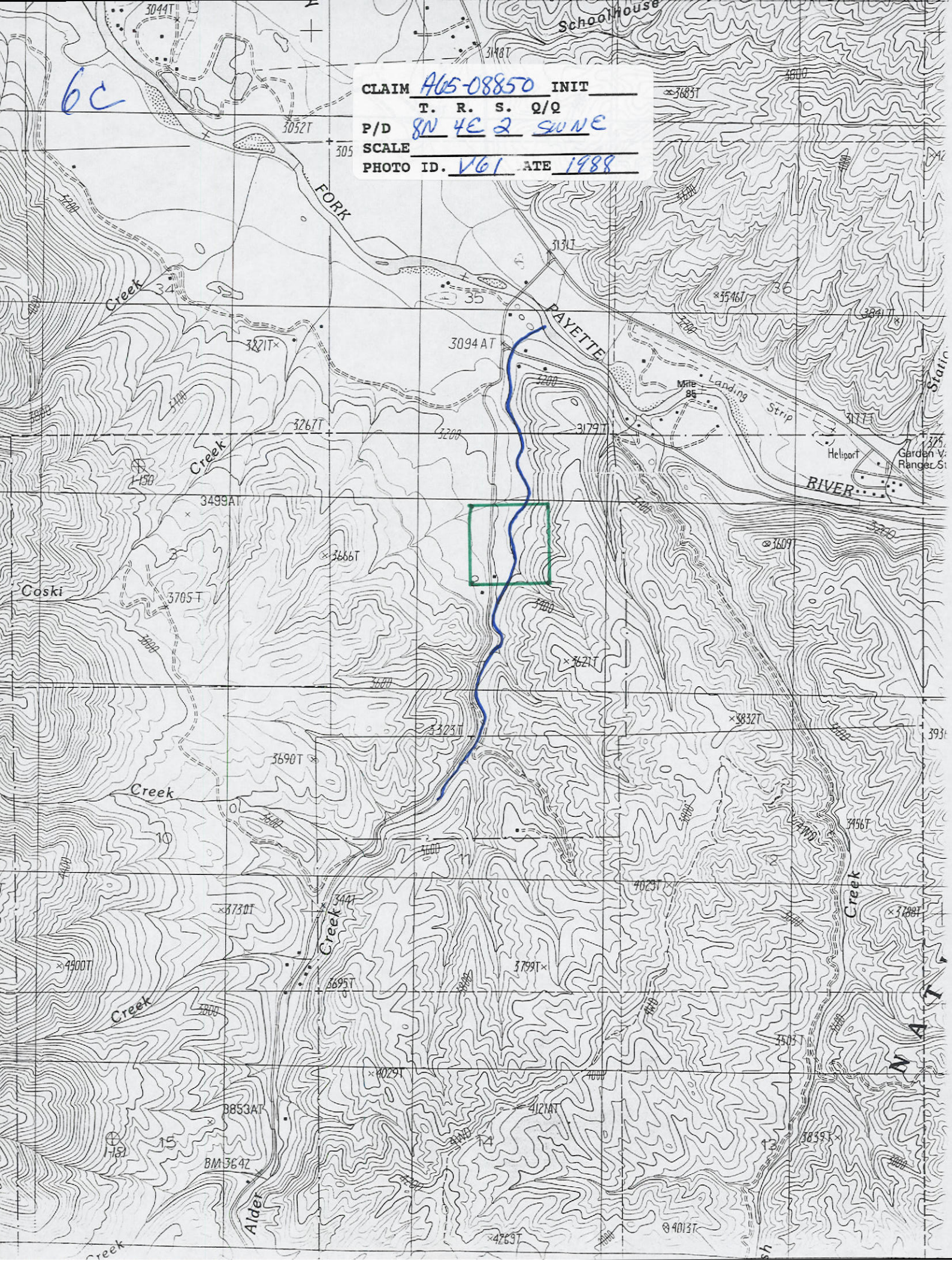
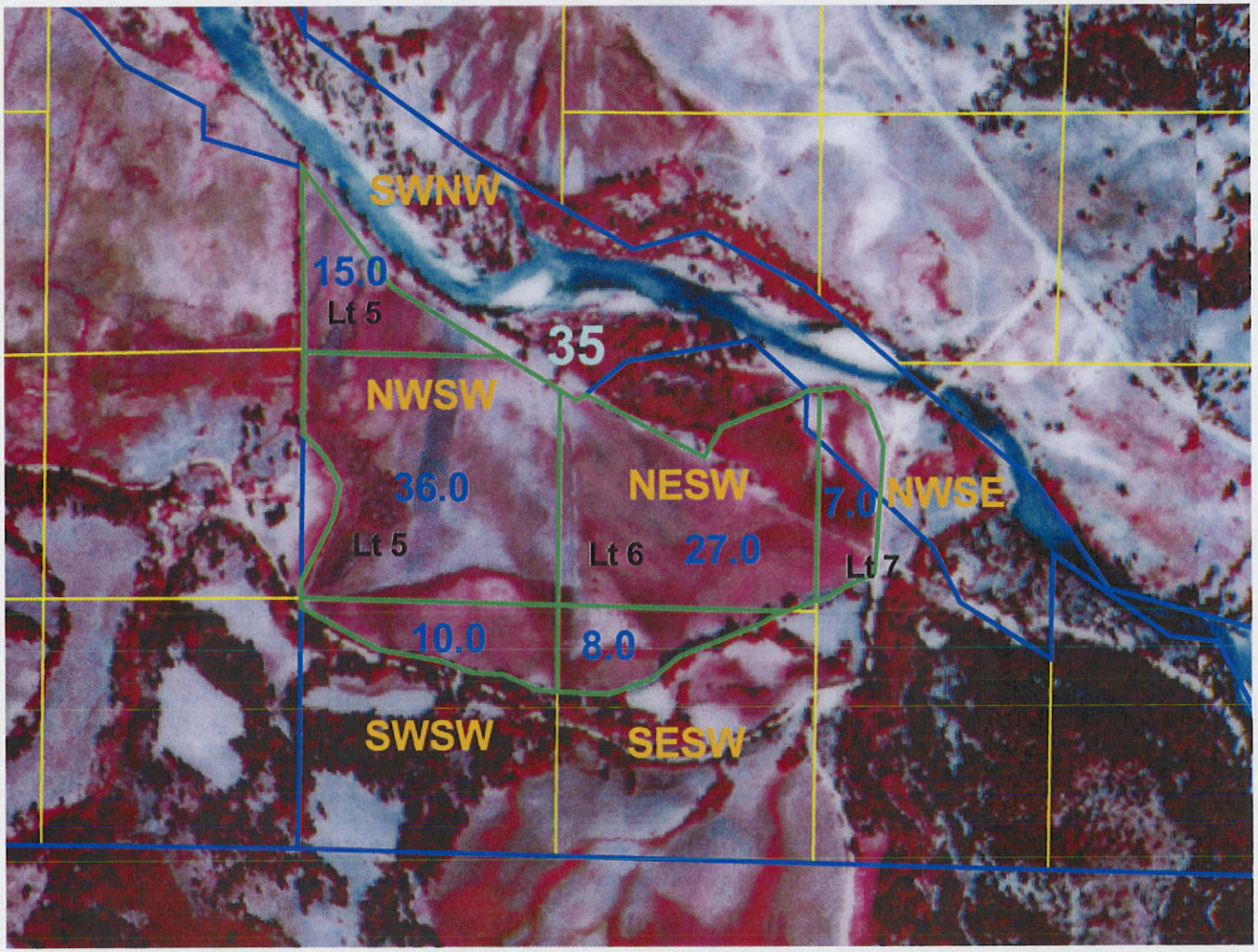


MICROFILMED


6C
CLAIM AK5-08850 INIT
T. R. S. Q/Q
P/D 8N 4E 2 SWNE
SCALE
PHOTO ID. V61 ATE 1988
Schoolhouse
FORK
Creek
PAYETTE
RIVER
Landing Strip
Mile 85
Heliport
Garden V.
Ranger St
Coski
Creek
Creek
Creek
Creek
Creek
Alder
Creek
BM 3642
3044T
3148T
3052T
3131T
3094AT
3267T
3179T
3177T
3499AT
3666T
3705T
3609T
3621T
3832T
3323T
3690T
3730T
3441
3695T
3799T×
3456T
4029T
3788T
4900T
3853AT
4029T
4121AT
3839T
4013T
4269T
NAT

6b

IDAHO DEPARTMENT OF WATER RESOURCES
T09N, R04E, S35



0 0.25 0.5 0.75 1 Miles

N
W E
S

1987 NAPP PHOTO

POINT OF DIVERSION

PLACE OF USE

1/4 1/4 LINES

SECTION LINES

6 ACRES

6 SECTION NUMBERS

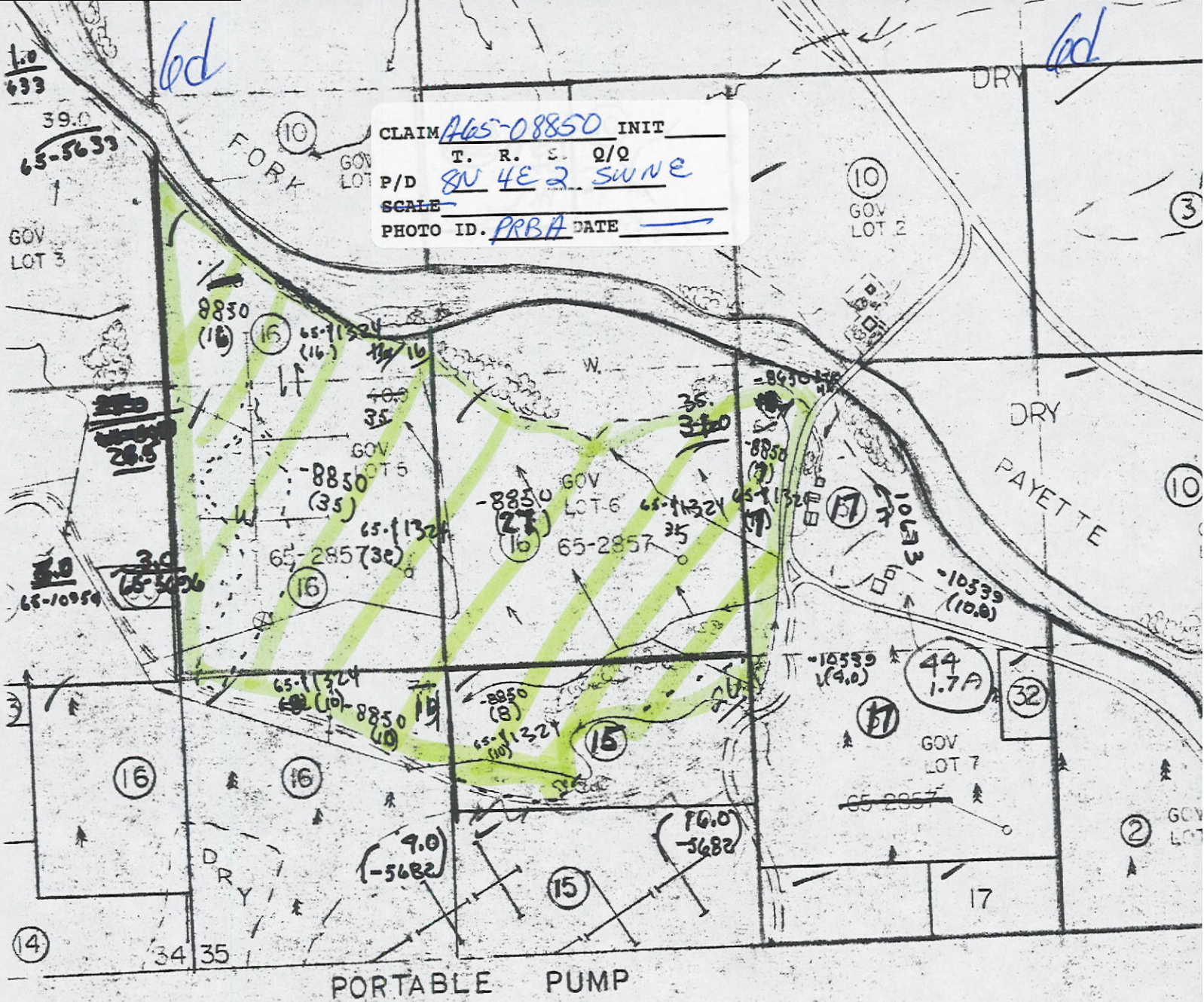
CLAIM(S): 65-08850

OWNER(S): BARNES TRUST

Prepared by Mel Schulte

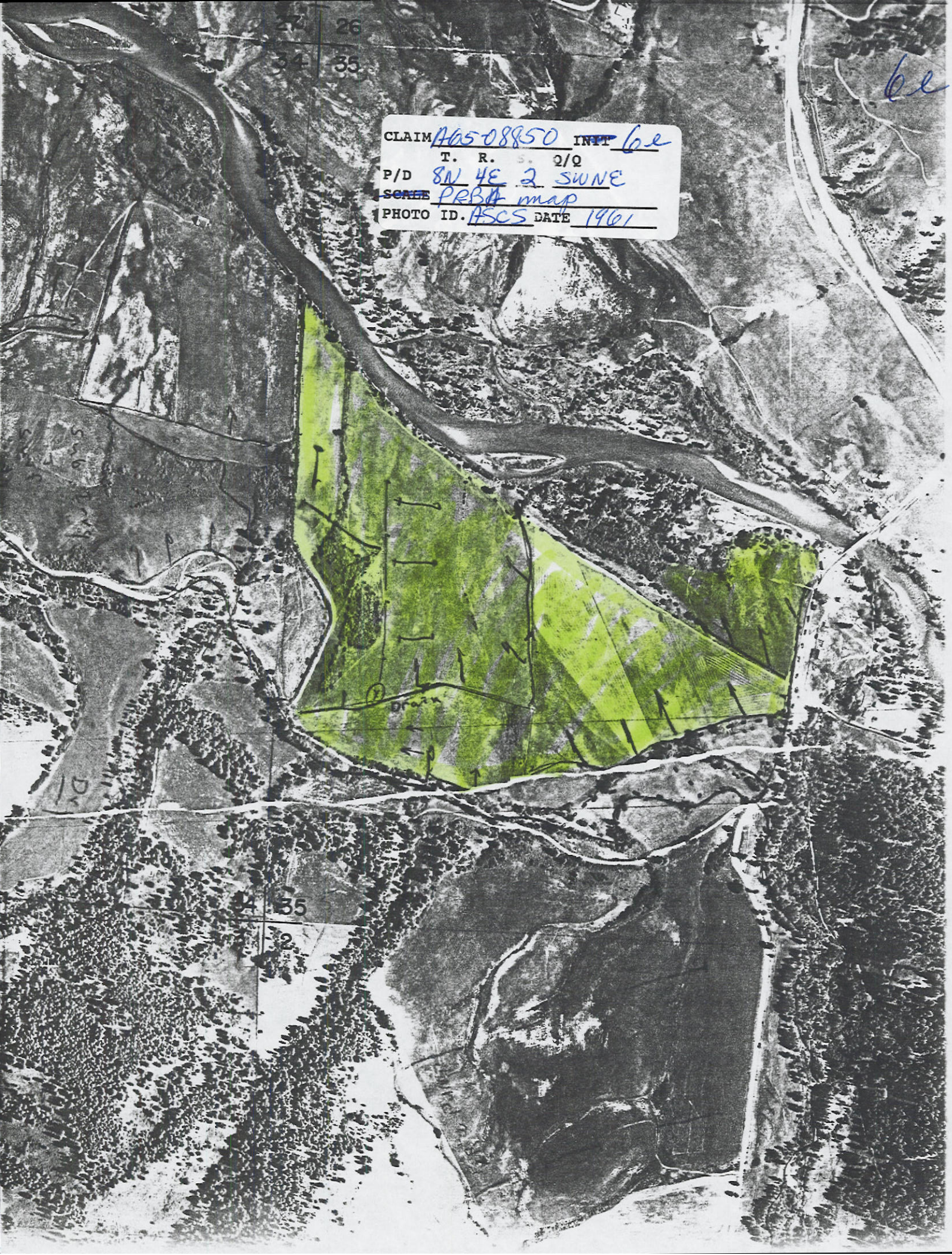
DATE: OCTOBER 12,1999

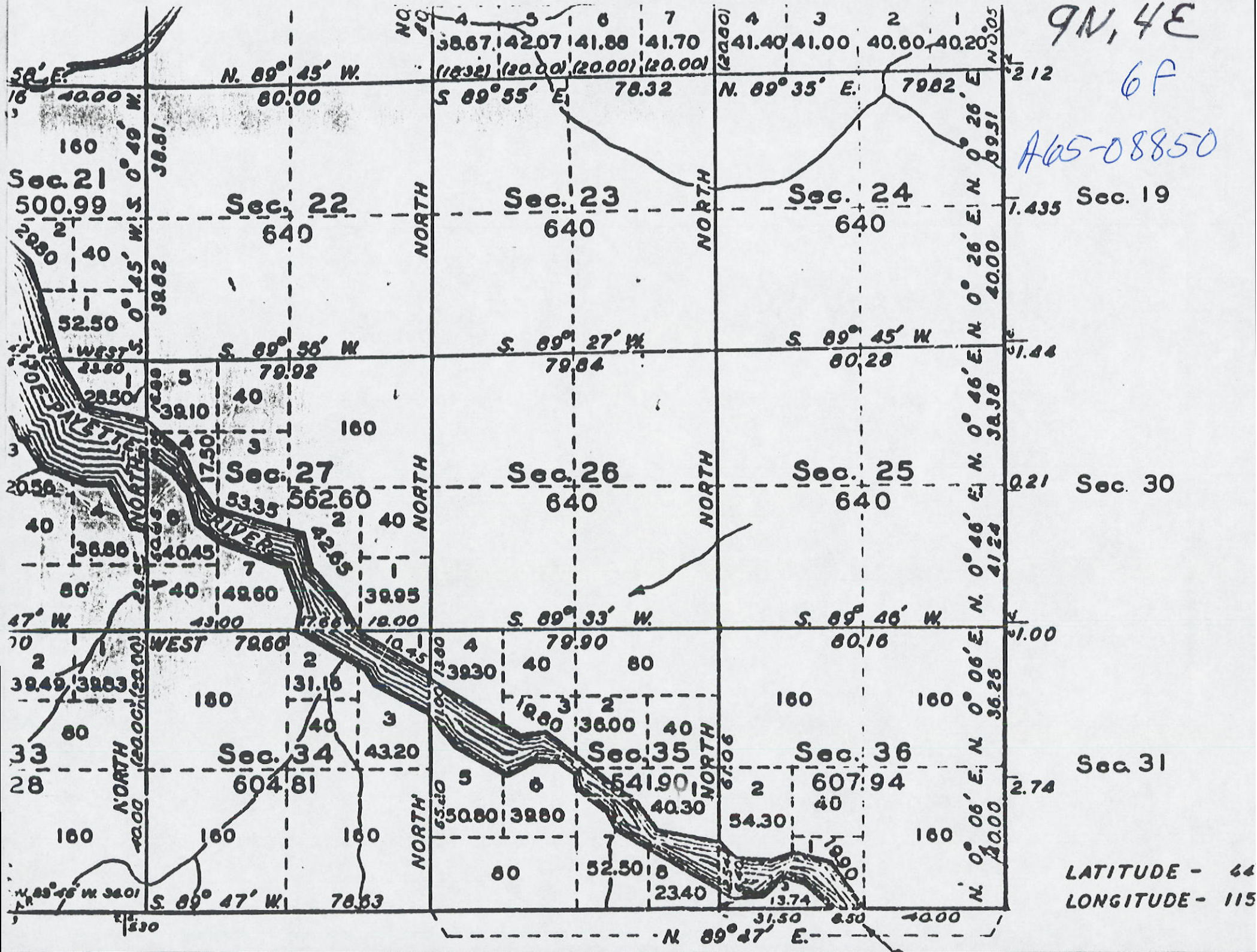
6b



1. Boise Payette Lumber Co.
2. State
3. Gloria Smith Ford
4. Dan Rothoff
5. Jack Tucker
6. Wilbur Tucker
7. Nellie Mills, Mills Mt. View Ranch
   c/o Warner Mills
8. Scottie Turnbull
9. Marie MacDonald 24A ~ E½ NW 26
10. Anna Case Canaday
11. Gladys Charters
12. Dora Murray &
    Guy Canaday
13. Public Domain
14. Edith Cash
15. Earl McKie
16. ~~I. B. Waugh~~
    Larry Barnes
17. ~~Donley~~ Douglas ✓
18. School Dist. #71
19. Blanche Mills
20. G. V. School District
21. Ben L. Babcock
22. Roy Arbaugh
23. Minnie E. Maxwell 11.4A
24. Delbert Brown
25. Sam Harp .5A
26. ~~Wm. Acr~~ Ben L. BABCOCK
    c/o ~~Tracy Glover~~
27. Delbert L. Coulter, et al
28. Myron E. Watson 1.1A
29. Ray A. Huston 4A + 12A in
30. Orie Hutchinson
31. ~~Jamie Donley~~
32. George Bates
33. Roy Buckle
34. R.
35. L.
36. Elmer

Own
R


CLAIM A0508850 INIT 6e
T. R. S. Q/Q
P/D 8N 4E 2 SWNE
SCALE PRBA map
PHOTO ID. ASCS DATE 1961
6e
27
26
34
35
Drain
10
34
35
2


9N, 4E
6F
A65-08850
Sec. 21
500.99
Sec. 22
640
Sec. 23
640
Sec. 24
640
Sec. 19
Sec. 27
562.60
Sec. 26
640
Sec. 25
640
Sec. 30
Sec. 34
604.81
Sec. 35
541.90
Sec. 36
607.94
Sec. 31
28
33
NORTH
WEST
SNOQUALMIE
RIVER
N. 89° 45' W.
60.00
S. 89° 55' E.
78.32
N. 89° 35' E.
79.82
S. 89° 58' W.
79.92
S. 89° 27' W.
79.84
S. 89° 45' W.
80.28
S. 89° 33' W.
79.90
S. 89° 46' W.
80.16
S. 89° 47' W.
78.63
N. 89° 47' E.
LATITUDE - 44
LONGITUDE - 115


CLAIM AMS-11324 AMS-08850 UNIT 69
T. R. S. Q/Q
P/D Overlap map
SCALE
PHOTO ID. DATE
⑦ = 8850 = 11
⑩ = 11324
4+5
4+5
4+5
46
47
35

IN THE MATTER OF:

Payette River Adj.

State of Idaho

County of Boise

AFFIDAVIT #2

#1

A. D. Rane being first duly sworn,

deposes and says: I can remember water in the Charter - Wetzel ditch as early as the year 1907 - I was born in 1897 and have lived in Garden Valley all my life. 10 yrs old

RECEIVED

SEP 22 19

Department of Water Resources
Western Regional Office

A. D. Rane - 80 yrs old
(signature)

Subscribed and sworn to before me this 1 day of September 19 77.

M. Beulah Reay
(notary public)

Residing at Garden Valley, Idaho

My commission expires Notary Expires

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: **A65-08850**
Date Received: 3/10/1989
Receipt No: W002572
Received By: _____

COPY FOR YOUR FILES — **NOTICE OF CLAIM TO A WATER RIGHT ACQUIRED UNDER STATE LAW** — **COPY FOR YOUR FILES**

1. Name: LENORA B BARNES 208-375-3740
   Address: 5120 SORRENTO DR
   BOISE ID 83704

2. Date of Priority: APR 1, 1900

3. Source: ALDER CREEK Trib. to: PAYETTE RIVER, SOUTH FORK

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4	Lot	County
08N	04E	2	SW NE		BOISE

5. Description of diverting works:
   GRAVITY FLOW FROM ALDER CK. WITH DITCHES FOR GRAVITY IRRIGATION.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/01	11/01	2.510		
STOCKWATER	01/01	12/31	0.060		3.29

7. Total Quantity Appropriated is:
   2.570 C.F.S. (and/or) 3.29 A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
   S/150 HD.

10. Place of Use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
09N	04E	35	NE SW	6	IRR	27.0
			NW SW	5	IRR	51.0
			SW SW		IRR	10.0

10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4		Lot	Use	Acres
09N	04E	35	SE	SW		IRR	8.0
			SW	SE	7	IRR	7.0

Section Acres 103.0

Total Acres 103.0

11. Place of use in counties: BOISE

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

13. Other Water Rights Used:
CLAIM NO. A65-08651(ALDER CK.RES.)& A65-11324(S.FK.PAY.)

14. Remarks:
THIS RIGHT WHEN COMBINED WITH RIGHT 65-11329 SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.
JON L. BARNES HAS REQUESTED AMENDMENT OF PRIORITY DATE TO APRIL 1, 1900 AND WILL BE SUBMITTING SUPPORTING EVIDENCE.-L.W. 5/2/89
__ADDITIONAL RECEIPT NUMBER W2625.
2/14/90-SEE ATTACHED DOCUMENTS SUPPORTING 4/1/1900 PRIORITY DATE. THIS CLAIM HAS BEEN CHECKED FOR A FIELD EXAM TO ENSURE THAT ALL DOCUMENTS, INCLUDING THOSE SUBMITTED IN THE PAYETTE RIVER ADJUDICATION, BE TAKEN INTO CONSIDERATION. L.R.W.
*OWNERSHIP CHANGED BY DB 3/23/2000.
ADDED ATTORNEY NAMES PER NOTICE OF APPEARANCE REC'D 3/22/2000.

15. Basis of Claim: BENEFICIAL USE

ELAM & BURKE
A Professional Association
ATTORNEYS AND COUNSELORS AT LAW
KEY FINANCIAL CENTER
702 WEST IDAHO
POST OFFICE BOX 1539
BOISE, IDAHO 83701

TELEPHONE
208-343-5454
FACSIMILE
208-384-5844

SCOTT L CAMPBELL

RECEIVED
MAR 2 2 2000
WATER RESOURCES
WESTERN REGION

March 21, 2000

Idaho Department of Water Resources
Western Region Office
2735 Airport Way
Boise, ID 83705

Re: Water Right Nos. 65-08650, 65-08850, and 65-011324

To Whom it May Concern:

Enclosed you will find one executed original and two copies of the Notice of Change of Water Right Ownership form for each of the above-referenced water rights, which our office has prepared on behalf of Ms. Lenora Barnes. We have also enclosed one original and two copies of a Notice of Appearance for each of those water rights. Please date-stamp a copy of each document and return them to me in the enclosed self-addressed, stamped envelope.

These water rights are currently in the preliminary recommendation stage, and we request that, if possible, the change in ownership be corrected before the Department makes its final recommendation to the SRBA District Court.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me.

Very truly yours,

ELAM & BURKE
A Professional Association

Scott L. Campbell

SLC:tmh G:\Thm\WPDATA\6831\00021-IDWR Western Region.wpd
encl.
cc: Lenora Barnes

RECEIVED
MAR 2 2 2000
WATER RESOURCES
WESTERN REGION

STATE OF IDAHO
IDAHO DEPARTMENT OF WATER RESOURCES
NOTICE OF CHANGE OF WATER RIGHT OWNERSHIP

Please print or type. Attach pages with additional information. Instructions are on the back of this page.
Incomplete forms will be returned.

1. Water Right No(s).: 65-08850

   Adjudication Claim No(s).: same

2. The following **REQUIRED** information must be submitted with this form: Please see attached Exhibit 1.

   A. A copy of the most recent **DEED, TITLE POLICY, CONTRACT OF SALE** or other legal document indicating your ownership of the property and water rights or claims in question, **WITH ATTACHED LEGAL DESCRIPTION.**

   AND

   B. **PLAT OF PROPERTY** or **SURVEY MAP** showing the location of the place of use of the water right(s) or claim(s). (These are usually attached to your deed or on file with the county.)

   OR

   C. If your water right or adjudication claim is for ten or more acres of irrigation, you must submit a USDA Farm Service Agency **AERIAL PHOTO** with irrigated acres outlined and point(s) of diversion clearly marked. The **AERIAL PHOTO** should also be submitted in place of the PLAT OF PROPERTY or SURVEY MAP.

3. Name and Address of Former Owner/Claimant: Please see attached Exhibit 2

4. New Owner/Claimant(s): Lenora B. Barnes
   Name Connector (Check one) [ ] and, [ ] or, [ ] and/or

   New Mailing Address: 5120 Sorrento Dr.

   City, State, and ZIP Code: Boise, ID 83704

   New Telephone Number: (208) 375-3740

5. Date you acquired the property: January 6, 1997

6. **Did you acquire all of the former owner's property? If you did, skip this item and go to item 7.** If you have acquired only a portion of the former owner's property, IDWR may need to split the water right(s) or adjudication claim(s). Describe in detail your portion of each water right or adjudication claim in the spaces in the box below **only if the water right(s) or claims(s) need to be split between owners.** If necessary, attach additional pages. If a water right or adjudication claim is being split and you are not sure how to identify your portion of the original right or claim, please contact the nearest IDWR office for assistance.

Number of acres you irrigate with this water right			Number and type of stock		
Diversion rate in CFS		Number of homes you acquired		Other uses	

7. Signature of New Owner or Claimant(s): X Lenora B. Barnes

Corporations or other organizations must submit a list of directors and/or officers demonstrating authority to sign this form.

8. For Snake River Basin Adjudication Claims: Please attach a Notice of Appearance completed by your attorney, if you wish IDWR to correspond with him or her for all matters related to your claims.

INSTRUCTIONS

This form has been prepared to assist new owners of property to comply with the requirements of Sections 42-248 and 42-1409(6), Idaho Code. Section 42-248 requires certain property owners to notify the Department of Water Resources (IDWR) of any change in mailing address or ownership of all or part of a water right record on file with IDWR. Section 42-1209(6) provides that new property owners must notify IDWR of any change in ownership of a water right during an adjudication of water rights. Required claims may be filed by a new owner.

Separate brochures are available from IDWR describing the adjudication of water rights and the requirement to notify IDWR of changes in ownership. Please contact your nearest IDWR office, or call 1-800-451-4129, if you would like more information or need help completing this form. Please attach additional sheets to the form if you require additional space to describe or explain any of the items on the form.

1. If there are water rights associated with the property, the seller should be able to provide you with the water right or adjudication claim number(s). Please enter these numbers(s) at **Item 1**. If you or the seller believes there are water rights for the property but the numbers are unknown, you may wish to contact IDWR for assistance in identifying the water rights for the property in question. If claims for the rights are required, and have not been filed, IDWR will so advise you.

2. The information described at **Item 2** is required, since IDWR cannot process the requested change without documentation of ownership. The preferred types of documentation are shown; contact IDWR if you have difficulty obtaining this information. Do not obtain a new survey for purposes of this form before contacting IDWR.

3. Please provide the name and address of the former owner of the water right and/or adjudication claim at **Item 3**.

4. The name, mailing address, and telephone number of the new owner(s) is entered at **Item 4**. Please indicate the relationship between multiple owners by using the connector "and," "or," or "and/or." If an "and" is used, all parties must sign this form. If an "and/or" or "or" is used, all parties may sign. However, only one of the named parties is required to sign.

5. At **Item 5**, please provide the date the property in question was acquired. This may be the date of "closing" in the case of a real estate transaction or the date of court order for other types of ownership changes.

6. You may be purchasing only a portion of the total water right held by the seller. This means the water right held by the seller may be "split" to provide your share of the right in question. Be sure to include a description of the portion of the water right you have purchased in **Item 6**.

   Please provide as much detail as possible concerning your water right: include the number of homes you acquired, number of acres irrigated with your portion of the right, acreage if more than ½ acre, type and number of stock if your water right is for stockwater, etc. In the absence of information to the contrary, IDWR will assume the intent is to split the rights *proportionately*.

7. The new owner(s) must sign the form in the space(s) provided at **Item 7**. Corporations and other organizations must submit a list of directors or officers demonstrating the authority of the director or officer to sign the form.

8. There is no filing fee. When complete, you should retain a copy and return the original of the form to the IDWR office nearest you:

IDWR Western Region
2735 Airport Way
Boise, ID 83705-5082
(208) 334-2190

IDWR Northern Region
1910 Northwest Blvd., Suite 210
Coeur d' Alene, ID 83814-2615
(208) 769-1450

IDWR Southern Region
1341 Fillmore St., Suite 200
Twin Falls, ID 83301-3380
(208) 736-3033

IDWR Eastern Region
900 N. Skyline Dr., Suite A
Idaho Falls, ID 83402-1718
(208) 525-7161

EXHIBIT - 1 -

FILED FOR RECORD AT REQUEST OF

This Space Provided For Recorder's Use:

163254

Elam Burke

WHEN RECORDED RETURN TO

163254

Name _____

Address _____

City, State, Zip _____

Lynn J. Adams
Deed 9.00/CK

QUITCLAIM DEED

For valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, Larry B. Barnes, as Trustee of the Jon L. Barnes Trust dated the 31st of May, 1977, **Grantor** (with the concurrence of the beneficiary, Jon L. Barnes), does hereby convey, release, remise and forever quitclaim unto Lenora B. Barnes, as **Grantee,** as her sole and separate property, whose current address is 5120 Sorrento Drive, Boise, Idaho 83704, all of the **Grantor**'s interest in the following described real estate, situated in the County of Boise, State of Idaho:

See Exhibit "A" which is attached hereto and by this reference incorporated herein

Subject to all liens, taxes, assessments, encumbrances, easements, covenants, restrictions and reservations whether or not of record, known or unknown;

Together, with all and singular, the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all after acquired title of the **Grantor.**

In witness whereof, the **Grantor** has executed this document on the date set forth below.

_____ Date: 12-5-97

Larry B. Barnes, Trustee

7-4-024.95
Page 1

Acknowledgment and Concurrence.

As the sole beneficiary of the Jon L. Barnes Trust dated the 31st day of May, 1997, I execute this document to reflect my acceptance of the real estate transfer referenced above.

Jon L. Barnes

Date: 12/5/96

State of IDAHO)
)ss.
County of ADA)

On this 5th day of December, 1996, before me, MARY LOU DECKER, a Notary Public, personally appeared Larry B. Barnes as Trustee of the Jon L. Barnes Trust, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

(Notary Seal)

NOTARY PUBLIC
Residing at Boise Id
My Commission Expires: 3-04-02

State of IDAHO)
)ss.
County of ADA)

On this 5th day of December, 1996 before me, MARY LOU DECKER, a Notary Public, personally appeared Jon L. Barnes, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

(Notary Seal)

NOTARY PUBLIC

Residing at Boise Id
My Commission Expires: 3-04-02

EXHIBIT "A"

Lots 5, 6, 7, the North Half of the Southeast Quarter of the Southwest Quarter, and the Southwest Quarter of the Southwest Quarter; EXCEPTING the South 10 chains of said Lot 7 and ALSO EXCEPTING that portion of said Lot 7 lying East of Alder Creek; all being in Section 35, Township 9 North, Range 4 East, Boise Meridian, Boise County, Idaho,

AND

The North Half of the East Half of the Southeast Quarter of the Southeast Quarter and the North Half of the South Half of the East Half of the Southeast Quarter of the Southeast Quarter of Section 34, Township 9 North, Range 4 East, Boise Meridian, Boise County, Idaho.

FILED FOR RECORD AT REQUEST OF 16?257

This Space Provided For Recorder's Use:

WHEN RECORDED RETURN TO

Name _____

Address _____

City, State, Zip _____

QUITCLAIM DEED

For valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, **Julie** Barnes Johnston, as Trustee of the Julie Barnes Johnston Trust dated the 5th day of January, 1977, **Grantor**, does hereby convey, release, remise and forever quitclaim unto Lenora B. **Barnes, Grantee,** as her sole and separate property, whose current address is 5120 Sorrento Drive, Boise, Idaho 83704, all of the **Grantor's** interest in the following described real estate, situated in the County of Boise, State of Idaho:

See Exhibit "A" which is attached hereto and by this reference incorporated herein.

Subject to all liens, taxes, assessments, encumbrances, easements, covenants, restrictions and reservations whether or not of record, known or unknown;

Together, with all and singular, the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all after acquired title of the **Grantor**.

In witness whereof, the **Grantor** has executed this document on the date set forth below.

Julie Barnes Johnston Date: 12-10-96

Julie Barnes Johnston, Trustee

State of Idaho)
)ss.
County of Ada)

On this 2 day of Nov, 1994, before me Jennifer C. Lawrence, a Notary Public, personally appeared Julie Barnes Johnston, as Trustee of the Julie Barnes Johnston Trust, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

Jennifer C. Lawrence
NOTARY PUBLIC
Residing at Boise
My Commission Expires: 4-1-99

(Notary Seal)

JENNIFER C. LAWRENCE
NOTARY
PUBLIC
STATE OF IDAHO

EXHIBIT "A"

Lots 5, 6, 7, the North Half of the Southeast Quarter of the Southwest Quarter, and the Southwest Quarter of the Southwest Quarter; EXCEPTING the South 10 chains of said Lot 7 and ALSO EXCEPTING that portion of said Lot 7 lying East of Alder Creek; all being in Section 35, Township 9 North, Range 4 East, Boise Meridian, Boise County, Idaho,

AND

The North Half of the East Half of the Southeast Quarter of the Southeast Quarter and the North Half of the South Half of the East Half of the Southeast Quarter of the Southeast Quarter of Section 34, Township 9 North, Range 4 East, Boise Meridian, Boise County, Idaho.

IST: 163253
Elam, Burke

163253

This Space Provided
For Recorder's Use: Logan Adams
Ded 1/2 ck

FILED FOR RECORD AT REQUEST OF

WHEN RECORDED RETURN TO

Name _____

Address _____

City, State, Zip _____

QUITCLAIM DEED

For valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, **Cecily Barnes Cooper**, as Trustee of the Cecily Barnes Cooper Trust dated the 31st day of May, 1977,(previously known as the Cecily Barnes Trust dated the 31st day of May, 1977 and the Cecily Barnes Darrow Trust dated the 31st day of May, 1977) **Grantor**, does hereby convey, release, remise and forever quitclaim unto Lenora B. Barnes, **Grantee**, as her sole and separate property, whose current address is 5120 Sorrento Drive, Boise, Idaho 83704, all of the **Grantor's** interest in the following described real estate, situated in the County of Boise, State of Idaho:

See Exhibit "A" which is attached hereto and by this reference incorporated herein.

Subject to all liens, taxes, assessments, encumbrances, easements, covenants, restrictions and reservations whether or not of record, known or unknown;

Together, with all and singular, the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all after acquired title of the **Grantor**.

In witness whereof, the **Grantor** has executed this document on the date set forth below.

Cecily Barnes Cooper Date: 12/8/96

Cecily Barnes Cooper, Trustee

State of Idaho)
)ss.
County of Ada)

On this 8th day of October, 1996, before me, Minnie L Dodge, a Notary Public, personally appeared Cecily Barnes Cooper, as Trustee of the Cecily Barnes Cooper Trust, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

Minnie L Dodge
NOTARY PUBLIC
Residing at Boise Idaho
My Commission Expires: 4-19-

(Notary Seal)
MINNIE L DODGE
NOTARY PUBLIC
STATE OF IDAHO

EXHIBIT "A"

Lots 5, 6, 7, the North Half of the Southeast Quarter of the Southwest Quarter, and the Southwest Quarter of the Southwest Quarter; EXCEPTING the South 10 chains of said Lot 7 and ALSO EXCEPTING that portion of said Lot 7 lying East of Alder Creek; all being in Section 35, Township 9 North, Range 4 East, Boise Meridian, Boise County, Idaho,

AND

The North Half of the East Half of the Southeast Quarter of the Southeast Quarter and the North Half of the South Half of the East Half of the Southeast Quarter of the Southeast Quarter of Section 34, Township 9 North, Range 4 East, Boise Meridian, Boise County, Idaho.

:: 12256
--- Elam, Burke

160257

This Space Provided
For Recorder's Use:
Adams
CK

FILED FOR RECORD AT REQUEST OF

WHEN RECORDED RETURN TO

Name LORI GIRDNER

Address 7337 CARVER RD.

City, State, Zip MODESTO CA. 95356

QUITCLAIM DEED

For valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, **Lori** Lou Barnes Girdner, as Trustee of the Lori Lou Barnes Girdner Trust dated the 30th day of December, 1976, **Grantor**, does hereby convey, release, remise and forever quitclaim unto Lenora **B.** Barnes, **Grantee,** as her sole and separate property, whose current address is 5120 Sorrento Drive, Boise, Idaho 83704, all of the **Grantor's** interest in the following described real estate, situated in the County of Boise, State of Idaho:

See Exhibit "A" which is attached hereto and by this reference incorporated herein.

Subject to all liens, taxes, assessments, encumbrances, easements, covenants, restrictions and reservations whether or not of record, known or unknown:

Together, with all and singular, the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all after acquired title of the **Grantor.**

In witness whereof, the **Grantor** has executed this document on the date set forth below.

Lori Lou Barnes Girdner Date: 12-11-96

Lori Lou Barnes Girdner, Trustee

State of CALIFORNIA)
)ss.
County of STANISLAUS)

On this 11 day of DECEMBER, 1996, before me, KATHRYN HOWARD, a Notary Public, personally appeared Lori Lou Barnes Girdner, as Trustee of the Lori Lou Barnes Girdner Trust, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

Kathryn Howard
NOTARY PUBLIC
Residing at MODESTO CALIF
My Commission Expires: 3/27/2000

(Notary Seal)

KATHRYN HOWARD
Commission # 1090281
Notary Public — California
Stanislaus County
My Comm Expires Mar 27, 2000

EXHIBIT "A"

Lots 5, 6, 7, the North Half of the Southeast Quarter of the Southwest Quarter, and the Southwest Quarter of the Southwest Quarter; EXCEPTING the South 10 chains of said Lot 7 and ALSO EXCEPTING that portion of said Lot 7 lying East of Alder Creek; all being in Section 35, Township 9 North, Range 4 East, Boise Meridian, Boise County, Idaho.

AND

The North Half of the East Half of the Southeast Quarter of the Southeast Quarter and the North Half of the South Half of the East Half of the Southeast Quarter of the Southeast Quarter of Section 34, Township 9 North, Range 4 East, Boise Meridian, Boise County, Idaho.

FILED FOR RECORD AT REQUEST OF

WHEN RECORDED RETURN TO

Name _____

Address _____

City, State, Zip _____

This Space Provided For Recorder's Use:

Boise County Idaho ss
Request of
Elaine Zuzzle
Time 8:51 AM.
Date 1/6/97
163255
By Linda A. Adams
Deputy
Fee 7.00/CK

QUITCLAIM DEED

For valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, Larry B. Barnes, as Trustee of the Frank B. Barnes Trust dated the 31st of May, 1977, **Grantor** (with the concurrence of the beneficiary, Frank B. Barnes), does hereby convey, release, remise and forever quitclaim unto Lenora B. Barnes, as **Grantee**, as her sole and separate property, whose current address is 5120 Sorrento Drive, Boise, Idaho 83704, all of the **Grantor's** interest in the following described real estate, situated in the County of Boise, State of Idaho:

See Exhibit "A" which is attached hereto and by this reference incorporated herein

Subject to all liens, taxes, assessments, encumbrances, easements, covenants, restrictions and reservations whether or not of record, known or unknown:

Together, with all and singular, the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all after acquired title of the **Grantor**.

In witness whereof, the **Grantor** has executed this document on the date set forth below.

_____ Date: _____
Larry B. Barnes, Trustee

Acknowledgment and Concurrence.

As the sole beneficiary of the Frank B. Barnes Trust dated the 31st day of May, 1997, I execute this document to reflect my acceptance of the real estate transfer referenced above.

Frank B. Barnes Date: [illegible]

Frank B. Barnes

State of [illegible])
)ss.
County of [illegible])

On this [illegible] day of [illegible], 19[illegible], before me, [illegible], a Notary Public, personally appeared Larry B. Barnes as Trustee of the Frank B. Barnes Trust, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

MINNIE E. DODGE NOTARY PUBLIC STATE OF IDAHO
(Notary Seal)

[illegible]
NOTARY PUBLIC
Residing at [illegible]
My Commission Expires: [illegible]

State of COLORADO)
)ss.
County of ARAPAHOE)

On this 4th day of December, 1996 before me. S. L. Pacheco, a Notary Public, personally appeared Frank B. Barnes, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

NOTARY PUBLIC
(Notary Seal)

S. L. Pacheco
NOTARY PUBLIC - S. L. Pacheco

Residing at Colorado
My Commission Expires: 2/0/97

EXHIBIT "A"

Lots 5, 6, 7, the North Half of the Southeast Quarter of the Southwest Quarter, and the Southwest Quarter of the Southwest Quarter; EXCEPTING the South 10 chains of said Lot 7 and ALSO EXCEPTING that portion of said Lot 7 lying East of Alder Creek; all being in Section 35, Townsnip 9 North, Range 4 East, Boise Meridian, Boise County, Idaho,

AND

The North Half of the East Half of the Southeast Quarter of the Southeast Quarter and the North Half of the South Half of the East Half of the Southeast Quarter of the Southeast Quarter of Section 34, Township 9 North, Range 4 East, Boise Meridian, Boise County, Idaho.

EXHIBIT - 2 -

3 Jon L. Barnes Trust
Julie Barnes Johnston Trust
Cecily Barnes Trust
Lori Lou Girdner Trust
Frank B. Barnes Trust

PO Box 2797
Boise, ID 83701

RECEIVED
MAR 2 2 2000
WATER RESOURCES
SOUTHERN REGION

Attorneys for Lenora B. Barnes

Scott L. Campbell
Angela D. Schaer
ELAM & BURKE, P.A.
Key Financial Center, 10th Floor
702 West Idaho
P.O. Box 1539
Boise, Idaho 83701
Telephone: (208) 343-5454
Facsimile: (208) 384-5844

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 No. 65-08850
	)	
Case No. 39576	)	NOTICE OF APPEARANCE
	)	

PLEASE TAKE NOTICE that Scott L. Campbell and Angela D. Schaer, of the firm of Elam & Burke, P.A., 702 West Idaho, 10th Floor, Post Office Box 1539, Boise, Idaho, 83701, hereby enters an appearance as Attorneys of Record for Lenora B. Barnes.

Respectfully submitted this 21st day of March, 2000.

ELAM & BURKE, P.A.

By Scott L. Campbell
Scott L. Campbell

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing NOTICE OF APPEARANCE was mailed on this 21st day of March, 2000, with sufficient first-class postage to each of the following:

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

The United States Department of Justice
Environment and Natural Resources Division
550 West Fort Street, MSC 033
Boise, Idaho 83724

Idaho Department of Water Resources
Document Depository
Post Office Box 83720
Boise, Idaho 83720-0098

Scott L. Campbell

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: **A65-08850**
Date Received: 3/10/1989
Receipt No: W002572
Received By: LW

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

1. Name: JON L. BARNES, TRUST 208-345-7515
   Address: P.O. BOX 2797
   BOISE, ID 83701
   OR
   Name: JULIE BARNES JOHNSTON, TRUST 208-345-7515
   Address: P.O. BOX 2797
   BOISE, ID 83701
   OR
   Name: CECILY BARNES, TRUST 208-345-7515
   Address: P.O. BOX 2797
   BOISE, ID 83701
   OR
   Name: LORI LOU BARNES GIRDNER, TRUST 208-345-7515
   Address: P.O. BOX 2797
   BOISE, ID 83701
   OR
   Name: FRANK B. BARNES, TRUST 208-345-7515
   Address: P.O. BOX 2797
   BOISE, ID 83701

2. Date of Priority: APR 01, 1900

3. Source: ALDER CREEK Trib. to: PAYETTE RIVER, SOUTH FORK

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
08N	04E	2	SW	NE			BOISE

5. Description of diverting works:
   GRAVITY FLOW FROM ALDER CK. WITH DITCHES FOR GRAVITY IRRIGATION.

MICROFILMED
SEP 2 3 1992

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/01	11/01	2.510		
STOCKWATER	01/01	12/31	0.060		3.29

7. Total Quantity Appropriated is:
2.570 C.F.S. (and/or) 3.29 A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
S/150 HD.

10. Place of Use:

Township	Range	Section	1/4 of 1/4		Lot	Use	Acres
09N	04E	35	NE	SW	6	IRR	27.0
			NW	SW	5	IRR	51.0
			SW	SW		IRR	10.0
			SE	SW		IRR	8.0
			SW	SE	7	IRR	7.0
						Section Acres	103.0
						Total Acres	103.0

11. Place of use in counties: BOISE

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

13. Other Water Rights Used:
CLAIM NO. A65-08651(ALDER CK.RES.)& A65-11324(S.FK.PAY.)

14. Remarks:
THIS RIGHT WHEN COMBINED WITH RIGHT 65-11329 SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.
JON L. BARNES HAS REQUESTED AMENDMENT OF PRIORITY DATE TO APRIL 1, 1900 AND WILL BE SUBMITTING SUPPORTING EVIDENCE.-L.W. 5/2/89
__ADDITIONAL RECEIPT NUMBER W2625.

15. Basis of Claim: BENEFICIAL USE

MICROFILMED
SEP 2 3 1992

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: N/A

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): x _____ Date: 19 May 89

_____ Date: _____

State of Idaho)
) SS.
County of Ada)

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

Linda K. Blanton
Notary Public

Seal

Residing at Boise, Idaho

My Commission Expires 6-21-92

MICROFILMED
SEP 23 1992

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: **A65-08850**
Date Received: 3/10/1989
Receipt No: ~~X999999~~
Received By:

NOTICE OF CLAIM TO A WATER RIGHT ACQUIRED UNDER STATE LAW

1. Name: JON L. BARNES, TRUST 208-345-7515
   Address: P.O. BOX 2797
   BOISE, ID 83701
   OR
   Name: JULIE BARNES JOHNSTON, TRUST 208-345-7515
   Address: P.O. BOX 2797
   BOISE, ID 83701
   OR
   Name: CECILY BARNES, TRUST 208-345-7515
   Address: P.O. BOX 2797
   BOISE, ID 83701
   OR
   Name: LORI LOU BARNES GIRDNER, TRUST 208-345-7515
   Address: P.O. BOX 2797
   BOISE, ID 83701
   OR
   Name: FRANK B. BARNES, TRUST 208-345-7515
   Address: P.O. BOX 2797
   BOISE, ID 83701

2. Date of Priority: JUN 01, 1920

3. Source: ALDER CREEK Trib. to: PAYETTE RIVER, SOUTH FORK

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4	Lot	County
08N	04E	2	SW NE		BOISE

5. Description of diverting works:
   GRAVITY FLOW FROM ALDER CK. WITH DITCHES FOR GRAVITY IRRIGATION.

MICROFILMED
SEP 23 1992

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/01	11/01	2.510		
STOCKWATER	01/01	12/31	0.060		3.29

7. Total Quantity Appropriated is:
2.570 C.F.S. (and/or) 3.29 A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
S/150 HD.

10. Place of Use:

Township	Range	Section	1/4	of 1/4	Lot	Use	Acres
09N	04E	35	NE	SW	6	IRR	27.0
			NW	SW	5	IRR	51.0
			SW	SW		IRR	10.0
			SE	SW		IRR	8.0
			SW	SE	7	IRR	7.0
					Section Acres		103.0
					Total Acres		103.0

11. Place of use in counties: BOISE

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

13. Other Water Rights Used:
CLAIM NO. A65-08651(ALDER CK.RES.)& A65-11324(S.FK.PAY.)

14. Remarks:
THIS RIGHT WHEN COMBINED WITH RIGHT 65-11329 SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.

15. Basis of Claim: BENEFICIAL USE

MICROFILMED
SEP 23 1992

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do ____ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: 1

For Individuals:

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

Signature of Claimant(s): [signature] Date: 3-10-89

Date:

State of Idaho)
) SS.
County of ADA)

Subscribed and sworn (or affirmed) before me this 10th day of March 19 89

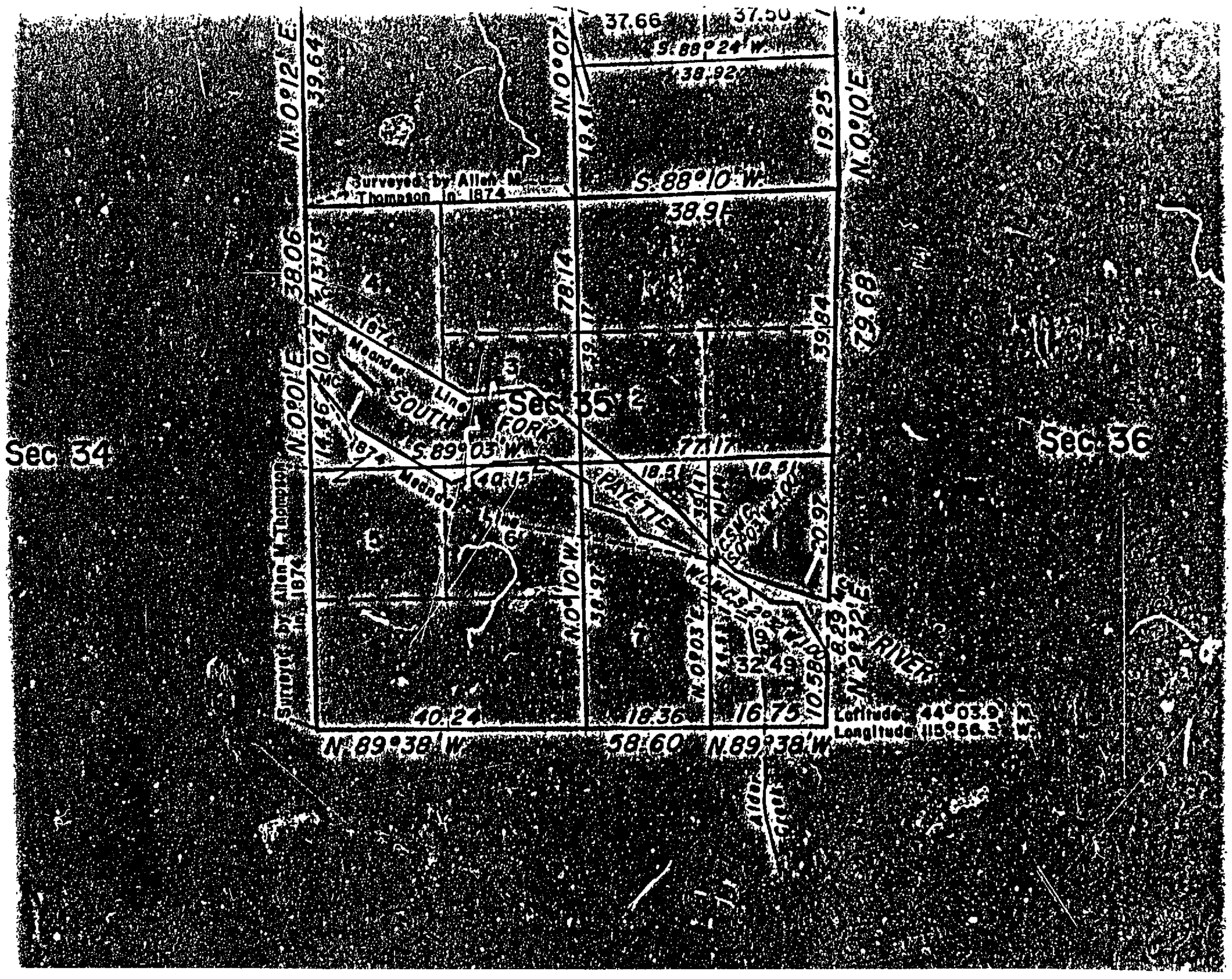
[signature]
Notary Public

Seal

Residing at Meridian ID

My Commission Expires 9-14-94

MICROFILMED
SEP 23 1992


Sec 34
Sec 35
Sec 36
SOUTH FORK
PAYETTE
RIVER
Meander Line
Surveyed by Allen M. Thompson in 1874
S. 88°10' W.
S. 88°24' W.
S. 89°03' W.
N. 89°38' W.
58.60
N. 89°38' W.
N. 0°12' E.
N. 0°01' E.
N. 0°07'
N. 0°10' E.
N. 0°10' W.
N. 0°03' E.
N. 2°32' E.
Latitude 44°03.9' N.
Longitude 115°56.3' W.
39.64
38.06
79.68
78.14
38.92
38.91
77.17
40.24
18.36
16.75
32.49
10.58
19.25
19.41
39.84
37.66
37.50
40.15
20.92

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

RECEIVED Boise
FEB 7 1974
Department of Water Administration

IN THE MATTER OF THE GENERAL DETERMINATION OF THE RIGHT TO THE USE OF THE SURFACE AND GROUND WATERS OF THE PAYETTE RIVER DRAINAGE BASIN

NOTICE OF CLAIM TO A WATER RIGHT

IDENT. NO. 65-8850 MAP NO.

Notice is hereby given that Larry B. Barnes &/or Charles Cheney: Ranch (Name of Claimant)

Box 2797, Boise, Idaho 83701 (Mailing Address), claims a right to the diversion and beneficial use of the surface or groundwater, of or tributary to the Payette River;

The extent and nature of said claim is as follows:

(1) Date of priority: (When was the water first applied to a beneficial use, or date that permit was issued) June 1, 1920

(2) Describe source of water: (Name of stream, lake, spring, etc., or subterranean) Alder Creek, (trib. to So. Fk. Payette River)

(3) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed: (Both Dates Inclusive)

Use Irrigation (Domestic, irrigation, stock, etc.) 2.51 CFS Period of Use From April 1 To Nov. 1 (Mo., Day) (Mo., Day)

Use Stockwater (Domestic, irrigation, stock, etc.) 1.06 CFS Period of Use From Jan. 1 To Dec. 31 (Both Dates Inclusive) (Mo., Day) (Mo., Day)

Use _____ (Domestic, irrigation, stock, etc.) 3.57 CFS Period of Use From _____ To _____ (Both Dates Inclusive) (Mo., Day) (Mo., Day)

(4) Quantity of water claimed: 3.57 Cubic Feet Per Second, or _____ Acre Feet Per Annum, and/or _____ Gals. Per Minute.

(5) A) Point of Diversion: Give location of point where water is diverted from its source SW ¼ NE ¼, Sec. 2, Twp. 8 N, Rge. 4 E, B.M.; additional points: _____

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.) Give sizes and capacities; be as specific as possible. Concrete diversion structure with ½ mile ditch & gravity system.

(6) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

T	R	SEC.	NE¼				NW¼				SW¼				SE¼				TOTAL
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
9N	4E	35							Lot 6 27	Lot 5 31			10	8		Lot 7			103

Total No. of acres 103

B) If water is used for other than irrigation, fully describe that use, being as specific as possible: Stockwater for 200 beef cattle.

(7) Effluent, sewage waste, or return water from this use is discharged into _____

(8) If you are claiming water as a member of an organization, list name of organization. _____

(9) Remarks This use right is for 1/1 of 3/4 of the water of Alder Creek but cannot exceed 3.33 c.f.s. Supplemental right from S. F. Payette covers same grounds. (THIS RT. WHEN COMBINED WITH RT # 65-11329 SHALL PROV. NO MORE THAN .03 CFA DIV 82

(10) Basis of claim (Check one) ☐ A) Right based on diversion and beneficial use.

☐ B) Right decreed by court, cite title of case _____

☐ C) Right based on application, license, or claim filed with State Reclamation Engineer, Office No. _____

Be it known that the undersigned, after being duly sworn on oath, depose(s) and say(s) that all statements included herein are true and accurate to the best of (his, her, their) knowledge.

February 7, 1974 (Date)

KEYPUNCHED 10-30-78 cm 11-17-78 cm

Individual

Charles Cheney Partner (Signature of Claimant)

(Signature of Spouse)

Organization _____

(Signature of Authorized Agent)

State of Idaho } ss.
County of Ada }

Organization Seal

On this _____ day of _____, in the year 1974, before me, _____, a notary public, personally appeared _____ known to me to be the person(s) whose name(s) are subscribed to the above instrument, and acknowledged to me that (he, she, they, corporation, partnership or _____) executed the same.

Notary Public residing at _____

My commission expires _____

adj. claim by Linda Warner 65-08850

DAVID H. LEROY
Attorney General
State of Idaho
Statehouse, Room 210
Boise, Idaho 83720
Telephone: (208) 384-2400

JOSEPHINE P. BEEMAN
MICHAEL H. HYER
Deputy Attorneys General
Department of Water Resources
Statehouse
Boise, Idaho 83720
Telephone: (208) 334-4448

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

IN THE MATTER OF THE GENERAL DETERMINATION OF THE RIGHT TO THE USE OF SURFACE AND GROUNDWATERS OF THE PAYETTE RIVER DRAINAGE BASIN.	Civil No. 3667 RESPONSE TO MOTION OF BARNES AND/OR CHENEY

COMES NOW, C. Stephen Allred, Director of the Idaho Department of Water Resources, and responds to the Motion to Allow Submission of Objection and to Modify Director of Department of Water Resources' Report filed by Larry B. Barnes and/or Charles Cheney, dated September 20, 1979, as follows:

I.

The Department takes no position on whether these claimants have good cause to file a late objection. However, it is the Department's position that it has no jurisdiction or authority to receive a late objection without an order from this Court.

II.

Nevertheless, the Department has reviewed the claimants' objection. The objection concerns the recommended priority date of 6/1/1920 for Right No. 65-8850 from Alder Creek. While it is difficult to ascertain the exact date water from Alder Creek was first applied to beneficial use on the land covered by No. 65-8850, water was probably applied to beneficial use on that land

at the same time water from Alder Creek was applied to beneficial use on the land covered by Right No. 65-5633, owned by Dora Murray and Guy Canada. This is suggested by the Goldtrap-Charters deed (Exhibit A to Claimants' Motion), by the use by both rights of the same ditch from Alder Creek and by the physical location of the two parcels with respect to each other and the ditch. In his proposed findings, the Director recommended a priority date of 4/1/1900 for No. 65-5633, and no objections were filed with respect to that right.

Accordingly, if the Court grants the motion to submit a late claim, the Department would ask the Court to order that the proposed findings for Right No. 65-8850 be amended to state a priority date of 4/1/1900.

III.

A copy of this Response and the Notice of Hearing filed herewith will be served upon those holders of rights which may be affected by this proposed change, specifically: Dora Murray and Guy Canada, owners of Right No. 65-5633, Elzie Yensen and Shirley Lindstrom, owners of No. 65-10925, and Douglas and Janice Donley, owners of No. 65-10539.

DATED this 11 day of March, 1980.

MICHAEL H. HYER
Deputy Attorney General
Department of Water Resources

DAVID H. LEROY
Attorney General
State of Idaho
Statehouse Room 210
Boise, Idaho 83720
Telephone (208) 384-2400

DAVID H. LEROY
Attorney General
State of Idaho
Statehouse, Room 210
Boise, Idaho 83720
Telephone: (208) 384-2400

JOSEPHINE P. BEEMAN
MICHAEL H. HYER
Deputy Attorneys General
Department of Water Resources
Statehouse
Boise, Idaho 83720
Telephone: (208) 334-4448

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

IN THE MATTER OF THE GENERAL DETERMINATION OF THE RIGHT TO THE USE OF SURFACE AND GROUNDWATERS OF THE PAYETTE RIVER DRAINAGE BASIN.	Civil No. 3667 NOTICE OF HEARING

TO: Larry B. Barnes and Charles Cheney, Dora Murray and Guy Canada, Elsie Yensen and Shirley Lindstrom, and Douglas and Janice Donley.

PLEASE TAKE NOTICE that on the 24th day of March, 1980 at the hour of 9:30 a.m. or as soon thereafter as counsel may be heard, in the Gem County Courthouse in Emmett, the Idaho Department of Water Resources will bring on for hearing the MOTION TO ALLOW SUBMISSION OF OBJECTION, filed by Larry B. Barnes and/or Charles Cheney, dated September 20, 1979.

DATED this 11th day of March, 1980.

MICHAEL H. HYER
Deputy Attorney General
Department of Water Resources

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on the 11th day of March, 1980, true and correct copies of the foregoing NOTICE OF HEARING AND RESPONSE TO MOTION OF BARNES AND/OR CHENEY were mailed, postage prepaid to:

Dora Murray
Garden Valley
Idaho 83622

Guy Canaday
Garden Valley
Idaho 83622

Elsie Yensen
Box 12
Garden Valley, ID 83622

Shirley Lindstrom
Box 12
Garden Valley, ID 83622

Douglas & Janice Donley
Garden Valley,
Idaho 83622

Larry B. Barnes
Box 2797
Boise, ID 83701

Charles Cheney
Box 2797
Boise, ID 83701

State of Idaho
Statehouse Room 210
Boise Idaho 83720
Telephone (208) 384-2400

MICHAEL H. HYER
Deputy Attorney General
Department of Water Resources

MEMO TO: 65-8850
FROM: F.E.L 2/15/79

THIS RIGHT ON LAND WHICH WAS ORIGINALLY KNOWN AS THE WETZEL PLACE, POSSIBLY HAS A CONSIDERABLY EARLIER PRIORITY DATE. VERY POSSIBLY THE DATE SHOULD BE THE SAME AS 65-5633, SINCE THE SUPPORTING DOCUMENTS & TRANSFERS FOR THAT PROPERTY DESCRIBE THE CHARTERS-WETZEL DITCH. HOWEVER, PHONE CONVERSATION WITH CHARLES CHANEY INDICATED THE 1920 DATE WAS THE EARLIEST WITH DEFINITE SUPPORTING EVIDENCE, THOUGH HE WAS AWARE IT WENT BACK FAR EARLIER.

MICROFILMED
SEP 2 3 19

02/14/79 F.E.L.

```
**********************************************
* MACALLISTER'S MODIFICATION OF MORITZ        *
* LOSS CALCULATION FOR                        *
* THE ALDER CR. DIVERSION #2                  *
* WATER RIGHT NO. 65-8850                     *
**********************************************
```

Q DIVERTED: 7.84
Q DELIVERED: 6.43
PERCENTAGE LOSS: 21.9

TYPE OF SOIL: SANDY LOAM
SOIL CONSTANT= 1.50 (FEET/DAY)
LENGTH OF HEAD OF DITCH: .75
LENGTH OF DELIVERY SECTION: 1.38

LOSS TABLE FOR HEAD OF DITCH

MILE	Q (CFS)	LOSS (CFS)
.75	7.28	.56

LOSS TABLE FOR DELIVERY

MILE	Q (CFS)	LOSS (CFS)	Q DELIVERED (CFS)
1.00	1.91	.72	4.66
1.38	-.01	.14	1.77

CFS = AFA CALCS

Loss Constant From Above 1.219

2.06 CFS x 1.219 = 2.51 CFS IRR.

2.7 AFA Stk x 1.219 = 3.29 AFA Stk

.05 CFS Stk x 1.219 = .06 CFS Stk.

MICROFILMED
SEP 2 3 1992

MEMO TO: 65-8850
FROM: FEL 10/27/78

POORLY DESCRIBED OWNERSHIPS IN RECORDS FROM BOISE CO. IN THESE SECTIONS, BUT 1964 PHOTO DHU-1EE-140 INDICATES AN APPROXIMATE TOTAL OF 103 ACRES IRRIGATED UNDER THIS RT. AND GRAVITY SYSTEM. THE 1975 U-2 PHOTO INDICATES APPROXIMATELY [redacted]-110 ACRES WHICH WOULD REFLECT EXPANSION OF ACREAGE UNDER A LAPSED 1966 PERMIT FOR PUMPING FROM THE SO. FK. BY JAMES WAUGH. THEREFORE RECOMMENDING 103 ACRES FOR ALDER CK. RT. B/D CLAIM SOLICITED ON RT FR. SO. FK.

MICROFILMED
SEP 23 1992

F.L.B. No. 125395

THE FEDERAL LAND BANK OF SPOKANE

Transfer of Stock to Borrower in Federal Land Bank Association, Acceptance of Assignment and Assumption of Mortgage by Purchaser and Approval of Association

KNOW ALL MEN BY THESE PRESENTS, That the undersigned, for value received, does hereby sell, assign, transfer and set over unto Larry B. Barnes

* | | | Social Security Number

all my right, title and interest in and to 133 shares of stock registered in my name in the Federal Land Bank Association of Boise which stock is held as collateral security in connection with the above designated mortgage made under the Federal Farm Loan Act and I hereby authorize and direct the officers of said Association and The Federal Land Bank of Spokane to make the necessary transfer of such stock interests, with full power of substitution.

Signed at Boise, Idaho, this 5th day of July, 19 67

*Underline name to which social security number applies.

CERTIFICATE OF PURCHASE AND ELIGIBILITY AND ASSUMPTION BY PURCHASER

WHEREAS, I (we), the undersigned, have purchased of

the land described in mortgage to The Federal Land Bank of Spokane, designated by it as F.L.B. No.

given to secure a note of Dollars ($);

Now, I the undersigned, purchaser and present owner of said land, have assumed and do hereby assume said mortgage and the stock interests of said vendor in the Federal Land Bank Association named in the foregoing assignment, and hereby make application for membership in said Association.

I further certify that the terms of said purchase of said lands are as follows:

Cash . . . . . $

By assuming mortgage to said Federal Land Bank . . . . . $

By assuming or executing other mortgages . . . . . $

By trading other property, cash value of which is . . . . . $

. . . . . $

Total purchase price . . . $

Dated , 19

Important: Give permanent P. O. Address:

(Joint purchasers should all sign this certificate. In case of joint ownership, all joint owners should be elected to membership and one joint owner must be designated to act in association affairs and a power of attorney must be executed by all joint owners authorizing him so to act.)

ELECTION TO MEMBERSHIP

The undersigned Loan Committee of the Federal Land Bank Association of , by unanimous vote, at a meeting held on this day of , 19 , approves the foregoing transfer and assumption and elects to membership in said association.

FLB FORM 418 (REV 4-64)

REAL ESTATE CONTRACT

THIS AGREEMENT, Made and entered into this 23rd day of May, 1967, by and between JAMES E. WAUGH and DONNA J. WAUGH, husband and wife, of Meridian, Idaho, hereinafter called Sellers, and LARRY B. BARNES and LENORA B. BARNES, husband and wife, of Boise, Idaho, hereinafter called Buyers;

WITNESSETH: That for and in consideration of the covenants and agreements herein contained, Sellers agree to sell and convey unto Buyers, and Buyers agree to purchase and pay for the following described real property situate in Boise County, Idaho, to-wit:

Lots Five and Six, the North Half of the Southeast Quarter of the Southwest Quarter, the Southwest Quarter of the Southwest Quarter, Section 35; all of Lot Seven less the South ten chains, Section Thirty-five; the North Half of the East Half of the Southeast Quarter of the Southeast Quarter, the North Half of the South Half of the East Half of the Southeast Quarter of the Southeast Quarter, Section 34; all in Township 9 North, Range 4 East, Boise Meridian, containing approximately 198.10 acres; Excepting and reserving therefrom, however, that portion of Lot Seven, Section Thirty-five, Township 9 North, Range 4 East, Boise Meridian, lying East of Alder Creek, being approximately eighteen acres.

together with all appurtenances thereon or appertaining thereto of every kind and nature.

PURCHASE PRICE: It is understood and agreed that the total purchase price is the sum of $55,000.00, of which Buyers have paid Sellers the sum of $1,000.00,

constitutes a lien against the premises. Sellers are making the July 1, 1967 payment upon the mortgage to the Federal Land Bank of Spokane, and Buyers are assuming the unpaid balance of said mortgage from and after that date. At the time the contract is paid in full, the Buyers shall repay the Sellers in full for the Federal Land Bank stock held in connection with said loan, which is in the amount of $665.00.

WATER RIGHTS: It is understood that the conveyance to Buyers includes all water rights appurtenant to the property, including one-third of three-fourths of the water in Alder Creed established as a user's right upon said property, and also all of Sellers' right, title and interest in Filing Number 33049 with the State of Idaho in connection with 198 miners inches of water in the South Fork of the Payette River.

TITLE EVIDENCE: Concurrently herewith, Sellers shall furnish Buyers with a policy of title insurance showing merchantable title in Sellers in the amount of $55,000.00, subject to the existing Federal Land Bank Loan, existing ditch, road rights-of-way and existing easements and current taxes and assessments. Buyers shall have ten days from the receipt of said title insurance policy within which to have the same examined. If there are objections to Sellers' title, Sellers shall have a reasonable time, according to the nature thereof, within which to correct the same, provided said objections shall be made in writing wherein it is specified in what particulars and by what legal authority said title is not marketable. If no objections are made within said ten days, then Buyers shall be presumed to have accepted said title as merchantable. After said title insurance policy has been examined, the same shall be placed with the escrowholder.

ASSIGNING AND SUBLETTING: Buyers agree that they will not sell, assign, or otherwise transfer their interest in this contract or the real property herein described, and that they will not sublet the same without the prior written consent of the Sellers.

and the prompt performance of each and every obligation of Buyers is agreed to be of the essence of this contract, and should Buyers fail or neglect to make any payment of principal, interest, water and assessments, or insurance premiums when due, and before the same become delinquent, or fail or

IN THE MATTER OF:
Tony B Barnes
Alder Creek water use
Harden Valley
State of Idaho
County of Boise

AFFIDAVIT

Earl F McKee being first duly sworn, deposes and says: To the Best of My Knowledge Tony Barnes & George Mussey Water Diversion has been in use since 1920

Earl F McKee
(signature)

Subscribed and sworn to before me this 25 day of January 1974.

Lubby Brundin
(notary public)

Residing at Boise.
My commission expires Feb 2, 1976.

NOV 9 1989

RECEIVED

MAR 5 1980

Department of Water Resources

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

In the Matter of the General Determination of the Rights to the Use of Service and Ground Water of the Payette River Drainage Basin.	)	Civil No: 3667 MOTION TO ALLOW SUBMISSION OF OBJECTION AND TO MODIFY DIRECTOR OF DEPARTMENT OF WATER RESOURCES' REPORT

COMES NOW Larry B. Barnes &/or Charles Cheney and respectfully moves the above entitled Court to consider his objections to the report filed herein by the Director of the Department of Water Resources for the State of Idaho pursuant to Section 42-1410, Idaho Code.

This motion is made on the grounds and for the reasons that new information has been discovered which has a direct bearing on the determination of water rights in this area. The recorders office of Boise County has apparently undergone a catastrophy which has eliminated certain of the earlier records regarding the initial land grant and subsequent sale of the property and related water rights in dispute. An examination of related parcels has led to the discovery of a much earlier "beneficial use" then originally reported.

The objections presented by Larry B. Barnes &/or Charles Cheney to the Director's report are made on the grounds and for the reasons that the Director in his report shows a priority date of 6/1/69, which date Probably 6/1/1920 is clearly subsequent to that shown hereafter. Exhibit "A" is a warranty deed filed approximately April 20, 1888 which makes reference to the lands and farms of one N. Wetzel and of the fact that the water rights being transferred by said 1888 deed flow from the ditch crossing the lands and farms of N. Wetzel. Through a chain of title shown on Exhibit "B" and illustrated by the corresponding warranty deeds Exhibits "C through E", Larry Barnes has acquired that same water right described in the 1888 deed attached as Exhibit "A". Further Exhibits Affidavit I and Affidavit II demonstrate that at least as far back as 1907 these waters have been in "beneficial use".

Pursuant to Section 42-1410, Idaho Code, this Court, in its sound discretion ". . . may allow such additional or amended pleadings as may be necessary for a final determination of the proceedings."

Therefore, Larry B. Barnes &/or Charles Ch ney respectfully requests that this Court grant his Motion to allow the submission of these objections to the Department of Water Resources report on the Payette River Drainage Basin, after the required sixty (60) days filing time, in order that this Court may make a complete and final determination of all water rights within this area.

In summation, Larry B. Barnes &/or Charles Cheney respectfully requests that this Court allow this submission of these objections to the Director's report on the Payette River Drainage Basin and further requests that his report be modified to reflect these objections as revisions.

Dated this 20th day of September, 1979

By: Charles Cheney Barnes Mgr

Larry B. Barnes &/or Charles Cheney

STATE OF IDAHO, COUNTY OF Ada

On this 20th day of Sept., 1979
before me, a notary public in and for said State,
personally appeared

Charles Cheney

known to me to be the person whose name subscribed
to the within instrument, and acknowledged to
me that he executed the same

Shirley M Linke
Notary Public

Residing at Boise, Idaho
Commission Expires 7-16-82

Exhibit A

Year 1888 Warranty Deed Witt to Charters

Exhibit B

Year 1952 Wetzel to Allen

Exhibit C

Year 1960 Allen to Waugh

Exhibit D

Year 1965 R. Waugh to James & Donna Waugh

Exhibit E

Year 1967 James & Donna Waugh to Larry Barnes

Affidavit I

William Tucker

Affidavit II

A. D. Rane

S.K.Goldtrap.and
Anna C.Goldtrap.wife.

—— TO ——

5.

William Charters,

Dated April 17,1888.
Ackl April 17,1888
Filed April 20,1888
Book 16 of Deeds, Page 132
Consid $2000.00

Grant,Bargain,Sell, Alien, Convey and Confirm the Lots 2 and 3, and the SW¼ of the NE¼, and the NE¼, and the NE¼ of the SE¼, of Section 34,Township 9 North, Range 4 East, ~~of the Boise Meridian~~. Also a water right and ditch covering the South end of said land, taking the water from the Gulch coursing down through the premises in a Northerly directio, also an un-divided 1/3 interes of, in and to that certain ditch and w water right belonging to said land, and by which the same is irrigated which said ditch takes the water from Alder Creek, and conveyed the same along the west bank thereof, to the lands and farms of N .Witzell, and said parties of the first and second part, the above described land and water ditches and rights being the same formerly owned by A.Bael,deceased, and purchased by said party of the first part, of and from the estate of said A.Bael,deceased.
Subject to a certain Mortgage executed by parties of the first part, to Martha E.McCarthy, bearing date tNovember 25,1885, secures payment of $1500.00, evidence by a certain promissory note.executed by party of the first part, to Martha E.McCarthy.due one year after date, with interest thereon from date, at the rate of 1½% per month, Mortgage recorded in Book 4 of Mortgages, Pages 684,5,6, and 7, the consideration money shall be appropriated toward the payment of Nota and Mortgage now due.

Acknowledged by the Grantors, before T.S.Hart. Judge of the Probate Court, County of Boise, Idaho. Seal.

Two Witnesses.

William Charters.

—— TO ——

16.

Whom it may Concern.

DECLARATION OF HOMESTEAD:

Dated June 6,1904
Ackl June 6,1904.
Filed June 7,1904.
Book 1 of Declar-of Homestead,Pg 195

Declaration of Homestead on the W½ of the SE¼ of the SE¼, and the SW¼ of the SE¼, and the NW¼ of the SE¼, Section 34, Township 9 North, and the Lots 2 and 3, and the SW¼ of the NE¼, and the NE¼ of the SE¼ of Section 34, Township 9 North, Range 4 East, and the E½ of the NW¼, of Section 34, and the Lots 6 and 7, of Section 27, Township 9 North, Range 4 East.B.M. Recites that he and family actually reside on said land, that his family consists of himself and five children, estimated value $5000.00

Acknowledged by William Charters, before James McDivitt, Notary Public, Boise County,Idaho. Seal.

Probate Judge.

INSTRUMENT NO. 61542

THIS INDENTURE Made this 3rd day of December in the year of our Lord one thousand nine hundred and fifty-two, between THOMAS H. WETZEL and KATHERINE WETZEL, husband and wife, of Garden Valley, County of Boise, State of Idaho, the parties of the first part, and WILLIAM E. ALLEN and GLADYS M. ALLEN, husband and wife, of , County of Boise, State of Idaho, the parties of the second part.

WITNESSETH, That the said parties of the first part, for and in consideration of the sum of TEN and 00/100 DOLLARS lawful money of the United States of America, and other good and valuable consideration to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain, sell, convey and confirm unto the said parties of the second part, and to their heirs and assigns forever, all of the following described real estate, situated in , County of Boise, State of Idaho, to-wit:

Lots five (5) and six (6), $N\frac{1}{2}SE\frac{1}{4}SW\frac{1}{4}$, $S\frac{1}{2}SW\frac{1}{4}$, Section thirty-five (35); all of Lot seven (7) less the South ten chains, Section thirty-five (35); $N\frac{1}{2}S\frac{1}{2}SE\frac{1}{4}$, $N\frac{1}{2}S\frac{1}{2}E\frac{1}{2}SE\frac{1}{4}$, Section thirty-four (34); all in Twp. 9 N. Range 4 E., B. M., containing approximately 193.10 acres;

Excepting and reserving therefrom, however, that portion of Lot 7, Section 35, Twp. 9 N. Range 4 E., B. M., lying East of Alder Creek, being approximately eighteen acres.

TOGETHER, With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said parties of the first part.

TO HAVE AND TO HOLD All and singular the above mentioned and described premises, together with the appurtenances, unto the parties of the second part, and to their heirs and assigns forever and the said parties of the first part, and their heirs, the said premises in the quiet and peaceable possession of the said parties of the second part, their heirs and assigns, against the said parties of the first part, and their heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same shall and will WARRANT and by these presents forever DEFEND.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

Thomas H. Wetzel (SEAL)
Katherine E. Wetzel (SEAL)

STATE OF IDAHO,)
COUNTY of Ada :ss
)

On this 3rd day of December in the year 1952, before me, A Notary Public in and for said State, personally appeared Thomas H. Wetzel and Katherine Wetzel, husband and wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

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

(SEAL) Claude V. Parsons
Notary Public for the State of Idaho,
Residing at Boise, Idaho.

STATE OF IDAHO,)
COUNTY of Boise)ss

I hereby certify that this instrument was filed for record at request of Robert Copper at 33 minutes past 10 o'clock A. M., this 23 day of July, A. D. 1955, in my office, and duly recorded in Book 54 of Deeds at page 573.

Katherine L. Brogan
Ex-Officio Recorder

By Aileen Murchison
Deputy

Fee $1.50

Pd 7/1/53 TMVD

INSTRUMENT NO. 70615

Exhibit C

WARRANTY DEED

THIS INDENTURE, Made this 1st day of September in the year of our Lord one thousand nine hundred and sixty, between WILLIAM E. ALLEN and GLADYS M. ALLEN, husband and wife of Boise, County of Ada, State of Idaho, the parties of the first part, and JAMES E. WAUGH and DONNA JEAN WAUGH, husband and wife and ROI WAUGH a Bachelor, of Boise, County of Ada, State of Idaho, the parties of the second part.

WITNESSETH, That the said parties of the first part, for and in consideration of the sum of TEN DOLLARS, lawful money of the United States of America, and other valuable consideration, to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain, sell, convey and confirm unto the said parties of the second part, and to their heirs and assigns forever, all of the following described real estate, situated in the County of Boise, State of Idaho, to-wit:

Lots Five and Six, the North Half of the Southeast Quarter of the Southwest Quarter, the Southwest Quarter of the Southwest Quarter, Section Thirty-five; all of Lot Seven less the South ten chains, Section thirty-five; the North Half of the East Half of the Southeast Quarter of the Southeast Quarter, the North Half of the South Half of the East Half of the Southeast Quarter of the Southeast Quarter, Section Thirty-four; all in Township Nine North, Range Four East Boise Meridian, containing approximately 198.10 acres;

EXCEPTING and RESERVING therefrom, however, that portion of Lot Seven, Section Thirty-five, Township Nine North, Range Four East, Boise Meridian, lying East of Alder Creek, being approximately eighteen acres.

TOGETHER, With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said parties of the first part.

TO HAVE AND TO HOLD, All and singular the above mentioned and described premises, together with the appurtenances, unto the parties of the second part, and to their heirs and assigns forever and the said parties of the first part, and their heirs, the said premises in the quiet and peaceable possession of the said parties of the second part, their heirs and assigns, against the said parties of the first part, and their heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same shall and will WARRANT and by these presents forever DEFEND.

TOGETHER, With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all estate, right, title and interest in and to the said property, as well in law as in equity of the said parties of the first part.

TO HAVE AND TO HOLD, All and singular the above mentioned and described premises, together with the appurtenances, unto the parties of the second part, and to their heirs and assigns forever and the said parties of the first part, and their heirs, the said premises in the quiet and peaceable possession of the said parties of the second part, their heirs and assigns, against the said parties of the first part, and their heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same shall and will WARRANT and by these presents forever DEFEND.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

William T. Allen (SEAL)
Gladys M. Allen (SEAL)

Exhibit 6

INSTRUMENT NO. 70560

WARRANTY DEED

THIS INDENTURE, Made this 27th day of September in the year of our Lord one thousand nine hundred and sixty-five, between ROY WAUGH, a Bachelor of Garden Valley, County of Boise, State of Idaho, the party of the first part, and JAMES E. WAUGH and DONNA JEAN WAUGH husband and wife of Garden Valley, County of Boise, State of Idaho, the parties of the second part.

WITNESSETH, That the said party of the first part, for and in consideration of the sum of TEN DOLLARS lawful money of the United States of America, and other valuable consideration to him in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargain, sell, convey and confirm unto the said parties of the second part, and to their heirs and assigns forever, all of the following described real estate, situated in the County of Boise, State of Idaho, to-wit:

Lots Five and Six, the North Half of the Southeast Quarter of the Southwest Quarter, the Southwest Quarter of the Southwest Quarter, Section Thirty-five; all of Lot Seven less the South ten chains, Section Thirty-five; the North Half of the East Half of the Southeast Quarter of the Southeast Quarter, the North Half of the South Half of the East Half of the Southeast Quarter of the Southeast Quarter, Section Thirty-four; all in Township Nine North, Range Four East, Boise Meridian, containing approximately 198.10 acres;

EXCEPTING and RESERVING therefrom, however, that portion of Lot Seven, Section Thirty-five, Township Nine North, Range Four East, Boise Meridian, lying East of Alder Creek, being approximately eighteen acres.

TOGETHER, With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said party of the first part.

TO HAVE AND TO HOLD, All and singular the above mentioned and described premises, together with the appurtenances, unto the parties of the second part, and to their heirs and assigns forever and the said party of the first part, and their heirs, the said premises in the quiet and peaceable possession of the said parties of the second part, their heirs and assigns, against the said party of the first part, and his heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same shall and will WARRANT and by these presents forever DEFEND.

IN WITNESS WHEREOF, The said party of the first part has hereunto set his hand and seal the day and year first above written.

Roy Waugh (SEAL)

STATE OF IDAHO,)
COUNTY of ----)ss

On this 1st day of October in the year 1965, before me the undersigned, a Notary Public in and for said State, personally appeared Roy Waugh, a bachelor known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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

(SEAL) Helen Harbaugh
Notary Public for the State of Idaho,
Residing at ----, Idaho.

STATE OF IDAHO,)
COUNTY of Boise)ss

I hereby certify that this instrument was filed for record at request of Idaho Title Co. at 20 minutes past 10 o'clock A. M., this 7th day of October, A. D. 1965, in my office, and duly recorded in Book 58 of Deeds at page 46.

Katherine M. Brogan
Ex-Officio Recorder

By [signature] Deputy

Fee $1.50

REVENUE STAMPS

WARRANTY DEED

For Value Received

JAMES E. WAUGH and DONNA J. WAUGH, husband and wife,

the grantor s, do hereby grant, bargain, sell and convey unto

LARRY B. BARNES and LENORA B. BARNES, husband and wife,

the grantee s, the following described premises, to-wit:

Lots Five and Six, the North Half of the Southeast Quarter of the Southwest Quarter, the Southwest Quarter of the Southwest Quarter, Section Thirty-five; all of Lot Seven less the South ten chains, Section Thirty-five; the North Half of the East Half of the Southeast Quarter of the Southeast Quarter, the North Half of the South Half of the East Half of the Southeast Quarter of the Southeast Quarter, Section Thirty-four, all in Township Nine North, Range Four East, Boise Meridian, containing approximately 198.10 acres

Excepting and reserving therefrom, however, that portion of Lot Seven, Section Thirty-five, Township Nine North, Range Four East, Boise Meridian, lying East of Alder Creek, being approximately eighteen acres.

Subject to a mortgage in favor of the Federal Land Bank of Boise, Idaho, Loan Number 125395, the unpaid balance of which is $13,167.00, which Grantees assume and agree to pay according to the terms thereof.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantees, their heirs and assigns forever. And the said Grantor s do hereby covenant to and with the said Grantees, that they are the owners in fee simple of said premises, that said premises are free from all incumbrances except the mortgage in favor of Federal Land Bank of Boise, Idaho, above described, existing ditch, road rights-of-way, existing easements and current taxes and assessments.

and that they will warrant and defend the same from all lawful claims whatsoever.
Dated: May 23, 1967

James E. Waugh

Donna J. Waugh

STATE OF IDAHO, COUNTY OF ADA
On this 23 day of May, 1967, before me, a notary public, personally appeared JAMES E. WAUGH and DONNA J. WAUGH, his wife.

known to me to be the person s whose name s is subscribed to the within instrument, and acknowledged to me that they executed the same.

Notary Public
Residing at Boise, Idaho
Comm. Expires 2nd 10, 75

STATE OF IDAHO, COUNTY OF Ada
I hereby certify that this instrument was filed for record at the request of Ada Title & Escrow, Inc.
at 20 minutes past 10 o'clock A.M., this 20th day of March, 1974, in my office, and duly recorded in Book 66 of Deeds at page 147

Robert J. Tuffias
Ex Officio Recorder

By Buck M Shawhan Deputy.
Fees $ 1.50
Mail to: Ada Title & Escrow, Inc. Boise, Idaho 83701

INSTRUMENT No. 82373

Warranty Deed 201-A

Printed and For Sale By Form-Tech Company, Boise

IN THE MATTER OF:

Payette River Bd

AFFIDAVIT #1

State of Idaho
County of Boise

William Tucker being first duly sworn, deposes and says: I was born and raised in Garden Valley in the year 1898 and am personally familiar with Charters-Wetzel ditch. Ranch in operation since the year of 1912.

Department of Water Resources
Western Regional Office

William Tucker
(signature)

Subscribed and sworn to before me this 1 day of September 19 77.

W Beulah Reay
(notary public)

Residing at Garden Valley, Idaho
My commission expires Non-Expiration.

IN THE MATTER OF:

Payette River Adj.

State of Idaho

County of Boise

AFFIDAVIT #2

A. D. Rane being first duly sworn, deposes and says: I can remember water use the Charter - Wetzel ditch as early as the year 1907 — I was born in 1897 and have lived in Garden Valley all my life.

RECEIVED
SEP 22 1977
Department of Water Resources
Western Regional Office

A. D. Rane
(signature)

Subscribed and sworn to before me this 1 day of September 19 77.

Mrs. Beulah Reay
(notary public)

Residing at Garden Valley, Idaho

2002 APR 11 AM 9:11

DISTRICT COURT-SRBA
TWIN FALLS CO. IDAHO
FILED_____

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	)	
	)	**ORDER OF PARTIAL DECREE**
Case No. 39576	)	
	)	**For Water Right 65-08850**

On February 27, 2002, a ***Special Master's Report and Recommendation*** was filed for the above water right. No Challenges were filed to the ***Special Master's Report and Recommendation*** and the time for filing Challenges has now expired.

Pursuant to I.R C.P. 53(e)(2) and ***SRBA Administrative Order 1***, Section 13f, this Court has reviewed the Findings of Fact and Conclusions of Law contained in the ***Special Master's Report*** and wholly adopts them as its own.

Therefore, IT IS ORDERED that water right 65-08850 is hereby **decreed** as set forth in the attached ***Partial Decree Pursuant to I.R.C.P. 54(b)***.

DATED 4/11/02

Roger Burdick

ROGER S. BURDICK
Presiding Judge
Snake River Basin Adjudication

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

In Re SRBA)
)
Case No. 39576)
)

PARTIAL DECREE PURSUANT TO
I.R.C P. 54(b) FOR

Water Right 65-08850

2002 APR 11 AM 9:11

DISTRICT COURT-SRBA
TWIN FALLS COUNTY, IDAHO
FILED

NAME AND ADDRESS: LENORA B BARNES
5120 SORRENTO DR
BOISE, ID 83704

SOURCE: ALDER CREEK TRIBUTARY, PAYETTE RIVER, SOUTH FORK

QUANTITY: 2.57 CFS
3.29 AFY

THIS RIGHT WHEN COMBINED WITH RIGHT NO. 65-11324 SHALL PROVIDE NO MORE THAN .02 CFS PER ACRE AT THE FIELD HEADGATE.

PRIORITY DATE 04/01/1900

POINT OF DIVERSION. T08N R04E S02 SWNE Within Boise County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
Irrigation	04-01 TO 11-01	2.51 CFS
Stockwater	01-01 TO 12-31	0.06 CFS
		3.29 AFY

PLACE OF USE. Irrigation Within Boise County
T09N R04E S35 LOT 06 (NESW) 27.0 LOT 05 (NWSW) 51.0
SWSW 10.0 SESW 8.0
LOT 07 (SWSE) 7.0
103.0 Acres Total

Stockwater Within Boise County
Same as Irrigation

USE OF THIS RIGHT WITH RIGHT NO. 65-11324 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 110 ACRES IN A SINGLE IRRIGATION SEASON

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

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C SECTION 42-1412(6)

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.

Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

2002 APR 11 PM 02:00
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

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	CERTIFICATE OF MAILING
Case No. 39576	Water Right(s): 65-08850

CERTIFICATE OF MAILING

I certify that a true and correct copy of the PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b) for WATER RIGHT 65-08850 was mailed on April 11, 2002, with sufficient first-class postage prepaid to the following:

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

CHARTER MOUNTAIN RANCH
Represented by:
BRUCE M. SMITH
225 NORTH 9TH ST, STE 420
BOISE, ID 83702
Phone: 208-331-1800

LENORA B BARNES
Represented by:
SCOTT L. CAMPBELL
101 S CAPITOL BLVD, 10TH FLOOR
PO BOX 829
BOISE, ID 83701-0829
Phone: 208-345-2000

CHARTER MOUNTAIN RANCH, INC
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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 No.: 65-08850
Case No. 39576	**CHARTER MOUNTAIN RANCH, INC.'S RESPONSE IN OPPOSITION TO CLAIMANT'S MOTION FOR SUMMARY JUDGMENT**

Charter Mountain Ranch, Inc. (hereinafter referred to as "Charter Mountain") hereby responds in opposition to claimant Lenora Barnes' Motion for Summary Judgment.

This case concerns Charter Mountain's objection to the priority date recommended for claimant's water right no. 65-08850. Until the Director's Report recommendation was issued, the priority for claimant's right had been June 1, 1920. A priority date represents the date water was first appropriated and put to beneficial use. Idaho Code § 42-106; Rabido v. Furey, 33 Idaho 56 (1920); Lee v. Hanford, 21 Idaho 327 (1912); Brown v. Newell, 12 Idaho 166 (1906). Thus, to prevail on its summary judgment motion claimant must factually show that water was applied to beneficial use on April 1, 1900. Charter Mountain has objected to the recommended priority date because there is no evidence that the water right was put to

beneficial use on April 1, 1900. Not only does the Director's Report ("Report") contain no basis for its recommendation, numerous facts exist which contradict the recommendation. These deficiencies, considered together or alone, rebut the *prima facie* status of the Director's Report.

Furthermore, claimant has failed to allege or prove that water was appropriated to beneficial use on April 1, 1900. Claimant never even bothers to argue that water was beneficially used on April 1, 1900. Absent proof that water was put to beneficial use on April 1, 1900, claimant is not entitled to judgment adopting the claimed priority date as a matter of law.

Charter Mountain's objection cannot be resolved on a Motion for Summary Judgment and the Motion should be denied. Charter Mountain's Response in Opposition to Claimant's Motion for Summary Judgment is supported by the Affidavits of John B. McCallum ("JBM") and Tammy A. Zokan ("TAZ") and the exhibits attached to the Affidavit of TAZ. Charter Mountain reserves the right to respond to any additional documents and/or evidence submitted by claimant in her reply to Charter Mountain's Response.

I. FACTUAL BACKGROUND

Claimant's property and the property owned by Charter Mountain are served by a ditch which takes water from Alder Creek, runs through claimant's property to Charter Mountain's property, and terminates on Charter Mountain's property. Affidavit of JBM; Exhibit 2 at 61-63. Claimant is entitled to 2.57 c.f.s. from Alder Creek and Charter Mountain is entitled to 5.27 c.f.s. from Alder Creek.

Both claimant's water right claim and Charter Mountain's water right claim were previously part of the Payette River Adjudication. Exhibit 1, Attachment A. In 1974

Claimant's predecessor made a claim to water right 65-08850 in the Payette River Adjudication claiming a June 1, 1920 priority date. Exhibit 4. In 1979, the Department issued its proposed findings in the Payette River Adjudication which recommended a June 1, 1920 priority date for claimant's water right. Exhibit 1, Attachment A; Exhibit 2 at 13, 52-53. Claimant's predecessor later objected to the June 1, 1920 priority date and claimed an April 1, 1900 priority. Exhibit 1, Attachment B. The objection was not resolved in the Payette River Adjudication and was dismissed without prejudice.

Charter Mountain's water right no. 65-05633 has an April 1, 1900 priority date. The June 1, 1920 priority for claimant's water right and the April 1, 1900 priority for Charter Mountain's water right have persisted until now. Exhibit 2 at 55. These priority dates are also consistent with how water has been managed on the ground. Affidavit of JBM. For at least fifteen years, water has been distributed to claimant's property in accordance with claimant's June 1, 1920 priority date and Charter Mountain's April 1, 1900 priority date. Id.; Exhibit 2 at 55.

When the SRBA began claimant's predecessor filed a claim in the SRBA in 1989 claiming a priority date of June 1, 1920. Exhibit 1 at 5. An amended claim was later filed claiming a priority date of April 1, 1900. Id. Some time in 1999, Mr. Mel Schulte, Senior Water Rights Agent for the Department, recommended an April 1, 1900 priority date for claimant's water right. Exhibit 2 at 30-31.

During the summer of 2000, Charter Mountain learned of the change in claimant's priority date from June 1, 1920 to April 1, 1900. Affidavit of JBM. Notably, the management and distribution of the water had not changed, however, upon confirming the change in claimant's priority date with the Department, Charter Mountain filed its Motion to File Late

Objection and Objection on August 9, 2000. Claimant did not oppose Charter Mountain's Motion.

II. ARGUMENT

A. Claimant is Not Entitled to Judgment as a Matter of Law.

A court may grant a motion for summary judgment if, after considering "the pleadings, depositions, and admissions on file, together with the affidavits, if any", Samuel v. Hepworth, Nungester & Lezamiz, Inc., 134 Idaho 84, 87 (2000), and construing all inferences in favor of the nonmoving party, the court finds "no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Id. (quoting IRCP 56(c)). "As the trier of fact, the district court is free to arrive at the most probable inferences based upon the [undisputed] evidence before it and to grant summary judgment, despite the possibility of conflicting inferences." Cameron v. Neal, 130 Idaho 898, 900 (1997) (citing Loomis v. City of Hailey, 119 Idaho 434, 437 (1991)). Therefore, the Special Master, as the trier of fact in this subcase, may resolve any conflict between inferences which may be drawn from any undisputed facts. Id.

The parties are in disagreement over the appropriate priority date for the water right described as 65-08850. In the information before the Court, claimant claims an April 1, 1900 priority date but makes no argument that water was applied to beneficial use on April 1, 1900 and provides no evidence that water was put to beneficial use on April 1, 1900. Thus she is not entitled to judgment as a matter law. Charter Mountain, on the other hand, by its affidavits and exhibits, shows that claimant is not entitled to an April 1, 1900 priority date, but a June 1, 1920 priority date instead.

A priority date stands for the date on which water was first put to beneficial use. Idaho Code § 42-106; Rabido v. Furey, 33 Idaho 56 (1920); Lee v. Hanford, 21 Idaho 327 (1912); Brown v. Newell, 12 Idaho 166 (1906); Exhibit 2 at p. 18-19, 28. In Idaho the "[p]riority of appropriations shall give the better right as between those using the water". Jenkins v. State, Dept. of Water Resources, 103 Idaho 384, 388 (1982). "Priority in time is an essential part of western water law and to diminish one's priority works an undeniable injury to that water right holder." Jenkins v. State, Dept. of Water Resources, 103 Idaho 384, 388 (1982).

The resolution of the priority date question necessarily requires that the Court review and weigh all of the relevant facts to resolve the conflicting factual issues relevant to the date water was first appropriated to beneficial use. For grant of summary judgment, this Court must find that claimant has alleged that water was put to beneficial use on April 1, 1900, that undisputed evidence in the record shows that water was put to beneficial use on April 1, 1900, and that any inferences drawn from the undisputed evidence, if any, show that the water was put to beneficial use on April 1, 1900.

There is no evidence that water was put to beneficial use on April 1, 1900. Claimant makes no argument that it was. To the contrary, the evidence submitted by claimant provides no basis for an April 1, 1900 priority date. Furthermore, the evidence relied upon by claimant, in addition to the evidence presented by Charter Mountain, contradict the claimed priority date. Therefore, based upon the record before the Court, the claimant is not entitled to judgment as a matter of law.

1. The Director's Report is not entitled to *prima facie* status in this subcase.

The Director's Report is treated as *prima facie* evidence of its contents. Idaho Code 42- §1411(4); Hagerman Water Right Owners, Inc., 130 Idaho 736, 745 (1997). The facts in the Director's Report "are presumed to be correct until such time as a water claimant produces sufficient evidence to rebut that presumption." 130 Idaho 736 at 746. The Hagerman court "reasoned that 'when an evidentiary presumption arises it shifts only the burden of production.'" McCray v. Rosenkrance, 135 Idaho 509, 20 P.3d 693, 698 (2001) (quoting Hagerman Water Right Owners, Inc, 130 Idaho 736, 745 (1997)). However, the presumption in favor of the contents of a Director's Report is a rebuttable presumption. 130 Idaho 736 at 745. If a party presents facts in conflict with facts contained in the Director's Report, triable issues exist. Id. at 746. "When rebutted, the presumption disappears and the party with the benefit of the presumption retains the burden of persuasion on the issue." Id. at 745 (citing Bongiovi v. Jamison, 110 Idaho 734 (1986)).

Claimant's Motion for Summary Judgment relies heavily on the Director's Report. However, that reliance is misplaced. Here, claimant does not benefit from a presumption in favor of the Report because the Report provides no basis for the recommended priority date. A priority date is founded upon the date on which water was first applied to beneficial use, but, the Department found no evidence that the water was put to beneficial use on the recommended priority date, Exhibit 2 at 101-04, 115-18, and available information actually contradicts the recommended date. Affidavit of JBM and Exhibits to Affidavit of TAZ. The Report is simply insufficient to satisfy the Department's statutory role "as an independent expert and technical assistant ... assur[ing] that claims to water rights acquired under state law are accurately reported...." Idaho Code § 42-1401B. Because there is no basis in the

Report or its underlying documents to establish a 1900 priority date, the Department's recommendation is arbitrary, capricious and an abuse of discretion.

Because the Director's Report contains only a recommendation for a priority date, the basis for the recommended date cannot be determined by examining only the Director's Report. For an explanation of basis of the Department's recommendation, the Court must look to the Supplemental Director's Report which has been prepared in this case. The Supplemental Report is attached to the Affidavit of TAZ as Exhibit 1.

The Supplemental Report "details the extensive procedural history for subcase no. 65-08850, discusses Charter Mountain's objection and **explains the basis of IDWR's priority date recommendation**." Exhibit 1 at 1 (emphasis added). The Supplemental Report concludes:

> In summary, the copy of the warranty deed filing and the affidavits provided in Barnes' Motion of September 20, 1979, the property's close proximity and fact that they draw from the same ditch, the letters from both Barnes's and Murray-Canaday's attorney stating that the Barnes water right is a derivative of the Murray-Canaday water right and the associated copy of the quit claim filing were deemed by IDWR to be sufficient evidence that the priority date for 65-08850 was equal to or before the claimed priority date of April 1, 1900. Therefore, IDWR recommended the priority date as claimed.
>
> Exhibit 1 at 7.

The Supplemental Report does not describe the basis for the recommendation at the time the recommendation was made in late 1999. See Exhibit 2 at 42, 45-48. Deputy Attorney General Garrick Baxter, not Senior Water Rights Agent Mel Schulte, prepared the Department's Supplemental Report describing the basis for the priority date. Exhibit 2 at 39-40. According to Mr. Schulte, the Supplemental Report cites information that Mr. Schulte did not consider when he made his recommendation, Exhibit 2 at 42, and excludes

information that influenced Mr. Schulte's recommendation. Exhibit 2 at 45-48. Thus, the Supplemental Report is little more than a *post hac* rationalization of the Department's 1999 recommendation. Because of the inclusion and exclusion of documents, this Report does not provide the basis for the priority date at the time the date was recommended. Instead, it describes a third-party's review of Department files in 2001 and the third party's, not Mr. Schulte's, explanation of what Mr. Schulte did in 1999. As a result, the Supplemental Report is arbitrary and capricious and is not *prima facie* evidence of the recommended priority date.

2. The Documents Cited In Support Of the Department's Recommendation Do Not Show Beneficial Use On April 1, 1900

Even if the Supplemental Report actually described the basis for the Department's recommended priority date at the time of Mr. Schulte's recommendation in 1999, which it does not, the Supplemental Report provides no evidence that the water right was put to beneficial use on April 1, 1900.[1] See Exhibit 1. The Supplemental Report cites "the copy of the warranty deed filing and the affidavits provided in Barnes' Motion of September 20, 1979". These documents include an 1888 deed from Charter Mountain's chain of title, various deeds from claimant's chain of title, and two affidavits. None of these documents provide a basis for the recommendation that water was applied to beneficial use on April 1, 1900. The 1888 deed states:

[1] The Supplemental Report also misreads a document it relies upon in support of the priority recommendation. On page 4 of the Supplemental Report it states "In a letter dated May 12, 1980, C.H. Higer, attorney for the Murrays and the Canadays, wrote the Gem County Court suggesting that the Barnes water right is a derivative of the Murray-Canaday water right and asking that the Murray-Canaday water right and the Barnes water right have the same priority date. The letter, attached to Exhibit1 as Attachment E, does **not** request that the two water rights have the same priority date. (Exhibit 1, Attachment E, is one of the documents contained in the Supplemental Report that Mr. Schulte did not consider at the time he made his recommendation. See discussion at p. 8.)

> Also a water right and ditch covering the South end of said land, taking the water from the Gulch coursing down through the premises in a Northerly directio[n] also an un-divided 1/3 interes[t] of, in and to that certain ditch and water right belonging to said land, and by which the same is irrigated which said ditch takes the water from Alder Creek, and conveyed the same along the west bank thereof, to the lands and farms of N. Witzell, and said parties of the first and second part, the above described land and water ditches and rights being the same formerly owned by A. Bael, deceased, and purchased by said party of the first part....

This deed is from Charter Mountain's predecessor and does not convey nor allege to convey, property in claimant's chain of title. The deed does not show that water was being applied to beneficial use on the claimant's property on April 1, 1900, or any date. See Exhibit 1, Attachment B, Exhibit A.

The other deeds included in the "warranty deed filing" are from claimant's chain of title, however the deeds make no mention of water from any source and provide no basis for the Department's recommendation. See Exhibit 1, Attachment B, Exhibits B-E.

The two affidavits cited in support of the recommendation likewise provide no basis for an April 1, 1900 priority date. The affidavit of Mr. Tucker "remember[s] the Charters-Wetzel ditch being in operation since the year 1912." Exhibit 1, Attachment B, Affidavit 1. The affidavit of Mr. Rane "remember[s] water in the Charter-Wetzel ditch as early as the year 1907." Exhibit 1, Attachment B, Affidavit 2. Mr. Tucker and Mr. Rane do not provide the information necessary to resolve Charter Mountain's Objection because the affidavits do not describe the beneficial use of water on claimant's property at any time. Furthermore, neither affidavit provides evidence that water was put to beneficial use on the claimed priority date, April 1, 1900.

The Supplemental Report also cites "the property's close proximity and fact that they draw from the same ditch" as part of the sufficient evidence to support the April 1, 1900

recommendation. Charter Mountain assumes that this reference is to the proximity of the Charter Mountain property and claimant's property. That fact does not provide a basis for the April 1, 1900 priority date. In fact, the closeness of the two properties and the operation of the ditch for many years directly contradicts the recommended priority date. Claimant's and Charter Mountain's properties have distributed the water in accordance with claimant's junior and Charter Mountain's senior water rights. Affidavit of JBM. The Department's recommendation actually changes how the neighboring parcels manage their water, and the change inflicts injury on Charter Mountain. Id.

Finally, the Report cites to letters from "both Barnes' and Murray-Canaday's attorney stating that the Barnes water right is a derivative of the Murray-Canaday water right and the associated copy of the quit claim filing" in support of the recommended priority date. The cited letters were not part of the Department's record when the recommendation was made in 1999. Exhibit 2 at 42. The Department's reliance on documents that were not part of the record at the time the decision was made is arbitrary and capricious and an abuse of the Department's discretion, thus, these documents provide no basis for the Department's recommendation.

The "associated copy of the quit claim filing" is an 1881 deed which states: "With all right, title and interest in a certain Water-right and ditch, for irrigation purposes, taking waters of Alder Creek, owned by first party, and N. Wetzel, and estate of A. Bail, being the un-divided ½ interest in said water-right and ditch." Like the 1888 deed described above, the 1881 deed is also from Charter Mountain's chain of title. And like the 1888 deed, the 1881 deed does not convey nor allege to convey, property in claimant's chain of title. The 1881

deed does not show that water was being applied to beneficial use on the claimant's property on April 1, 1900, or on any date.

The evidence cited by the Supplemental Report allegedly in support of the April 1, 1900 priority actually provides no support at all, thus, there is no basis for recommending the April 1, 1900 priority date for 65-08850.

3. The Facts Of This Case Rebut The Director's Report And Show That Claimant Is Not Entitled To Judgment As A Matter Of Law.

The Department has not fulfilled its statutory role of "independent expert" and "technical assistant" in this subcase. See Idaho Code § 42-1401B. The Director's Report and Supplemental Report describing the basis for the priority date recommendation contained in the Director's Report recommend an April 1, 1900 priority date but recite no facts or investigation undertaken showing when water was first put to beneficial use. Exhibit 2 at 104. Indeed, there are no facts indicating that water was put to beneficial use on April 1, 1900. Exhibit 2 at 98, 101, 104-05. Despite the fact the Department had no information that water was beneficially used on April 1, 1900, it concluded that based upon the Department's information, it "was the most appropriate date to recommend." Exhibit 2 at 48-49. There was no information however. The Department's investigation did not go beyond the Department's walls. Exhibit 2 (Mr. Schulte considered "the Department of Water Resources files, the claim files that I had there in front of me within the western region office", Deposition at 32; the Department did not request that a historical report be prepared, Deposition at 33; Mr. Schulte did not conduct an on-site investigation, Deposition at 33; the Department did not contact the claimant, Deposition at 35; the Department did not investigate claimant's property records, Deposition at 66; the Department did not attempt to

contact claimant's predecessors or Charter Mountain's predecessors, Deposition at 35-36, 93-94). The Department's failure to meaningfully investigate on what date water was put to beneficial use, the determining factor for a priority date, results in a recommendation that is arbitrary, capricious, and an abuse of discretion and precludes reliance on the Department's recommendation and Report altogether.

While there are no facts that support an April 1, 1900 priority date, there are substantial facts which contradict the April 1, 1900 priority date. First, the actual management of the water on the ground in this case shows that the priority date should be June 1, 1920. Claimant's and Charter Mountain's water rights historically have not been administered as equal in priority. Affidavit of JBM. As shown by the Affidavit of John B. McCallum his water right has always been treated as senior to claimant and the same was true when his predecessor in interest owned the Charter Mountain Ranch property. Id. Had the Department conducted an on-site investigation or interviewed the parties and/or the parties' predecessors, the Department would have learned how the contiguous parcels received the water from Alder Creek. Specifically, the Department would have discovered that the water was delivered in accordance with claimant's June 1, 1920 priority and Charter Mountain's April 1, 1900 priority. Affidavit of JBM. Thus, the Report now contains a priority date that is contradicted by how water has actually been administered.

The Department failed to adequately investigate the priority date, knowing that the change in longstanding priority for claimant would undeniably injure Charter Mountain's water right. See Jenkins v. State, Dept. of Water Resources, 103 Idaho 384, 388 (1982). It is obvious from only cursory review of Department files that the parties' water rights had a history of administration under the priority system. Until now the Department's records

showed a priority of June 1, 1920 for 65-08850 and April 1, 1900 for 65-05633. The Department took action in this case which destroyed Charter Mountain's prior appropriation – that is, Charter Mountain's better right as between Charter Mountain and claimant – and did so without any basis for doing so.

Second, in the Payette River Adjudication, the claimant originally claimed and the Department recommended a June 1, 1920 for the water right. Exhibit 1, Attachment A; Exhibit 2 at 13, 52-53. After the Department's recommendations were published, claimant's predecessors objected to the June 1, 1920 priority date and sought to change it to the April 1, 1900 date. Exhibit 1, Attachment B. However, the objection was not resolved in the Payette Adjudication and was dismissed without prejudice. Exhibit 1 at 5. Thus, the June 1, 1920 priority remained the Department's recommendation until the present recommended date. Exhibit 2 at 55. The change in priority date from June 1, 1920 to April 1, 1900 is supported by no evidence showing the change was warranted. In sum, the Department found no evidence that water was put to beneficial use on April 1, 1900.

Third, two deeds relied upon by the Department for the recommendation, Exhibit 2, at 101-03, and provided in support of claimant's Motion for Summary Judgment, Exhibits B and N to Affidavit of Counsel, do not show water was applied to beneficial use on claimant's property on April 1, 1900. The 1881 and 1888 deeds are described in section II A. 2, above, and are both from Charter Mountain's chain of title. Neither of the deeds deals with claimant's property or water rights. Most significantly, the deeds do not show that water was being applied to beneficial use on the claimant's property on April 1, 1900, or any date.

The 1881 and 1888 deeds do not provide support for the priority date recommended by the Department and claimed by claimant. The cited deeds concern Charter Mountain's

property, not claimant's property, and it is incongruous that Charter Mountain's chain of title contains explicit reference to the water rights from Alder Creek transferred with the property and claimant's chain of title does not. See Exhibits B and N to Affidavit of Counsel. Claimant's property is likely mentioned in the two deeds conveying the Charter Mountain property as a mere reference because claimant's property is located between Alder Creek (the source of the water) and the Charter Mountain property. See Affidavit of JBM; See also Exhibit 2 at 63-64. The ditch simply crosses claimant's property to reach the Charter Mountain property. Id. One explanation for this could be that Charter Mountain's predecessors constructed the ditch along claimant's predecessor's property to access the Alder Creek water supply.

As shown above, not only is there no information in the Director's Report to support an April 1, 1900 priority date, there is substantial and competent evidence that contradicts the Department's recommendation. Because of the lack of evidence in the Report, the Department's decision must viewed as arbitrary and capricious and is thus entitled to no weight in this proceeding.

4. Claimant's Memorandum, Affidavit, And Supporting Documentation Do Not Show That Claimant Is Entitled To Judgment As A Matter Of Law.

The Director's Report does not establish that Claimant is entitled to a priority date of April 1, 1900, and yet, claimant's motion is based in substantial part on the Director's Report recommendation of an April 1, 1900 priority date. Charter Mountain has presented substantial facts rebutting any evidentiary presumption in favor of the Report. See discussion at II. A. 1-3, above. Thus, the Director's Report must be weighed, at most, as any other facts. Hagerman Water Right Owners, Inc, 130 Idaho 736 at 746. However, the facts contained in

the Director's Report clearly do not provide a basis for the claimed priority date. See discussion at II. A. 1-3, above.

Claimant also cites as support Charter Mountain 1881 and 1888 deeds mentioned above which specifically convey to Charter Mountain water rights from Alder Creek in support of her motion. Memorandum at 4-5. Claimant argues that since the Charter Mountain deeds make reference to Wetzel, a predecessor of claimant, those deeds, in addition to the *prima facie* evidence in the Director's Report, entitle her to summary judgment. Memorandum at 12-13. Claimant, however, does not have the benefit of *prima facie* evidence because Charter Mountain has rebutted any presumption in favor of the Report. See discussion at II. A. 1-3, above. In addition, the deeds cited by claimant do not otherwise provide a basis for claimant's summary judgment. See discussion at II. A. 2-3, above.

According to claimant, Charter Mountain's deeds reference Wetzel (claimant's predecessor in interest) provides proof that her priority date should be April 1, 1900. Memorandum at 12-13. Any argument that this reference, included in a deed from a wholly separate piece of property, is evidence that water was put to beneficial use on claimant's property on April 1, 1900 is unfounded. Whatever inference can be drawn from the Charter Mountain deeds cannot amount to proof that water was appropriated for beneficial use on claimant's property on April 1, 1900. The mere reference to a parcel of land in another party's chain of title is not enough to establish the appropriation and application of water to beneficial use on the referenced parcel on any date.

Significantly, claimant's chain of title does not seem to reference water rights. The fact that claimant's own chain of title contains no reference to her water rights until 1915 weakens any reliance on Charter Mountain's predecessor deeds for a 1900 priority date. The

1881 and 1888 deeds from Charter Mountain's chain of title describe only the water rights from Alder Creek that are appurtenant to Charter Mountain's property. See the discussion regarding the1881 and 1888 deeds at II. A. 2-3 above. Claimant has presented no deed from her own chain of title that conveys water rights from Alder Creek. Nor has she presented any documentation which would seem to convey any right to water and a ditch to carry the water before 1915. The first express transfer of water rights in the claimant's chain of title appears in claimant's Exhibit E.[2] Exhibit E includes two deeds from Mary N. Wetzel and one deed from Thomas Henry and Katherine Ellen Wetzel, each dated 1915. These deeds convey the described property "together with all the water rights and ditches appertaining thereto, or used in connection therewith." From this language it can only be assumed that the Wetzels had some interest in water and ditches in 1915. However, even that assumption provides no support for the April 1, 1900 priority date. The other pre-1920 deed cited by claimant makes no reference to water rights at all.[3] See Exhibit D to Affidavit of Counsel.

None of the materials provided by claimant in support of her Motion for Summary Judgment support her claim to an April 1, 1900 priority date. Charter Mountain does not dispute claimant's description of the chain of title for the claimant's property and the Charter

[2] The Homestead Certificate attached as Exhibit C to Affidavit of Counsel contain the following language, "Subject to any vested and accrued water... for mining, agricultural, manufacturing, or other...and rights to ditches and reservoirs used in connect[ion] with such water rights **as may be recognized** and a[cknow]ledged by the local customs, laws, and decisions of.... and also subject to the rights of the proprietor of a ... lode to extract and remove his ore therefrom, should same be found to penetrate or intersect the premise[s] granted as provided by law." (emphasis added) (parts of copy illegible).

[3] The additional deeds in claimant's chain of title appended to the Affidavit of Counsel span 1952-1996 and are irrelevant to the determination of whether water was put to beneficial use on April 1, 1900. See Exhibits F-K to Affidavit of Counsel.

Mountain property contained in the Memorandum in Support of Motion for Summary Judgment in so far as it identifies claimant's predecessors in interest and Charter Mountain's predecessors in interest. Memorandum at 3-6. However, the patents and deeds appended to claimant's Motion do not provide any evidence of the application of water to beneficial use on April 1, 1900.

The documents filed in support of claimant's summary judgment motion do not entitle her to judgment as a matter of law. A priority date marks the date water was first put to beneficial use, therefore a priority cannot survive without some proof that water was put to beneficial use on the claimed priority date. Nothing in the documentation provided by claimant evidences that water was being used on the claimant's property on April 1, 1900. Indeed, claimant does not even argue that water was being used on the claimed priority date. Coupled with the long established priority date of 1920 and the historic management of water according to this date, claimant has failed to meet her burden of proof for summary judgment.

Charter Mountain, on the other hand, has shown that the April 1, 1900 date as recommended by the Department has no basis and is arbitrary and capricious. Charter Mountain has provided more than mere conclusions and allegations in its Response to claimant's Motion for Summary Judgment. Charter Mountain has presented specific and uncontroverted facts which contradict the priority claimed by claimant.

III. CONCLUSION

For the reasons explained above, Charter Mountain respectfully requests that claimant's Motion for Summary Judgment be denied.

DATED this 21 day of August, 2001.

MOORE SMITH BUXTON & TURCKE, CHARTERED

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CERTIFICATE OF SERVICE

I hereby certify that on this 21 day of August 2001, I caused a true and correct copy of the foregoing **CHARTER MOUNTAIN RANCH, INC.'S RESPONSE TO MOTION FOR SUMMARY JUDGMENT** was served upon the following by the method indicated below:

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Department of Water Resources

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,	)	**CHARTER MOUNTAIN RANCH, INC.'S MOTION IN LIMINE**
Case No. 39576	)	
	)	Subcase No.: 65-08850

COMES NOW Charter Mountain Ranch, Inc. (hereinafter "Charter Mountain"), by and through its attorney of record, Moore Smith Buxton & Turcke, Chartered, and hereby file this Motion In Limine for an Order finding that the Idaho Department of Water Resources' ("IDWR") Director's Report and Supplemental Director's Report regarding Subcase No. 65-08850 are of no evidentiary value to the resolution of Charter Mountain's Objection and should be excluded from the record. As shown by the documents filed by Charter Mountain in its Response in Opposition to Claimant Lenora Barnes' Motion for Summary Judgment and as shown herein, good cause exists for Charter Mountain's Motion.

Charter Mountain further moves this Court for an Order expediting the hearing of its Motion In Limine for the reason that the Motion must be resolved before trial. See Affidavit of Tammy A. Zokan in support of Charter Mountain's Motion In Limine.

ARGUMENT

Charter Mountain's Response in Opposition to Claimant's Motion for Summary Judgment establishes that there is no basis for the Department's April 1, 1900 priority recommendation contained in the Director's Report or the Supplemental Director's Report. The arguments in the Response and this Motion In Limine overlap, therefore, Charter Mountain hereby incorporates its Response and the Affidavits and Exhibits filed in support of its Response, in this Motion In Limine.

Charter Mountain files its Motion In Limine so that the parties can appropriately and efficiently prepare for trial on the priority date issue. As established by Charter Mountain's Response, there is no basis for the Department's recommended priority date contained in the Director's Report, and therefore the Department's recommendation is irrelevant. Furthermore, the Supplemental Director's Report does not provide any basis for the recommended priority date. The parties should not have to needlessly devote resources to prepare a case to contradict the Department's recommendation and Supplemental Report when the Department's information is of no evidentiary value to the resolution of this subcase. An Order granting Charter Mountain's Motion In Limine would limit the presentation of evidence to facts substantiated by the parties, thereby allowing the parties to define the scope of the trial and plan accordingly.

CONCLUSION

As shown above, and by Charter Mountain's Response in opposition to Claimant's Motion for Summary Judgment, Charter Mountain has shown good cause for its Motion In Limine for an Order excluding the Director's Report, Supplemental Director's Report, and recommendation for the reason that they provide no evidentiary value. For these reasons, the Department's recommendation, Director's Report, and Supplemental Director's Report should be

excluded from the record. Charter Mountain respectfully requests that its Motion in Limine be granted.

Respectfully submitted this 21 day of August, 2001.

MOORE SMITH BUXTON & TURCKE, CHARTERED

BRUCE M. SMITH
TAMMY A. ZOKAN
Attorneys for Charter Mountain Ranch, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21 day of August, 2001, I caused to be served a true and correct coy of the foregoing **MOTION IN LIMINE** by the method indicated below, and addressed to the following:

Clerk of the Court
Snake River Basin Adjudication
P.O. Box 2707
Twin Falls, Idaho 83303-2707

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____ via HAND DELIVERY
X via OVERNIGHT MAIL
____ via FACSIMILE

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Angela D. Schaer
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____ via FACSIMILE

The US Dept. of Justice
Environment & Natural Resources Division
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Boise, Idaho 83724

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____ via FACSIMILE

Garrick Baxter
Deputy Attorney General
Idaho Department of Water Resources
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P.O. Box 83720
Boise, Idaho 83720-0098

____ via U.S. MAIL
X via HAND DELIVERY 08/22/01
____ via OVERNIGHT DELIVERY
____ via FACSIMILE

TAMMY A. ZOKAN

RECEIVED

AUG 22 2001

Department of Water Resources

Bruce M. Smith, ISB #3425
Tammy A. Zokan, ISB #5450
MOORE SMITH BUXTON & TURCKE, CHARTERED
Attorneys at Law
225 North 9th Street, Suite 420
Boise, ID 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorney for Charter Mountain Ranch, Inc.

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 No.: 65-08850
	)	
Case No. 39576	)	**AFFIDAVIT OF JOHN B. McCALLUM IN SUPPORT OF CHARTER MOUNTAIN RANCH, INC.'S RESPONSE TO MOTION FOR SUMMARY JUDGMENT**
	)	
	)	
	)	
	)	
	)	

I, John B. McCallum, being first duly sworn upon oath, deposes and says:

1. I am the President and Chief Executive Officer of Charter Mountain Ranch, Inc. I am over the age of majority, have personal knowledge of, and am otherwise competent to give the following testimony.

2. In January 1990, I purchased from George and Dora Murray and Guy and Marilyn Canaday the land to which the water right described as 65-05633 is appurtenant (hereinafter referred to as "the property" or "my property"). The purchase included a land exchange and the transaction, therefore, took a few months to complete. I recall that we started the transaction in September 1989, and finally closed in January 1990. I purchased the property for the agricultural purposes.

3. Given the fact that I purchased the property for agriculture, which is necessarily dependent on water, I inquired into the nature of the water rights associated with the property. My inquiry included contacting one of the owners of the property I was purchasing, Mr. George Murray, and asking him to describe the amount of water right appurtenant to the property, how water is conveyed to the property, and how it is distributed. At that time Mr. Murray informed me that my water right is diverted from Alder Creek through a ditch which runs from Alder Creek, through Jon Barnes' property to my property.

4. The ditch that conveys Charter Mountain's water right no. 65-05633 starts about a mile and one-half from my property. The ditch diverts from Alder Creek on the Cross Timber Ranch. I understand Jon Barnes owns the Cross Timber Ranch. The ditch runs parallel to Alder Creek for about one-half mile, crosses Alder Creek Road, runs through claimant's property along Charter Mountain Ranch Road to the entrance to my property. The ditch terminates approximately one hundred feet inside my property line.

5. The ditch I just described also conveys water to claimant's property. The water right described as 65-08850 is appurtenant to claimant's property.

6. In response to my questions about the water right associated with the land I was purchasing, Mr. Murray showed me a list of water rights diverting from Alder Creek. The list indicated that the water right appurtenant to my property had a priority date of April 1, 1900, and that the water right appurtenant to the Barnes' property had a priority date of June 1, 1920.

7. Before purchasing the property I contacted IDWR to confirm that the list Mr. Murray showed me was correct. IDWR sent me a copy of a list of water rights on Alder Creek that was identical to the list Mr. Murray showed me. The list was displayed on a wall

in the house on my property for many years. I recently looked for the list of water rights I just described but found that it is no longer on the wall, nor in any of my files. The list however, is the same as the IDWR's list dated March 2, 1979, which is IDWR's Proposed Findings in the Payette River Adjudication. That list is included as Attachment A to IDWR's Supplemental Director's Report, which is Exhibit 1 to the Affidavit of Tammy A. Zokan.

8. After Mr. Murray described my water right and priority date to me he commented that I should be concerned about the neighbor trying to take my water right from me. Mr. Murray's warning caused me great concern and prompted me to ask Lenora Barnes about the water rights associated with my property. I met Lenora Barnes at her house and told her that I understood there was a problem with the water rights. During our conversation Ms. Barnes acknowledged that my water rights were senior to hers. I understood from our conversation that Ms. Barnes did not think there was a problem with the water rights.

9. Some time later I had a similar conversation with Jon Barnes during which Mr. Barnes acknowledged that my water rights were senior.

10. From the time I purchased the property forward the water rights were distributed in accordance with IDWR's list, which was exactly as Mr. Murray described. Specifically, every year, during the irrigation season, my rights were recognized as senior to the Barnes' water right and I, therefore, exercised first right to divert from the ditch.

11. Until years later, in the year 2000, I continued to exercise my senior right to divert water from the ditch without problem. However, I heard another rumor that Mr. Barnes was trying to steal my water rights. This information did not cause me much concern because of the conversations I had with Lenora and Jon Barnes around the time I purchased the property and because the ditch had been operated for many years in accordance with my

1900 priority date and Barnes' 1920 priority date. I then heard that Mr. Barnes might be claiming the same priority date as my water right. I investigated these rumors by contacting IDWR to determine what was reflected in IDWR's files. IDWR informed me that Mr. Barnes had amended his SRBA claim to claim an April 1, 1900 priority date and that IDWR recommended the April 1, 1900 priority date.

12. This news caused me serious concern because the ditch distributed water in accordance with our assigned priority dates, mine being April 1, 1900 and Barnes' being June 1, 1920. The amendment of the Barnes' water right turns the historical management and distribution of water from the ditch on its head. There is no way that the ditch can operate as it has for so many years if both priority dates are the exact same. When I learned of the change I filed my Motion to File Late Objection and Objection Form.

13. The change in priority date for the Barnes' property negatively impacts me because I no longer have the priority that has always been part of my water right.

14. The facts stated here are true from my personal knowledge, except those which are supported by other sources or of which judicial notice may be taken, or were stated to be on information and belief and, as to those facts, I believe them to be true.

Further your Affiant, saith naught.

DATED this _____ day of August, 2001.

_____
JOHN B. MCCALLUM

SUBSCRIBED AND SWORN TO before me this _____ day of August, 2001.

_____
NOTARY PUBLIC FOR IDAHO
Residing at:_____
My Commission expires:_____

DATED this 21st day of August, 2001

JOHN B MCCALLUM

SUBSCRIBED AND SWORN TO before me this 21st day of August, 2001

NOTARY PUBLIC FOR IDAHO
Residing at Mountain Home
My Commission expires: 12-27-05

SHERYL A. REYMENT NOTARY PUBLIC STATE OF IDAHO

CERTIFICATE OF SERVICE

I hereby certify that on this 21 day of August, 2001, a true and correct copy of the foregoing AFFIDAVIT OF JOHN B. McCALLUM IN SUPPORT OF CHARTER MOUNTAIN RANCH, INC.'S RESPONSE TO MOTION FOR SUMMARY JUDGMENT was served upon the following by the method indicated below:

Scott L. Campbell Angela D. Schaer ELAM & BURKE, P.A. Key Financial Center, 10th Floor 702 West Idaho P.O. Box 1539 Boise, Idaho 83701 Telephone: (208) 343-5454 Facsimile: (208) 384-5844	Hand delivery to Moffatt Thomas 10th Floor 10 S. Capitol Blvd Boise, ID 83701-0829 ___ via U.S. MAIL X via HAND DELIVERY 08/22/01 ___ via OVERNIGHT DELIVERY ___ via FACSIMILE
IDWR Document Depository P.O. Box 83720 Boise, Idaho 83720-0098	X via U.S. MAIL ___ via HAND DELIVERY ___ via OVERNIGHT DELIVERY ___ via FACSIMILE
United States Department of Justice ENRD 550 West Fort Street, MSC 033 Boise, Idaho 83724	X via U.S. MAIL ___ via HAND DELIVERY ___ via OVERNIGHT DELIVERY ___ via FACSIMILE
Chief, Natural Resources Division Office of the Attorney General State of Idaho P.O. Box 44449 Boise, Idaho 83711-4449	X via U.S. MAIL ___ via HAND DELIVERY ___ via OVERNIGHT DELIVERY ___ via FACSIMILE
Garrick Baxter Deputy Attorney General Idaho Department of Water Resources 1301 N Orchard P.O. Box 83720 Boise, Idaho 83720-0098	___ via U.S. MAIL X via HAND DELIVERY 08/22/01 ___ via OVERNIGHT DELIVERY ___ via FACSIMILE

Tammy A. Zokan

Bruce M. Smith, ISB #3425
Tammy A. Zokan, ISB #5450
MOORE SMITH BUXTON & TURCKE, CHARTERED
Attorneys at Law
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Boise, ID 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorney for Charter Mountain Ranch, Inc.

RECEIVED
AUG 22 2001
Department of Water Resources

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 No.: 65-08850
Case No. 39576	**AFFIDAVIT OF TAMMY A. ZOKAN IN SUPPORT OF CHARTER MOUNTAIN RANCH, INC.'S REPSPONSE TO CLAIMANT'S MOTION FOR SUMMARY JUDGMENT**

TAMMY A. ZOKAN, being first duly sworn upon oath, deposes and says:

1. I am an associate attorney employed by Moore Smith Buxton & Turcke, Chartered, attorneys of record for Charter Mountain Ranch, Inc. I am over the age of majority, have personal knowledge of, and am otherwise competent to give the following testimony.

2. On or about June 13, 2001, I asked Garrick Baxter, Deputy Attorney General, Idaho Department of Water Resources ("IDWR") for a report describing the basis for the recommended priority date for 65-08850. On or about July 20, 2001, I received in the mail a

copy of the Supplemental Director's Report regarding the priority date recommended for Subcase No. 65-08850 and attachments thereto from the IDWR. The Supplemental Report and attachments are attached hereto as Exhibit 1.

3. On July 31, 2001 I deposed Mr. Mel Schulte, Senior Water Right Agent, concerning his recommendation of the April 1, 1900 priority date for 65-08850 and concerning the Supplemental Report describing the basis for the recommended priority date. Ms. Rebecca Bowker, Associated Reporting, Inc., reported the deposition and I received a copy of a transcript of the deposition of Mr. Melvin T. Schulte (aka Mel Schulte) from Associated Reporting, Inc. on or about August 14, 2001. A photocopy of excerpts of the deposition transcript is attached hereto as Exhibit 2.

4. During the July 31, 2001 deposition of Mr. Schulte I had marked as deposition Exhibit H the Affidavit of Earl McKie. Mr. Schulte identified the Affidavit and testified that he considered the Affidavit in his recommendation for an April 1, 1900 priority date. Exhibit 2 at 71-72. A photocopy of the Affidavit of Earl McKie is attached hereto as Exhibit 3.

5. A photocopy of the Notice of a Claim to a Water Right filed by claimant's predecessor in the Payette River Adjudication in 1974 is attached hereto as Exhibit 4. The photocopy is a true and accurate copy of a document contained in IDWR's files.

6. The facts stated here are true from my personal knowledge, except those which are supported by other sources or of which judicial notice may be taken, or were stated to be on information and belief and, as to those facts, I believe them to be true.

Further your Affiant, saith naught.

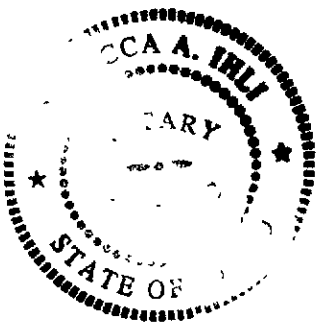
DATED this 21 day of August, 2001.

MOORE SMITH BUXTON & TURCKE, CHARTERED

TAMMY A. ZOKAN

SUBSCRIBED AND SWORN TO before me this 21st day of August, 2001.

NOTARY PUBLIC FOR IDAHO
Residing at: Boise, ID
My Commission expires: 11/5/05



CERTIFICATE OF SERVICE

I hereby certify that on this 21 day of August, 2001, a true and correct copy of the foregoing **AFFIDAVIT OF TAMMY A. ZOKAN IN SUPPORT OF RESPONSE TO MOTION FOR SUMMARY JUDGMENT** was served upon the following by the method indicated below:

Scott L. Campbell
Angela D. Schaer
ELAM & BURKE, P.A.
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Hand delivery 101 S. Capitol Blvd 10th Floor Boise, ID 83701-0829

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Chief, Natural Resources Division
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Garrick Baxter
Deputy Attorney General
Idaho Department of Water Resources
1301 N Orchard
P.O. Box 83720
Boise, Idaho 83720-0098

____ via U.S. MAIL
X via HAND DELIVERY 08/22/01
____ via OVERNIGHT DELIVERY
____ via FACSIMILE

Tammy A. Zokan

In a letter to the Idaho Department of Water Resources ("IDWR") dated June 13, 2001, Charter Mountain Ranch, Inc., ("Charter Mountain") requested that IDWR present the basis for its priority date recommendation for Snake River Basin Adjudication ("SRBA") Claim No. 65-08850, claimed in the name of Lenora Barnes. In response to this request, IDWR submits this Supplemental Director's Report Regarding Subcase No 65-08850 in accordance with Idaho Code § 42-1412(4), Administrative Order 1, and I.R.E. 706. This report was prepared under the supervision of Karl J. Dreher, Director, and David R Tuthill Jr., Adjudication Bureau Chief for IDWR.

The following IDWR employee has knowledge of the information contained in this report: Senior Water Resource Agent Mel Schulte

I. INTRODUCTION

This Supplemental Director's Report discusses IDWR's recommendation in subcase no. 65-08850. Charter Mountain has filed an objection to IDWR's recommendation for this water right, challenging the April 1, 1900 priority date claimed by Lenora Barnes and recommended by IDWR. Charter Mountain claims that the priority date should instead be June 1, 1920. This report details the extensive procedural history for subcase no. 65-08850, discusses Charter Mountain's objection and explains the basis of IDWR's priority date recommendation.

II. PROCEDURAL HISTORY

The litigation regarding this water right dates back to the Payette River Adjudication. The Payette River Adjudication was commenced in 1969 in the Gem County District Court for the general adjudication of rights to use the surface and ground

water of the Payette River and its tributaries. On April 26, 1979, the Director of IDWR filed a three volume, 2348 page, Proposed Finding of Water Rights in the Adjudication of the Payette River Drainage Basin ("Proposed Finding") with the Gem County District Court The Proposed Finding consisted of a list of the defendants, findings of fact, conclusions of law, statutory and decreed rights not claimed, claims submitted, claims recommended to be disallowed and recommended rights. Water right no 65-08850 was included in the Proposed Finding in the names Larry Barnes and Charles Cheney (ranch manager for Larry Barnes).[1] IDWR's report for claim no. 65-08850 recommended that Larry Barnes ("Barnes") be decreed 2.51 cfs for irrigation from April 1 to November 1 and 3.29 afa with .06 cfs for year 'round stockwater, all with a priority date of June 1, 1920. A copy of the page from the Proposed Findings showing IDWR's recommendation for this right is attached as Attachment "A".

On September 20, 1979, Barnes filed with the Gem County Court a Motion to Allow Submission of Objection and to Modify Director of Department of Water Resources' Report. A copy of the motion is attached as Attachment "B". In the motion, Barnes stated that the recorders office of Boise County had undergone a catastrophe which eliminated records regarding the initial land grant and subsequent sale of the land and water in dispute. Barnes stated that examination of related parcels of land had led to the discovery of new information that supported an earlier priority date for this water right. In support of an earlier priority date, Barnes included with the motion: (1) a warranty deed filed April 20, 1888 which makes reference to the farm and land owned by Barnes's predecessor-in-interest; (2) an affidavit by Wilbur Tucker stating he was born in

[1] For brevity, this report will hereafter delete reference to Charles Cheney.

the Garden Valley in 1898 and can remember that Barnes's predecessor's ditch was in operation since 1912, and (3) an affidavit by A. D. Rane stating that he was born in Garden Valley in 1897 and can remember water in Barnes's predecessor's ditch as early as 1907

IDWR filed a response to the motion in March of 1980, a copy of which is attached as Attachment "C". In the response, IDWR stated that it was without jurisdiction to address the issue without an order from the court, but that IDWR believed that this water right should be the same priority date as an adjacent water right. IDWR stated:

> The [Barnes] objection concerns the recommended priority date of 6/1/1920 for Right No. 65-8850 from Alder Creek. While it is difficult to ascertain the exact date water from Alder Creek was first applied to beneficial use on the land covered by No. 65-8850, water was probably applied to beneficial use on that land at the same time water from Alder Creek was applied to beneficial use on the land covered by Right No. 65-5633, owned by Dora Murray and Guy Canada [sic]. This is suggested by the Goldtrap-Charters deed (Exhibit A to Claimants' Motion), by the use by both rights of the same ditch from Alder Creek and by the physical location of the two parcels with respect to each other and the ditch. In his proposed findings, the Director recommended a priority date of 4/1/1900 for No. 65-5633, and no objections were filed with respect to that right. Accordingly, if the Court grants the motion to submit a late claim, the Department would ask the Court to order that the proposed findings for Right No. 65-8850 be amended to state a priority date of 4/1/1900.

Attachment "C," at 1-2.

In response to Barnes's motion and IDWR's response, George and Dora Murray and Guy and Marilyn Canaday (Charter Mountain's predecessors-in-interest) objected to IDWR's recommendation for their water right, no. 65-05633. Documents in IDWR's files suggest that in light of the deed uncovered by Barnes, the Murrays and the Canadays wanted to claim a priority date earlier than the April 1, 1900 priority date recommended for their water right. On April 28, 1980, Gem County District Judge Gilbert Norris

granted Barnes's motion to file a late objection to water right no. 65-08850 and ordered that the Murrays and the Canadays be permitted to file an objection to their own water right, no 65-05633 A copy of the Order is attached as Attachment "D"

In a letter dated May 12, 1980, C.H Higer, attorney for the Murrays and the Canadays, wrote the Gem County court, suggesting that the Barnes water right is a derivative of the Murray-Canaday water right and asking that the Murray-Canaday water right and the Barnes water right have the same priority date. In his letter, Higer attached a copy of a letter sent to him by Barnes attorney, Berne K. Jensen, which also suggests that the two water rights are derivative rights. Furthermore, Higer attached a copy of a quit claim deed filing, dated 1881, which again specifically mentions N. Wetzel (Barnes's predecessor-in-interest) as having ownership of an associated water right out of Alder creek. A copy of these letters and the quit claim filing is attached as Attachment "E".

Shortly thereafter, a stipulation was drafted by IDWR stating that the priority date for water right no. 65-08850 be changed from June 1, 1920 to April 1, 1900. A copy of the stipulation signed by IDWR and the attorney for Barnes is in IDWR records. For reasons unknown to IDWR, it appears that the stipulation was not signed by the Murray's and Canaday's attorney and was never filed with the court. A copy of the stipulation is attached as Attachment "F". No action was taken on these subcases for the next eight years.

On November 30, 1988, IDWR filed with the Gem County District Court a motion to dismiss water right claim nos. 65-05633 (Murray-Canaday) and 65-08850 (Barnes) without prejudice. IDWR sought to have claims dismissed from the Payette

Adjudication so that the issues could be resolved in the SRBA. On January 4, 1989, Gem County District Judge Jim Doolittle signed an order dismissing the claims without prejudice

On March 10, 1989, Barnes re-filed claim no. 65-08850 in the SRBA, seeking a June 1, 1920 priority date On May 2, 1989, Barnes amended the claim to reflect the April 1, 1900 priority date. On May 5, 1989 the Murrays and the Canadays re-filed claim no. 65-05633 in the SRBA, seeking an April 1, 1900 priority date. Subsequently, the Murrays and the Canadays sold their land and water rights to Charter Mountain. IDWR issued its directors report for these rights in April of 2000. No objections to Charter Mountain's water right were filed and it was partially decreed on November 3, 2000.

On August 10, 2000, Charter Mountain filed a *Motion to File Late Objection* and *Standard Form 1 Objection* to Barnes's water right priority date. In its objection Charter Mountain argues, "Historical data clearly indicates the priority date for this claim is 1920, not 1900." On August 18, 2000, Lenora Barnes, the current owner of water right 65-08850, filed a *Standard Form 2 Response to Objection*, disagreeing that historical data shows that the priority is 1920. At a hearing on September 1, 2000, Special Master Thomas R. Cushman granted the *Motion to file Late Objection* filed by Charter Mountain. This subcase is currently set for trial on October 10, 2001.

III. IDWR'S BASIS FOR PRIORITY DATE RECOMMENDATION:

IDWR based its recommendation on the record that had been developed through the Payette Adjudication. As discussed above, Barnes's motion of September 20, 1979 provides a copy of a warranty deed filing and affidavits that suggesting a priority date earlier than the 1920 priority date originally claimed by Barnes. The affidavit of Wilbur

Tucker states, "I was born and raised in Garden Valley in the year 1898 and can remember the Charters-Wetzel ditch being in operation since the year 1912." Attachment "B," at 9. The affidavit of A.D Rane states, "I can remember water in the Charter-Wetzel ditch as early as the year 1907. I was born in 1897 and have lived in Garden Valley all my life " Attachment "B," at 10. In addition, the warranty deed, filed April 20, 1888, makes reference to the farm and land owned by Barnes's predecessor-in-interest, Wetzel. See Attachment "B," at 4. This implies that Wetzel had an operating farm as early as 1888. Furthermore, the fact that both water rights come out of the same ditch from Alder Creek and the close proximity of these lands suggests to IDWR that these two parcels commenced irrigation in the same time frame. Finally, letters from both Barnes's and Murray-Canaday's attorneys further support a priority date prior to 1920. In his letter to the court of May 12, 1980, Murray-Canaday's attorney, C.H. Higer, states:

> All we want to do is have permission to show that the water right, which is claimed by Mr. and Mrs. Murray and Mr. and Mrs. Canaday goes back to 1879. I can see no problem with this as far as the Court is concerned, or as far as Mr. Barnes is concerned, because from the records that I have dug up, the Barnes water right is a derivative of the Murray-Canaday water right.

Attachment "E," at 1.

In addition, the letter from Barnes's attorney, Berne Jensen, states, "It is my client's contention that although this water right may be no better than your clients, that it should be at the same level. This is based on the Barnes chain of title stemming from the Wetzels." Attachment "E," at 2.

Finally, additional support is found in the abstract of the quit claim deed filing provided to the court by Higer. The record states that J.V.R. Witt quit claimed to

William Charters certain lands along with "[a]ll right, title and interest in a certain Water-right and ditch, for irrigation purposes, taking waters of Alder Creek, owned by first party, and N Wetzel, and Estate of A. Bail, being the undivided ½ interest in said water-right and ditch " Attachment "E," at 3. This filing suggests that Wetzel (Barnes's predecessor-in-interest) diverted water from Alder Creek as early as 1881.

In summary, the copy of the warranty deed filing and the affidavits provided in Barnes's Motion of September 20, 1979, the property's close proximity and fact that they draw from the same ditch, the letters from both Barnes's and Murray-Canaday's attorney stating that the Barnes water right is a derivative of the Murray-Canaday water right and the associated copy of the quit claim filing were deemed by IDWR to be sufficient evidence that the priority date for 65-08850 was equal to or before the claimed priority date of April 1, 1900 Therefore, IDWR recommended the priority date as claimed

Respectfully submitted this 18th day of July 2001.

David R. Tuthill, Jr., P.E
Adjudication Bureau Chief

CERTIFICATE OF MAILING

I certify that on 7-19, 2001 I mailed and/or delivered the original and copies of this form, including all attachments, to the following interested parties, by placing them in sealed envelopes, addressed as follows

1. Original to.

Clerk of the District Court Snake River Basin Adjudication 253 Third Avenue North P.O. Box 2707 Twin Falls, ID 83303-2707	__ Overnight Mail X Regular Mail __ Hand-Delivered __ Facsimile

2. Copies to.

Idaho Department of Water Resources Document Repository Box 83720 Boise, ID 83720-0098	__Overnight Mail X Regular Mail __Hand-Delivered __Facsimile
Bruce Smith Moore Smith Buxton & Turke, Chtd. 225 N. 9th St., Suite 420 Boise, ID 83702	__Overnight Mail X Regular Mail __Hand-Delivered __Facsimile
Scott Campbell/Angela Schaer Elam & Burke P.O. Box 1539 Twin Falls, ID 83301	__Overnight Mail X Regular Mail __Hand-Delivered __Facsimile

Sandy Egbert
Signature of person delivering form

INDICATES TOTAL SOURCE: ALDER CREEK TRIBUTARY TO: SOUTH FORK, PAYETTE RIVER

RIGHT NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM	USE PERIOD TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR RIGHT
65-5633	MURRAY, DORA C CANADAY, GUY GARDEN VALLEY, IDAHO 83622 REMARKS: THIS RIGHT WHEN COMBINED WITH RIGHT 65-12001 SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.	4/ 1/1900	IRRIGATION	4/ 1	11/ 1	--- AFA 5.27 CFS	SWNE S 2 T 8N R 4E SENW S34 T 9N R 4E NESE S34 T 9N R 4E	SWNE(40) SENW(6) NESE(19) NWSE(8) NENW(40) LOT 2(36) LOT 3(50) S34 T 9N R 4E LOT 7(17) S27 T 9N R 4E *216*	BENEFICIAL USE
65-10925	YENSEN, ELZIE C LINDSTROM, SHIRLEY BOX 12, GARDEN VALLEY, IDAHO 83622	9/15/1910	IRRIGATION	4/ 1	11/ 1	--- AFA .10 CFS	SESE S10 T 8N R 4E	SESE(1) S10 T 8N R 4E NENE(4) S15 T 8N R 4E *5*	BENEFICIAL USE
			STOCKWATER	1/ 1	12/31	.20 AFA .02 CFS *17.70*AFA *.10*CFS		SAME AS OTHER USE	
65-10539	DONLEY, DOUGLAS C DONLEY, JANICE GARDEN VALLEY, IDAHO 83622	5/ 1/1911	IRRIGATION	4/ 1	11/ 1	--- AFA .30 CFS	LOT 7 S35 T 9N R 4E SWSE S35 T 9N R 4E	LOT 7(14) S35 T 9N R 4E *14*	BENEFICIAL USE
65-8850	BARNES, LARRY B. C CHENEY, RCH. MGR., CHARLES BOX 2797, BOISE, IDAHO 83701 REMARKS: THIS RIGHT WHEN COMBINED WITH RIGHT 65-11329 SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.	6/ 1/1920	IRRIGATION	4/ 1	11/ 1	--- AFA 2.51 CFS	SWNE S 2 T 8N R 4E	SWSW(10) SESW(8) LOT 7(7) LOT 5(51) LOT 6(27) S35 T 9N R 4E *103*	BENEFICIAL USE
			STOCKWATER	1/ 1	12/31	3.29 AFA .06 CFS *----*AFA *2.57*CFS		SAME AS OTHER USE	
65-5682	MC KIE, EARL C MC KIE, GENEVA C. BOX 204, MERIDIAN, IDAHO 83642	6/ 1/1920	IRRIGATION	4/ 1	11/ 1	--- AFA 2.92 CFS	SESW S 2 T 8N R 4E	SWNW(1) SENW(34) NESW(4) LOT 2(5) LOT 3(40) LOT 4(17) S 2 T 8N R 4E SWSW(4) SESW(16) S35 T 9N R 4E *121*	BENEFICIAL USE
65-11001	VOGEL, MARJORIE 3916 WEST CLEMENT, BOISE, IDAHO 83704	4/ 1/1935	DOMESTIC	1/ 1	12/31	1.20 AFA .02 CFS	SESE S10 T 8N R 4E	SESE S10 T 8N R 4E	BENEFICIAL USE

Attachment A

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

FILED

SEP 20 1979

O'CLOCK

CLERK

DEPUTY

In the Matter of the General Determination of the Rights to the Use of Service and Ground Water of the Payette River Drainage Basin.	)	Civil No: 3667 MOTION TO ALLOW SUBMISSION OF OBJECTION AND TO MODIFY DIRECTOR OF DEPARTMENT OF WATER RESOURCES' REPORT

COMES NOW Larry B. Barnes &/or Charles Cheney and respectfully moves the above entitled Court to consider his objections to the report filed herein by the Director of the Department of Water Resources for the State of Idaho pursuant to Section 42-1410, Idaho Code.

This motion is made on the grounds and for the reasons that new information has been discovered which has a direct bearing on the determination of water rights in this area. The recorders office of Boise County has apparently undergone a catastrophy which has eliminated certain of the earlier records regarding the initial land grant and subsequent sale of the property and related water rights in dispute. An examination of related parcels has led to the discovery of a much earlier "beneficial use" then originally reported.

The objections presented by Larry B. Barnes &/or Charles Cheney to the Director's report are made on the grounds and for the reasons that the Director in his report shows a priority date of 6/1/69, which date is clearly subsequent to that shown hereafter. Exhibit "A" is a warranty deed filed approximately April 20, 1888 which makes reference to the lands and farms of one N. Wetzel and of the fact that the water rights being transferred by said 1888 deed flow from the ditch crossing the lands and farms of N. Wetzel. Through a chain of title shown on Exhibit "B" and illustrated by the corresponding warranty deeds Exhibits "C through E", Larry Barnes has acquired that same water right described in the 1888 deed attached as Exhibit "A". Further Exhibits Affidavit I and Affidavit II demonstrate that at least as far back as 1907 these waters have been in "beneficial use".

Attachment B

Pursuant to Section 42-1410, Idaho Code, this Court, in its sound discretion ". . . may allow such additional or amended pleadings as may be necessary for a final determination of the proceedings."

Therefore, Larry B. Barnes &/or Charles Ch ney respectfully requests that this Court grant his Motion to allow the submission of these objections to the Department of Water Resources report on the Payette River Drainage Basin, after the required sixty (60) days filing time, in order that this Court may make a complete and final determination of all water rights within this area.

In summation, Larry B. Barnes &/or Charles Cheney respectfully requests that this Court allow this submission of these objections to the Director's report on the Payette River Drainage Basin and further requests that his report be modified to reflect these objections as revisions.

Dated this 20th day of September, 1979

By: Charles Cheney Barnes Atty.
Larry B. Barnes &/or Charles Cheney

STATE OF IDAHO, COUNTY OF Ada

On this 20th day of Sept. , 1979
before me, a notary public in and for said State,
personally appeared

Charles Cheney

known to me to be the person whose name subscribed
to the within instrument, and acknowledged to
me that he executed the same

Shirley M Lamb
Notary Public

Residing at Boise , Idaho
Commission Expires 7-16-82

Exhibit A

Year 1888 Warranty Deed Witt to Charters

Exhibit B

Year 1952 Wetzel to Allen

Exhibit C

Year 1960 Allen to Waugh

Exhibit D

Year 1965 R. Waugh to James & Donna Waugh

Exhibit E

Year 1967 James & Donna Waugh to Larry Barnes

Affidavit I

William Tucker

Affidavit II

A. D. Rane

EXHIBIT A

S.K.Goldtrap.and
Anna C.Goldtrap.wife.

—— TO ——

15.

William Charters,

Dated April 17,1888
Ackl April 17,1888
Filed April 20,1888
Book 16 of Deeds, Page 132
Consid $2000.00

Grant,Bargain,Sell, Alien, Convey and Confirm the Lots 2 and 3, and the SW¼ of the NE¼, and the NE¼, and the NE¼ of the SE¼, of Section 34,Township 9 North, Range 4 East, ~~of Boise County~~. Also a water right and ditch covering the South end of said land, taking the water from the Gulch coursing down through the premises in a Northerly directio also an un-divided 1/3 interes of, in and to that certain ditch and w water right belonging to said land, and by which the same is irrigated which said ditch takes the water from Alder Creek, and conveyed the same along the west bank thereof, to the lands and farms of N .Witzell, and said parties of the first and second part, the above described land and water ditches and rights being the same formerly owned by A.Bael,deceased, and purchased by said party of the first part, of and from the estate of said A.Bael,deceased.
Subject to a certain Mortgage executed by parties of the first part, to Martha E.McCarthy, bearing date tNovember 25,1885, secures payment of $1500.00, evidence by a certain promissory note.executed by party of the first part, to Martha E.McCarthy.due one year after date, with interest thereon from date, at the rate of 1½% per month, Mortgage recorded in Book 4 of Mortgages, Pages 684,5,6, and 7, the consideration money shall be appropriated toward the payment of Note and Mortgage now due.

Acknowledged by the Grantors, before T.S.Hart. Judge of the Probate Court, County of Boise, Idaho. Seal.

Two Witnesses.

William Charters.

—— TO ——

16.

Whom it may Concern.

DECLARATION OF HOMESTEAD:

Dated June 6,1904
Ackl June 6,1904.
Filed June 7,1904.
Book 1 of Declar-of Homestead,Pg 195

Declaration of Homestead on the W½ of the SE¼ of the SE¼, and the SW¼ of the SE¼, and the NW¼ of the SE¼, Section 34, Township 9 North, and the Lots 2 and 3, and the S½ of the NE¼, and the NE¼ of the SE¼ of Section 34, Township 9 North, Range 4 East, and the E½ of the NW¼, of Section 34, and the Lots 6 and 7, of Section 27, Township 9 North, Range 4 East.B.M. Recites that he and family actually reside on said land, that his family consists of himself and five children, estimated value $5000.00

Acknowledged by William Charters, before James McDivitt, Notary Public, Boise County,Idaho. Seal.

Probate Judge.

EXHIBIT A

573

INSTRUMENT NO. 61542

THIS INDENTURE, Made this 3rd day of December in the year of our Lord one thousand nine hundred and fifty-two, between THOMAS H. WETZEL and KATHERINE WETZEL, husband and wife, of Garden Valley, County of Boise, State of Idaho, the parties of the first part, and WILLIAM L. ALLEN and GLADYS H. ALLEN, husband and wife, of , County of Boise, State of Idaho, the parties of the second part.

WITNESSETH, That the said parties of the first part, for and in consideration of the sum of TEN and 00/100 DOLLARS, lawful money of the United States of America, and other good and valuable consideration to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain, sell, convey and confirm unto the said parties of the second part, and to their heirs and assigns forever, all of the following described real estate, situated in , County of Boise, State of Idaho, to-wit:

Lots five (5) and six (6), N½SE¼SW¼, S½SW¼, Section thirty-five (35); all of Lot seven (7) less the South ten chains, Section thirty-five (35); N½E¼SE¼SE¼, N½S½E¼SE¼SE¼, Section thirty-four (34); all in Twp. 9 N. Range 4 E., B. M., containing approximately 193.10 acres;

Excepting and reserving therefrom, however, that portion of Lot 7, Section 35, Twp. 9 N. Range 4 E., B. M., lying East of Alder Creek, being approximately eighteen acres.

TOGETHER, With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said parties of the first part.

TO HAVE AND TO HOLD All and singular the above mentioned and described premises, together with the appurtenances, unto the parties of the second part, and to their heirs and assigns forever and the said parties of the first part, and their heirs, the said premises in the quiet and peaceable possession of the said parties of the second part, their heirs and assigns, against the said parties of the first part, and their heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same shall and will WARRANT and by these presents forever DEFEND.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

Thomas H. Wetzel (Seal)
Katherine M. Wetzel (Seal)

STATE OF IDAHO,)
COUNTY of Ada)

On this 3rd day of December in the year 1952, before me a notary public in and for said State, personally appeared Thomas H. Wetzel and Katherine Wetzel, husband and wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

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

Notary Public for Idaho
Residing at Boise

STATE OF IDAHO,)
COUNTY of Boise) ss

I hereby certify that this instrument was filed for record at the request of Grantee at 10 minutes past 10 o'clock A. M., this 23 day of Dec. 1952, and duly recorded in my office, and duly recorded in Book 1 of Deeds at page 573.

Fatima [illegible]
Ex-Officio Rec.

By [illegible] Deputy

[illegible]

F 72 E & T C

INSTRUMENT NO. 70615

WARRANTY DEED

THIS INDENTURE, Made this 1st day of September in the year of our Lord one thousand nine hundred and sixty, between WILLIAM E. ALLEN and GLADYS M. ALLEN, husband and wife of Boise, County of Ada, State of Idaho, the parties of the first part, and JAMES E. WAUGH and DONNA JEAN WAUGH, husband and wife and ROY WAUGH a Bachelor, of Boise, County of Ada, State of Idaho, the parties of the second part.

WITNESSETH, That the said parties of the first part, for and in consideration of the sum of TEN DOLLARS, lawful money of the United States of America, and other valuable consideration, to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain, sell, convey and confirm unto the said parties of the second part, and to their heirs and assigns forever, all of the following described real estate, situated in the County of Boise, State of Idaho, to-wit:

Lots Five and Six, the North Half of the Southeast Quarter of the Southwest Quarter, the Southwest Quarter of the Southwest Quarter, Section Thirty-five; all of Lot Seven less the South ten chains, Section Thirty-five; the North Half of the East Half of the Southeast Quarter of the Southeast Quarter, the North Half of the South Half of the East Half of the Southeast Quarter of the Southeast Quarter, Section Thirty-four; all in Township Nine North, Range Four East Boise Meridian, containing approximately 198.10 acres;

EXCEPTING and RESERVING therefrom, however, that portion of Lot Seven, Section Thirty-five, Township Nine North, Range Four East, Boise Meridian, lying East of Alder Creek, being approximately eighteen acres.

TOGETHER, With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said parties of the first part.

TO HAVE AND TO HOLD, All and singular the above mentioned and described premises, together with the appurtenances, unto the parties of the second part, and to their heirs and assigns forever and the said parties of the first part, and their heirs, the said premises in the quiet and peaceable possession of the said parties of the second part, their heirs and assigns, against the said parties of the first part, their heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will WARRANT and by these presents forever DEFEND.

TO HAVE AND TO HOLD, All and singular the above mentioned and described premises, together with the appurtenances, unto the parties of the second part, and to their heirs and assigns forever and the said parties of the first part, and their heirs, the said premises in the quiet and peaceable possession of the said parties of the second part, their heirs and assigns, against the said parties of the first part, their heirs, and against all and every person and persons whomsoever lawfully claiming or to claim the same, shall and will WARRANT and by these presents forever DEFEND.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

William E. Allen (Seal)
Gladys M. Allen (Seal)

E-Exhibit B

INSTRUMENT NO. 79588

WARRANTY DEED

THIS INDENTURE, Made this 27th day of September in the year of our Lord one thousand nine hundred and sixty-five, between ROY WAUGH, a Bachelor of Garden Valley, County of Boise, State of Idaho, the party of the first part, and JAMES R. WAUGH and DONNA JEAN WAUGH husband and wife of Garden Valley, County of Boise, State of Idaho, the parties of the second part.

WITNESSETH, That the said party of the first part, for and in consideration of the sum of TEN DOLLARS lawful money of the United States of America, and other valuable consideration to him in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargain, sell, convey and confirm unto the said parties of the second part, and to their heirs and assigns forever, all of the following described real estate, situated in the County of Boise, State of Idaho, to-wit:

Lots Five and Six, the North Half of the Southeast Quarter of the Southwest Quarter, the Southwest Quarter of the Southwest Quarter, Section Thirty-five; all of Lot Seven less the South ten chains, Section Thirty-five; the North Half of the East Half of the Southeast Quarter of the Southeast Quarter, the North Half of the South Half of the East Half of the Southeast Quarter of the Southeast Quarter, Section Thirty-four; all in Township Nine North, Range Four East, Boise Meridian, containing approximately 196.18 acres;

EXCEPTING and RESERVING therefrom, however, that portion of Lot Seven, Section Thirty-five, Township Nine North, Range Four East, Boise Meridian, lying East of Alder Creek, being approximately eighteen acres.

TOGETHER, With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said party of the first part.

TO HAVE AND TO HOLD, All and singular the above mentioned and described premises, together with the appurtenances, unto the parties of the second part, and to their heirs and assigns forever and the said party of the first part, and their heirs, the said premises in the quiet and peaceable possession of the said parties of the second part, their heirs and assigns, against the said party of the first part, and his heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same shall and will WARRANT and by these presents forever DEFEND.

IN WITNESS WHEREOF, The said party of the first part has hereunto set his hand and seal the day and year first above written.

Roy Waugh (SEAL)

STATE OF IDAHO,)
COUNTY of ——) ss

On this 1st day of October in the year 1965, before me the undersigned, a Notary Public in and for said State, personally appeared Roy Waugh, a bachelor known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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

(SEAL) Helen Harbaugh
Notary Public for the State of Idaho,
Residing at ——, Idaho.

STATE OF IDAHO,)
COUNTY of Boise) ss

I hereby certify that this instrument was filed for record at request of Idaho Title Co. at 10 minutes past 10 o'clock A. M., this 7th day of October, A. D. 1965, in my office, and duly recorded in book 5d of Deeds at page 46.

Katherine M. Brogan
Ex-officio Recorder
By Deputy

Fee $1.50

INSTRUMENT NO. 80373

Ex. of E

197

REVENUE STAMPS

WARRANTY DEED

For Value Received

JAMES E. WAUGH and DONNA J. WAUGH, husband and wife,

the grantor s, do hereby grant, bargain, sell and convey unto

LARRY B. BARNES and LENORA B. BARNES, husband and wife,

the grantees, the following described premises, to-wit:

Lots Five and Six, the North Half of the Southeast Quarter of the Southwest Quarter, the Southwest Quarter of the Southwest Quarter, Section Thirty-five; all of Lot Seven less the South ten chains, Section Thirty-five; the North Half of the East Half of the Southeast Quarter of the Southeast Quarter, the North Half of the South Half of the East Half of the Southeast Quarter of the Southeast Quarter, Section Thirty-four, all in Township Nine North, Range Four East, Boise Meridian, containing approximately 198.10 acres

Excepting and reserving therefrom, however, that portion of Lot Seven, Section Thirty-five, Township Nine North, Range Four East, Boise Meridian, lying East of Alder Creek, being approximately eighteen acres.

Subject to a mortgage in favor of the Federal Land Bank of Boise, Idaho, Loan Number 125395, the unpaid balance of which is $13,167.00, which Grantees assume and agree to pay according to the terms thereof.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantees, their heirs and assigns forever. And the said Grantor s do hereby covenant to and with the said Grantees, that they are the owners in fee simple of said premises, that said premises are free from all incumbrances except the mortgage in favor of Federal Land Bank of Boise, Idaho, above described, existing ditch, road rights-of-way, existing easements and current taxes and assessments.

and that they will warrant and defend the same from all lawful claims whatsoever.

Dated: May 23, 1967.

James E. Waugh

Donna J. Waugh

STATE OF IDAHO, COUNTY OF ADA

On this 23 day of May, 1967, before me, a notary public in and for said State, personally appeared

JAMES E. WAUGH and DONNA J. WAUGH, his wife,

known to me to be the persons whose name s subscribed to the within instrument, and acknowledged to me that they executed the same

Notary Public

Residing at Boise, Idaho

Comm. Expires Dec 15, 1968

STATE OF IDAHO, COUNTY OF [illegible]

I hereby certify that this instrument was filed for record at the request of [illegible]

at [illegible] minutes past [illegible] o'clock [illegible] M., this 31st day of [illegible], 1967, in my office, and duly recorded in Book 61 of Deeds at page 197

Ex-Officio Recorder

By [illegible] Deputy.

Fee $ 1.50

Mail to: [illegible]

Warranty Deed 500-4

Printed and For Sale By Boise-Town Company, Boise

INSTRUMENT NO. 80373

IN THE MATTER OF:

Payette River Bd

AFFIDAVIT #1

State of Idaho
County of Boise

Wilbur Tucker being first duly sworn, deposes and says: I was born and raised in Garden Valley in the year 1898 and was acquainted with the Charters - Wetzel Ditch Company in operation - Boise the year of 1912.

Wilbur Tucker
(signature)

Subscribed and sworn to before me this 1 day of September 19 77.

M Beulah Berry
(notary public)

Residing at Garden Valley, Idaho
My commission expires Not Expiring.

IN THE MATTER OF:

Payette River Adj.

State of Idaho

County of Boise

AFFIDAVIT #2

A. D. Rane being first duly sworn, deposes and says: I can remember water use the Abbaten - Wetzel ditch as early as the year 1907 - I was born in 1897 and have lived in Garden Valley all my life.

RECEIVED
SEP 23 19..
Department of Water ...
Western Regional Office

A. D. Rane
(signature)

Subscribed and sworn to before me this 1 day of September 19 77.

M. Beulah Reay
(notary public)

Residing at Garden Valley, Idaho.
My commission expires Notary Expiration.

INDICATES TOTAL SOURCE: ALDER CREEK TRIBUTARY TO: SOUTH FORK, PAYETTE RIVER

RIGHT NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM	USE PERIOD TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR RIGHT
65-5633	MURRAY, DORA C CANADAY, GUY GARDEN VALLEY, IDAHO 83622 REMARKS: THIS RIGHT WHEN COMBINED WITH RIGHT 65-12001 SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.	4/ 1/1900	IRRIGATION	4/ 1	11/ 1	--- AFA 5.27 CFS	SWNE S 2 T 8N R 4E SENW S34 T 9N R 4E NESE S34 T 9N R 4E	SWNE(40) SENW(6) NESE(19) NWSE(8) NENW(40) LOT 2(36) LOT 3(50) S34 T 9N R 4E LOT 7(17) S27 T 9N R 4E *216*	BENEFICIAL USE
65-10925	YENSEN, CLEIE C LINDSTROM, SHIRLEY BOX 12, GARDEN VALLEY, IDAHO 83622	9/15/1910	IRRIGATION	4/ 1	11/ 1	--- AFA .10 CFS	SESE S10 T 8N R 4E	SESE(8) S10 T 8N R 4E NENE(4) S15 T 8N R 4E *5*	BENEFICIAL USE
			STOCKWATER	1/ 1	12/31	.20 AFA .02 CFS *17.70*AFA *1.10*CFS		SAME AS OTHER USE	
65-10539	DONLEY, DOUGLAS E DONLEY, JANICE GARDEN VALLEY, IDAHO 83622	5/ 1/1911	IRRIGATION	4/ 1	11/ 1	--- AFA .30 CFS	LOT 7 S35 T 9N R 4E SWSE S35 T 9N R 4E	LOT 7(14) S35 T 9N R 4E *14*	BENEFICIAL USE
65-8850	BARNES, LARRY B, & CHENEY, RCH. MGR., CHARLES BOX 2797, BOISE, IDAHO 83701 REMARKS: THIS RIGHT WHEN COMBINED WITH RIGHT 65-11329 SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.	6/ 1/1920	IRRIGATION	4/ 1	11/ 1	--- AFA 2.91 CFS	SWNE S 2 T 8N R 4E	SWSW(10) SESW(8) LOT 7(7) LOT 5(5) LOT 6(27) S35 T 9N R 4E *20*	BENEFICIAL USE
			STOCKWATER	1/ 1	12/31	3.29 AFA .06 CFS *---*AFA *2.5?*CFS		SAME AS OTHER USE	
65-5682	MC KIE, EARL E MC KIE, GENEVA C. BOX 209, MERIDIAN, IDAHO 83642	6/ 1/1920	IRRIGATION	4/ 1	11/ 1	--- AFA 2.92 CFS	SESW S 2 T 8N R 4E	SWNW(1) SENW(34) NESW(4) LOT 2(5) LOT 3(40) LOT 4(17) S 2 T 8N R 4E SWSW(4) SESW(16) S35 T 9N R 4E *121*	BENEFICIAL USE
65-11001	VOGEL, MARJORIE 3916 WEST CLEMENT, BOISE, IDAHO 83704	4/ 1/1935	DOMESTIC	1/ 1	12/31	1.20 AFA .02 CFS	SESE S10 T 8N R 4E	SESE S10 T 8N R 4E	BENEFICIAL USE

INDICATES TOTAL SOURCE: ALDER CREEK TRIBUTARY TO: SOUTH FORK, PAYETTE RIVER

RIGHT NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM	USE PERIOD TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR RIGHT
65-2555X	LOONEY, WILLIAM O. & LOONEY, WILMA S. 9510 HALSTEAD, BOISE, IDAHO 83702	7/17/1951	IRRIGATION	4/ 1	11/ 1	--- AFA .02 CFS	SENE S15 T 8N R 4E	SENE(1) S15 T 8N R 4E *1*	LICENSE
65-2555A	RUSSELL, L. A. & RUSSELL, HAZEL ROUTE 3, BOX 136, EMMETT, IDAHO 83617	7/17/1951	IRRIGATION	4/ 1	11/ 1	--- AFA .04 CFS	SENE S15 T 8N R 4E	SENE(2) S15 T 8N R 4E *2*	LICENSE
-10673	NEIBUHR, WENDELL D. & NEIBUHR, DARELL M. STAR ROUTE, GARDEN VALLEY, IDAHO 83622	7/ 1/1957	DOMESTIC	1/ 1	12/31	1.20 AFA .04 CFS	LOT 7 S35 T 9N R 4E	LOT7 S35 T 9N R 4E	BENEFICIAL USE
65-5696	HUTCHISON, CHRIS J. & HUTCHISON, WILMA M. BOX 15, GARDEN VALLEY, IDAHO 83622 REMARKS: SOURCES FOR THIS RIGHT ARE ALDER CREEK & COSKI CREEK.	4/ 1/1966	IRRIGATION	4/ 1	11/ 1	--- AFA .04 CFS	NESE S34 T 9N R 4E SWNE S 2 T 8N R 4E	NESE(3) S34 T 9N R 4E *3*	BENEFICIAL USE
65-8650	BARNES, LARRY B. & CHENEY, CHARLES BOX 2797, BOISE, IDAHO 83701	6/ 1/1969	STOCKWATER FROM STOR	1/ 1	12/31	.50 AFA --- CFS	LOT 7 S35 T 9N R 4E	LOT7 S35 T 9N R 4E	BENEFICIAL USE
			DIVERSION TO STORAGE	1/ 1	12/31	--- AFA .02 CFS		SAME AS OTHER USE	
			RECREATION STORAGE	1/ 1	12/31	.50 AFA --- CFS		SAME AS OTHER USE	
			FISH PROP STORAGE	1/ 1	12/31	.50 AFA --- CFS		SAME AS OTHER USE	
			WILDLIFE FROM STOR	1/ 1	12/31	.50 AFA --- CFS *.50*AFA *.02*CFS		SAME AS OTHER USE	
65-10864	BROWN, G. RICHARD & BROWN, BARBARA J. ROUTE 3, NAMPA, IDAHO 83651 REMARKS: THIS RIGHT WHEN COMBINED WITH RIGHT 65-10865 SHALL PROVIDE NO MORE THAN 1.2 AFA FOR HOUSEHOLD USE.	5/ 1/1970	IRRIGATION	4/ 1	11/ 1	--- AFA .04 CFS	SESE S10 T 8N R 4E	SESE(2) S10 T 8N R 4E *2*	BENEFICIAL USE
			DOMESTIC	1/ 1	12/31	1.20 AFA .02 CFS *---*AFA *.04*CFS		SAME AS OTHER USE	

INDICATES TOTAL SOURCE: ALDER CREEK TRIBUTARY TO: SOUTH FORK, PAYETTE RIVER

RIGHT NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM	USE PERIOD TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR RIGHT
65-7619	COTA, JACK E STRITMATTER, LESTER BOX 165, ELMA, WASHINGTON 98541 REMARKS: THIS PERMIT RIGHT IS NOT DECREED BY THE PRESENT ADJUDICATION PROCEDURE, AND IS INCLUDED FOR INFORMATION PURPOSES ONLY. NORMAL STATUTORY PROCEDURES MUST BE COMPLETED FOR LICENSING.	7/ 9/1976	MINING	1/ 1	12/31	--- AFA .12 CFS	NWNE S35 T 8N R 4E	NENE NWNE S35 T 8N R 4E	PERMIT

INDICATES TOTAL SOURCE: ALLEN CREEK TRIBUTARY TO: PAYETTE RIVER

RIGHT NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM	USE PERIOD TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR RIGHT
65-11322	PATTERSON, CAROLYN ROUTE 3, NAMPA, IDAHO 83651	6/ 1/1912	IRRIGATION	4/ 1	11/ 1	--- AFA 1.10 CFS	SWSW S17 T 9N R 4E NWNW S20 T 9N R 4E	SWSW(3) S17 T 9N R 4E NWNW(16) SWNW(17) NWSW(15) S20 T 9N R 4E *5L*	DECREE
			DOMESTIC	1/ 1	12/31	2.40 AFA .04 CFS *---*AFA *1.10*CFS		SAME AS OTHER USE	
65-2325	ROTHERMEL, ALICE M. & GULDHAUG, ALICE 421 SOUTH CURTIS ROAD #18, BOISE, IDAHO 83705	7/21/1924	IRRIGATION	4/ 1	11/ 1	--- AFA .06 CFS	SESE S19 T 9N R 4E	LOT 11 3) S29 T 9N R 4E *3*	LICENSE

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Thelma A. Hodgson
Debbie Bacon

JOSEPHINE P. BEEMAN
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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

IN THE MATTER OF THE GENERAL DETERMINATION OF THE RIGHT TO THE USE OF SURFACE AND GROUNDWATERS OF THE PAYETTE RIVER DRAINAGE BASIN.	Civil No. 3667 RESPONSE TO MOTION OF BARNES AND/OR CHENEY

COMES NOW, C. Stephen Allred, Director of the Idaho Department of Water Resources, and responds to the Motion to Allow Submission of Objection and to Modify Director of Department of Water Resources' Report filed by Larry B. Barnes and/or Charles Cheney, dated September 20, 1979, as follows:

I.

The Department takes no position on whether these claimants have good cause to file a late objection. However, it is the Department's position that it has no jurisdiction or authority to receive a late objection without an order from this Court.

II.

Nevertheless, the Department has reviewed the claimants' objection. The objection concerns the recommended priority date of 6/1/1920 for Right No. 65-8850 from Alder Creek. While it is difficult to ascertain the exact date water from Alder Creek was first applied to beneficial use on the land covered by No. 65-8850, water was probably applied to beneficial use on that land

Attachment C

at the same time water from Alder Creek was applied to beneficial use on the land covered by Right No. 65-5633, owned by Dora Murray and Guy Canada. This is suggested by the Goldtrap-Charters deed (Exhibit A to Claimants' Motion), by the use by both rights of the same ditch from Alder Creek and by the physical location of the two parcels with respect to each other and the ditch. In his proposed findings, the Director recommended a priority date of 4/1/1900 for No. 65-5633, and no objections were filed with respect to that right.

Accordingly, if the Court grants the motion to submit a late claim, the Department would ask the Court to order that the proposed findings for Right No. 65-8850 be amended to state a priority date of 4/1/1900.

III.

A copy of this Response and the Notice of Hearing filed herewith will be served upon those holders of rights which may be affected by this proposed change, specifically: Dora Murray and Guy Canada, owners of Right No. 65-5633, Elzie Yensen and Shirley Lindstrom, owners of No. 65-10925, and Douglas and Janice Donley, owners of No. 65-10539.

DATED this 11 day of March, 1980.

Michael H. Hyer

MICHAEL H. HYER
Deputy Attorney General
Department of Water Resources

DAVID H. LEROY
Attorney General
State of Idaho
Statehouse Room 210
Boise, Idaho 83720
Telephone (208) 384-2400

FILED

MAY 22 1980

_____ O'CLOCK 12:00 PM

Thelma R. Hoagg CLERK

Gubbi Bacon DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

IN THE MATTER OF THE GENERAL DETERMINATION OF THE RIGHT TO THE USE OF SURFACE AND GROUNDWATERS OF THE PAYETTE RIVER DRAINAGE BASIN.	Civil No. 3667 ORDER PERMITTING LATE OBJECTION OF BARNES AND/OR CHENEY

UPON MOTION being duly presented to this Court, and the matter being duly considered by this Court,

IT IS HEREBY ORDERED that Larry B. Barnes and/or Charles Cheney be and is hereby permitted to file a late objection to Right No. 65-8850 of the Proposed Findings of Water Rights by the Director of the Department of Water Resources; and it appearing that there may be some relationship between the water rights of Larry B. Barnes and/or Charles Cheney and the rights of George and Dora Murray, husband and wife, and Guy and Marilyn Canaday, husband and wife,

IT IS FURTHER ORDERED that George and Dora Murray, husband and wife, and Guy and Marilyn Canaday, husband and wife, be and are hereby permitted to file objections to Right No. 65-5633 of the Proposed Findings of Water Rights of the Director of the Department of Water Resources.

DATED this 28th day of April, 1980.

Gilbert C. Norris

GILBERT C. NORRIS
District Judge

Attachment D

RECEIVED
MAY 13 1980
Department of Water Resources

May 12, 1980

Hon. Gilbert C. Norris
District Judge
Washington County Courthouse
P. O. Box 667
Weiser, Idaho 83672

Re: Water rights - Murray-Canaday/Barnes appropriation
Gem County Case No. 3667

Dear Judge:

I have a copy of Mr. Carsman's letter of May 8, 1980, to you, regarding the above-captioned water right. All we want to do is have permission to show that the water right, which is claimed by Mr. and Mrs. Murray and Mr. and Mrs. Canaday goes back to 1879. I can see no problem with this as far as the Court is concerned, or as far as Mr. Barnes is concerned, because from the records that I have dug up, the Barnes water right is a derivative of the Murray-Canaday water right.

It would appear to me, from the letter that I received from Mr. Berne K. Jensen, Mr. Barnes' attorney, a copy of which is enclosed, that there would be no problem with the establishment of the water right. I particularly feel that this should be done because, otherwise, the record will disclose that Mr. Barnes had a water right prior to Mr. and Mrs. Murray and Mr. and Mrs. Canaday, which just would not be the factual situation. I have enclosed a copy of the abstract sheet, dated January 11, 1880, for your reference.

Very truly yours,

HIGER & ASSOCIATES

C. H. Higer

CHH:js

Enclosures

cc: Berne K. Jensen
Howard Carsman, Deputy Attorney General

Attachment E

BERNE K. JENSEN
ATTORNEY-AT-LAW
BOISE, IDAHO 83701

TELEPHONE 344-7211
AREA CODE 208

P. O BOX 454

May 2, 1980

Mr. C. H. Higer
Attorney at Law
Emmett, Idaho

Re: Payette Adjudication, Gem County Civil No. 3667
Water Right No. 65-8850

Dear Clarence,

This letter is written with respect to the above captioned matter and in accordance with the suggestion of Michael H. Hyer, Deputy Attorney General. Mr. Hyer has suggested that we try to reach an agreement with you with respect to respective water rights.

It is my client's contention that although his water right may be no better than your clients, that it should be at the same level. This is based on the Barnes chain of title stemming from the Wetzels.

Would you please consider this matter and advise me.

Personal regards. Come and visit us.

Sincerely yours,

Berne

Berne K. Jensen

J.V.R.Witt.

7. TO

William Charters.

QUIT CLAIM DEED:

Dated January 8,1881.
Ackl January 8,1881
Filed January 10,1881
Book 15 of Deeds,Page 114.
Consid $2800.00

Remise,Release and forever Quit-claim the E½ of the NW¼, of Section 34, and the Lots 6 and 7, of Section 27,Township 9 North, Range 4 East B.M. containin 170.05 Acres.
With all right, title and interest in a certain Water-right and ditch, for irrigation purposes, taking waters of Alder Creek, owned by first party, and L.Tetzel, and Estate of A.Bail, being the un-divided ½ interest in said water-right and ditch.

Acknowledged by J.V.R.Witt, before Jonas W.Brown. Notary Public, County of Boise, Idaho, Seal.

One Witness.

William Charters.

— TO —

8. N.Haug.

MORTGAGE:

Dated January 8,1881
Ackl January 8,1881.
Filed January 10,1881.
Book 4 of Mtgs,Page 324.
Consd. $1600.00

Mortgages the E½ of the NW¼, of Section 34, and the Lots 6 and 7, of 27, Township 9 North, Range 4 East,containing 170.05 Acres.

Secures two Note of even date herewith for $800.00, each, one in 12 after date, with interest thereon at 1½ % per month, Payable at the end of every 12 months

Acknowledged by Mortgagors before Jonas W. Brown. Notary Boise County. Idaho. Seal.

DEC 01 1988

Department of Water Resource

PHILLIP J. RASSIER
JOSEPHINE P. BEEMAN
Deputy Attorneys General
Department of Water Resources
Statehouse
Boise, Idaho 83720
Telephone: (208) 334-4448

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR GEM COUNTY

IN THE MATTER OF THE GENERAL DETERMINATION OF THE RIGHTS TO THE USE OF SURFACE AND GROUND WATER OF THE PAYETTE RIVER DRAINAGE.	Civil Case No. 3667 STIPULATION RESOLVING OBJECTION OF LARRY B. BARNES

COME NOW R. Keith Higginson, Director of the Idaho Department of Water Resources; Larry B. Barnes; George and Dora Murray ("Murrays"), husband and wife; and Guy and Marilyn Canaday ("Canadays"), husband and wife; through their respective counsel, stipulate that water right No. 65-8850 have its priority date changed from 6/1/1920 to 4/1/1900. The 1900 priority date is the same as for water right No. 65-5633 held by the Murrays and Canadays. Both these water rights divert from Alder Creek (tributary to the South Fork, Payette River) with a similar distribution system. This stipulation resolves the objection of Larry B. Barnes which was allowed to be filed by order of District Judge

Attachment F

Gilbert C. Norris in May 1980.

DATED this _____ day of _____, 1988.

JIM JONES
Attorney General

_____
JOSEPHINE P. BEEMAN
Deputy Attorney General
Idaho Department of Water Resources

DATED this _____ day of _____, 1988.

_____
BERNE JENSEN
Counsel for Larry B. Barnes

DATED this _____ day of _____, 1988.

_____
CLARENCE H. HIGER
Counsel for George and Dora Murray and Guy and Marilyn Canaday

The above stipulation having come before the court, it is hereby approved this _____ day of _____, 1988.

_____
JIM R. DOOLITTLE
District Judge

A. No. I made the recommendation of the priority date as it was claimed of 1900. The claim had been amended from 1920 to 1900.

Q. Prior to making your recommendation, the Department recognized a June 1st, 1920 priority date for the 8850 water right; correct?

A. The Department made -- recognized that as the date that was claimed in the Payette River Adjudication.

Q. For how many years did the Department recognize the June 1st, 1920 priority date for the water right we're talking about today?

A. I don't know how many years.

Q. Do you know when it was first recommended by I.D.W.R., the June 1st, 1920 priority date?

A. Not the exact date, no. If it was recommended, it was recommended in the Payette River Adjudication.

Q. Do you know what year that would have been?

A. No, I don't.

Q. Do you have actual knowledge of the investigations which formed the basis for the recommendation to change the priority date from 1920 to 1900?

MR. CAMPBELL: Objection. The question

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dates. He hasn't -- You haven't laid any foundation that he's a qualified expert to give his opinion as to the, quote, significance of a priority date. So the objection stands.

Q. (BY MS. ZOKAN) What's a priority date when associated with a water right?

A. Priority date stands for the -- represents, let's say, the date of first use or the date that the water for that right was first beneficially used, first applied to beneficial use.

Q. And what role does the priority date have, then, to the use of water, water rights allocation?

A. That's a pretty broad question. It could have a significance in the administration of that water right relative to other water rights.

MR. CAMPBELL: Objection. Move to strike.

Q. (BY MS. ZOKAN) Is one priority date better than another priority date?

A. Can be.

Q. Because it's first in time, first in right?

A. Yes.

Q. Is that fair?

A. That's fair.

Q. You said a priority date is based upon the first time water is put to beneficial use?

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A. Yes. That's what it represents.

Q. What is beneficial use?

MR. CAMPBELL: Objection. This witness is not qualified to give a legal conclusion. The question calls for legal conclusion.

Q. (BY MS. ZOKAN) In your role as a senior water right specialist -- Is that your title?

A. Senior water right agent.

Q. -- senior water right agent, you make priority date determinations?

A. Yes.

Q. You determine what priority date belongs to what water right?

A. Those that I might be reviewing, yes.

Q. And what do you base your priority date determinations on?

A. Could be based upon several factors. Could be based upon an existing water right license. Could be based upon a prior court decree. It could be based upon information that is obtained if that water right is claimed under beneficial use.

Q. So if the water is claimed under beneficial use, what do you have to do to make a recommendation?

A. We -- I obtain the best information I can that would support the priority date that's claimed or

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place of use look like, to try to determine back, you know, at that time, at the time of the priority date or at the time of first beneficial use, you know, does it appear from those photographs that there was -- the water was applied to that -- you know, for that purpose. Sometimes that's not possible. But it can be part of the total picture, yes.

Q. Is beneficial use a component of your priority date determination?

A. The beneficial use aspect of the water, yes, is a component of the water right itself, yes.

Q. Right. Is priority based upon beneficial use?

A. Yes. As we said earlier, the priority date is representative of the first date that the water was applied beneficially.

Q. In making beneficial-use determinations, does the Department assign greater weight to some sort of information over another?

A. I don't think so. I don't. I look at all of the information, try to look at all the information that I have.

Q. In making priority date determinations, do you give some information greater weight than other information?

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past?

A. What is in the file -- okay? -- is the date, priority date, that is claimed -- okay? -- initially. A recommendation is not made, of course, until information is reviewed to determine whether that -- we feel that that date is the best date to recommend. The claim is just that. We look at it in terms of the claim is just that, a claim to a water right. And then those components have to be, again, reviewed and analyzed and whatever prior to the recommendation.

Q. In some circumstances like this case, you have a recommendation in the file rather than a claim in the file?

A. We have a claim in the file. We have a recommendation that I made back, what, two years ago. Okay? But I have the claim file is the initial starting place. And that date, the priority date within that claim, is just that. It's a claim to that priority date.

Q. When did you make the recommendation for the claimed priority date for 08850?

A. I'll have to look at my file.

A. It appears that my recommendation for this 65-8850 was made on December 8, 1999. That date may not be a definite to the date date, because of the

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process that we go through. Okay? The claim verification report is dated October 7th, 1999. And so from that date on to December 8th of '99, someplace in there is the date that I made my recommendation. And I'm not exactly sure when we -- what date we put on that. Is it the date that I input the material into the computer and print -- you know, bring a printout? I guess that's the date. Which I think, then, would be the December 8th, 1999 date.

Q. Is it fair to represent that you made your decision the end of 1999?

A. Yes.

Q. Earlier you described some standard evidence that you look at, procedures you follow, when making beneficial use and priority date investigations. Did you follow those standard procedures when you investigated this claim?

A. Yes.

Q. Would you describe exactly what you did before you recommended the April 1st, 1900 priority date for 65-08850, please?

MR. CAMPBELL: Objection. The question has been asked and answered in a different form. He already answered your question that he followed the same procedures. He described the procedures in detail. I

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water from Alder Creek, serves the Barnes property and serves the Charter Mountain property. Do you understand?

A. Okay.

MS. ZOKAN: Will you mark this as Deposition Exhibit "B", please?

(Deposition Exhibit "B was marked for identification.)

Q. (BY MS. ZOKAN) I'm handing you what's been marked Deposition Exhibit "B". Have you seen that document before?

A. Yes. It appears to be the supplemental 706 report prepared by Garrick Baxter.

Q. Have you reviewed the 706 report that's marked as Exhibit "B"?

A. Yes.

Q. Are you familiar with its contents?

A. Yes.

Q. You're identified on page 1 of Exhibit "B" as having knowledge of the contents of the report. Do you in fact have knowledge of the contents of the report on --

A. Which report are you referring to?

Q. I'm referring to Exhibit "B", page 1, second paragraph.

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A. "The following I.D.W.R. employee has knowledge of the information contained in this report"?

Q. Yes.

A. Yes.

Q. You're named in that sentence?

A. Yes.

Q. Do you have knowledge of what's contained in the report?

A. Yes.

Q. Did you write the report?

A. No.

Q. Do you know who did?

A. Yes.

Q. Who?

A. Garrick Baxter.

Q. Did you provide information to Mr. Baxter?

A. Yes.

Q. Is it standard practice for the Department to have someone other than the person responsible for making a recommendation write the Director's Report concerning that recommendation?

MR. CAMPBELL: Objection.

THE WITNESS: Write the Director's Report?

MR. CAMPBELL: We're not talking about the Director's Report.

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recommendation is based upon an accumulation of information within my files.

Q. (BY MS. ZOKAN) The accumulation of information in your files provided the basis for your recommendation; is that correct?

A. Yes.

Q. Is that basis reflected in this report?

A. Appears to be. But it may not include everything that influenced my thinking.

Q. Does the report contain any information that you did not consider when you made your recommendation?

A. Yes.

Q. What is that?

A. There are two letters in here, copies of two letters in here that I did not review prior to my recommendation.

Q. Would you point out for me which two letters you're referring to, please?

A. Attachment "E", and the letter following that, in my report, anyway, dated May 2nd, 1980, signed by Berne K. Jensen. The letter is to Mr. C.H. Higer.

Q. Anything else in there not considered by you at the time you made your recommendation?

A. No.

MS. ZOKAN: I just noticed it's been about an

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recommendation, except for the two that I noted. Okay? I looked at them, at least. Okay?

Q. All right. Does the report omit any information which you considered in making your recommendation?

A. There are -- There's at least one other document I can think of right now that I reviewed that I think had an influence on my recommendation.

Q. Would you describe that document, please?

A. It'll take me a minute to find it.

There's a document in my claim file which is a short memorandum with the initials F.E.L. on it; which I recognize to be Forrest Luthey, a prior -- an employee of the Department. This is dated, I believe, 2-15-79. In that short memorandum, it states -- it had some information in there that I felt, you know, had some influence on my thinking. I'll read it to you if you would like.

Q. Yes. And do we have an extra copy that we can mark and attach to the deposition?

MR. BAXTER: You can make a copy of that if you desire.

MR. CAMPBELL: Well, if we're going to do that, why don't we take a break and do it?

MS. ZOKAN: I'm not opposed to taking it apart and

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setting it aside and making a photocopy at the next break.

MR. CAMPBELL: Okay.

Q. (BY MS. ZOKAN) Would you go ahead and read what's in there, if you want to do that now?

A. Yes. It says this right -- and it's memo to 65-8850. It says, and I quote: "This right on land which was originally known as the Wetzel place, possibly has a considerably earlier priority date. Very possibly the date should be the same as 65-5633, since the supporting documents and transfers for that property describe the Charters-Wetzel Ditch. However, phone conversation with Charles Chaney indicated the 1920 date was the earliest date with definite supporting evidence, though he was aware it went back far earlier."

Q. Did you find any other memorandums in the file from F.E.L.?

A. There is one other in here also. But it does not -- it has nothing to do with priority date. It has to do with the number of acres within -- in the place of use.

Q. So you didn't consider it as part of your priority date recommendation?

A. No.

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Q. You said that there was at least one other document you considered, and then discussed the F.E.L. February 15th, 1979 document.

A. There are some copies of some letters within the file. I believe they were all prepared and signed by Jo Beeman, a prior Deputy Attorney General. There's three of them. And within those letters, there's reference and indication that the State in its review of the claim, both of these claims, and these letters were in relation to the objection that had been filed in the Payette River Adjudication over the priority date. In those letters -- Again, they influenced my thinking somewhat. But, again, they're making reference to the fact that the State probably -- did sport the 1900 priority date.

Q. Could you specifically point out those letters, so that we can identify them and review them?

A. Yes. Here is one that's dated July 1st, 1987, a copy, signed by Jo Beeman. It's to Berne Jensen, attorney at law. Another one signed by Jo Beeman, addressed to Dale Higer.

Q. Same date?

A. Same date.

And another one, June 30th, 1987, signed by Jo Beeman, and addressed to Thelma Kolodziej, Clerk of

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the District Court. Again -- Excuse me. Scratch that one. There was another letter signed by Jo Beeman to Honorable Jim Doolittle, dated June 30, 1987.

Those letters, just the information in those letters, again, was part of the total package I was looking at that made me feel that the 1900 date was the appropriate date that I would recommend.

Q. Is there anything else not contained in the report that you haven't identified here today that you considered in making your recommendation?

MR. CAMPBELL: I'll object to the question. I think the witness already answered that, that he used all the information in the files.

THE WITNESS: I don't believe there's anything else.

Q. (BY MS. ZOKAN) Is the supplemental report, which has been marked as Deposition Exhibit "B", the complete record upon which your recommendation was made with the exception of the additional documents you pointed out?

A. I hate to call it the complete record. Again, my recommendation is based upon, you know, all of the information that -- within our files. It's an accumulation of all that information. Complete, I don't know. I reviewed the files, the information

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MR. CAMPBELL: Excuse me, counsel. Where are you reading from?

MS. ZOKAN: On page 2, end of the carry-over paragraph.

MR. CAMPBELL: First line, second line, third line?

MS. ZOKAN: End of the carry-over paragraph, second to last sentence, beginning "I.D.W.R.'s report".

MR. CAMPBELL: Okay. And how are you saying that was 1979?

MS. ZOKAN: The report is a 1979 report.

MR. CAMPBELL: Okay. But it doesn't state that in the --

MS. ZOKAN: It states that earlier. I asked the question if the document referred to the 1979 Payette Adjudication findings report. And Mr. Schulte responded in the affirmative, so I understood.

MR. CAMPBELL: Okay. I just wanted to clarify that.

MS. ZOKAN: Thank you.

Q. (BY MS. ZOKAN) So in 1979, did the Department recommend a June 1st, 1920 priority date for 65-08850?

A. No.

Q. I'm sorry.

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A. You said did they recommend a 1920?

Q. A June 1st, 1920 priority date.

A. It's listed in their proposed finding of water rights with a June 1st, 1920 date.

Q. Well, I suppose I need to back up. Why don't you explain this 1979 report to me? What is its purpose?

A. It's a listing of proposed findings of water rights in the Payette River Adjudication.

Q. And a proposed finding means what to the Department of Water Resources?

A. I think -- I believe. I wasn't around at that time. But as far as I know, that would have been what was submitted to the Payette River Adjudication court.

Q. By who?

A. By the Department.

Q. So would that be the Department's recommendation to the --

A. I believe it is, yes.

Q. So the appearance of the June 1, 1920 priority date in the 1979 report reflects a recommendation of that date by the Department to the court?

A. Could have, yes.

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Orchard?

A. On Orchard Street.

Q. Do you know the basis for the Department's June 1, 1920 recommendation in 1979?

A. No, I don't.

Q. Do you know anyone who may know the basis for that recommendation?

A. Other than the two individuals that I just mentioned, I don't. I'm not familiar with the procedures of how they went about it at that time.

Q. In 1979, the recommended priority date was 1920. And then when you made your recommendation in 1999, that changed to April 1st, 1900; is that correct?

A. Yes.

Q. Pages 2 and 6 and Attachment "B" in your report reference an 1888 deed. And on page 2, I'm looking at the very end of the page. And then on page 6 --

A. What attachment are you talking?

Q. I'm sorry. Attachment "B", Exhibit "A". Attachment "B" is something filed --

A. 1888 deed.

MR. CAMPBELL: First, I'm going to object to the question, because it's obviously compound. And I'm also going to object because you made reference to the

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testimony?

A. Yes.

Q. Same responses to the two previous questions?

A. Yes. It also influenced my thinking.

Q. And not included in the supplemental report?

A. Yes.

Q. Thank you.

I'd like to direct your attention to what's been marked as Deposition Exhibit "C".

A. Okay.

Q. Does this look familiar?

A. Yes.

Q. What is it?

A. Rough version of a hand-drawn map that I prepared.

Q. I guess I should have had the original marked. Is this a photocopy of the map you drew before we took a recess?

A. Yes.

Q. Would you please describe for us what's on this map?

A. On the map is showing that the Charters and Barnes properties are contiguous to each other. The ditch flows on the south side of that and provides water to both places. And the water flows to the

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north, or the direction of flow would be towards the north towards the Payette River.

Q. Where is the source of water for the ditch?

A. It's from Alder Creek. I haven't drawn it on there.

Q. Would you put Alder Creek on here for me, please?

A. I'll have to refer to maps, because I don't know where it is.

Alder Creek is to the east of the Barnes property.

Q. Would you mark that on your hand-drawn map for me, please?

A. Well, I don't know exactly where, but it runs down here. This is Alder Creek. (Indicating)

Q. Would you write on here for me Alder Creek, and then also write on there where the ditch is? You indicated where the ditch is, but it's not so annotated.

A. (Marking on diagram.)

I believe that's correct, without spending more time on it, you know, reviewing it closer.

Q. You noted circles and an arrow. Is that a diversion?

A. Yes. I'd say that's approximately. That's

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-- You know, I could get it much more accurate to this. This is, again, a very rough sketch.

Q. Thank you. I appreciate that.

You indicated earlier that these lines on the bottom of the page below Charters and Barnes is the ditch, is Wetzel Ditch. Would you write ditch or Wetzel Ditch on there if that's in fact what it represents?

A. (Marking on diagram.)

Q. And the arrows appearing, there's one on Charters and one on Barnes on your handwritten drawing. Is that showing the ditch water flowing north onto the property?

A. Yeah. The water flows towards the river.

Q. By your drawing, it appears that the ditch crosses the Barnes property to reach the Charters property?

A. I'm not sure if it crosses or if it's along the edge of it. I'm not sure. I don't have the legal description. But it flows at the south edge of both properties, both places of use. If it's on the south edge of all the property they own, I don't know.

Q. It passes the Barnes property to get to the McCallum property; is that a fair description?

A. I believe so.

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MS. ZOKAN: Would you like to take a closer look before I make another photocopy?

Q. (BY MS. ZOKAN) The fact that the ditch crosses --

MR. CAMPBELL: Excuse me, counsel, just a moment.

(A discussion was held off the record.)

MR. CAMPBELL: Thank you.

Q. (BY MS. ZOKAN) You agree that the ditch passes the Barnes property on its way to the McCallum property; correct?

A. I believe so, yes.

Q. The fact that a ditch crosses a piece of land doesn't mean that that land is irrigated, does it?

A. No.

Q. Does the deed, the 1888 that we referred to before we took a recess -- which is Attachment "B", Exhibit "A", to the supplemental report. Do you have that in front of you?

A. Yes.

Q. Does it make any reference to beneficial use on the Barnes property, beneficial use of water on the Barnes property, on April 1st, 1900?

A. Does it make reference to beneficial use?

Q. Of water on the Barnes property.

A. No. It makes reference to the ditch

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date should be?

A. As I indicated before, it's a compilation of all the information that best supported that date, the date that was claimed, that led me to that.

Q. With all due respect, there's a lot of information that you've cited here today that you considered. I'm asking you specifically of all that information --

MR. BAXTER: I think that's what we've been doing here today.

THE WITNESS: That's what I just said.

Q. (BY MS. ZOKAN) I'm asking specifically which documents or which photographs or which piece or pieces of evidence showed you or led you to recommend the April 1st, 1900 priority date, because it showed you beneficial use?

MR. BAXTER: I'm going to object to the question, because it's already been asked and answered.

THE WITNESS: It has. And the claimants claim 4-1-1900. I had absolutely nothing in my file to indicate not to. I had more information in my file that influenced and said that that would be the best date to recommend. Okay?

Q. (BY MS. ZOKAN) Is there a specific document or documents you can point to that show beneficial use

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everything in the files, not just these things. And I'm asking specifically which documents show an April 1, 1900 priority date. An answer that a compilation of all the documents to that question is nonresponsive. And I'm asking specifically. Mr. Schulte just began to describe certain documents that showed that the Charter property and the Barnes property should have the same priority date. Those are documents specifically, it sounds like, supporting the April 1, 1900 date. And I'd like to have those identified for me, and also find out if there are any other specific documents which show the April 1, 1900 priority date.

THE WITNESS: The question that I interpreted that you asked me is what documents show an April 1, 1900 date that beneficial use began. And I'm telling you there are no documents that say beneficial use began on April 1st, 1900. I'm saying that there's a lot of information within the files that support the 4-1-1900 date as it was claimed. That's the only answer I can give you. I can't be any more specific than that.

MS. ZOKAN: And I appreciate that. The documents that provide support for that April 1, 1900 priority date, as you just explained, would you identify those for me, just because --

And I'm not trying to give a hard time. But

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this isn't everything. And this includes things that he didn't rely on. And he's made reference to a compilation of all the files. And a compilation of all the files is an awful lot of documents that he may or may not have relied upon.

THE WITNESS: Are you ready?

MS. ZOKAN: Yes.

THE WITNESS: The documents that I used, which we've been through every one of them here so far --

MS. ZOKAN: Okay.

THE WITNESS: The affidavit of A.D. Rane, dated 9-1-77; the affidavit of Wilbur Tucker, dated 9-1-77; response to motion of Barnes by Michael Hyer, Deputy A.G.

MR. BAXTER: Could you please slow down, Mel?

THE WITNESS: Deed dated 4-17-1888.

MR. BAXTER: Hold on, Mel. Would you start from the beginning again, please?

THE WITNESS: Affidavit of A.D. Rane, dated 9-1-1977; affidavit of Wilbur Tucker, dated 9-1-1977 -- and I can give you the -- they're part of your exhibits, if you want to look at them specifically; which the Rane is number 1, exhibit. It's part of the 706. They're both in there.

Okay. Number 3 is the response to the motion

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of Barnes, signed by Michael Hyer, Deputy A.G.

Number 4 is a deed dated April 17, 1888.

Number 5 is --

MR. BAXTER: Hold on, Mel. Number 4?

THE WITNESS: It's way back in --

MS. ZOKAN: Are you looking for 1888?

THE WITNESS: What exhibit is it?

MS. ZOKAN: It's Attachment "B", I believe, Exhibit --

MR. BAXTER: There are two deeds. Which deeds are you pointing to?

THE WITNESS: The April 17th, 1888 deed.

MR. BAXTER: I'm sorry. I thought I heard a different date.

MS. ZOKAN: Attachment "B", Exhibit "A".

MR. BAXTER: Next deed, dated January 8th, 1881.

MS. ZOKAN: That's part of Attachment "E", page 3 of Attachment "E".

THE WITNESS: Stipulation signed by Berne Jensen, dated November 17, 1988; memo dated 2-15-1979 from Forrest Luthey; affidavit by McKie, dated 1-25-1974; three letters from Jo Beeman to Jensen, Higer, and Judge Doolittle, dated June 30, 1987 and July 1st, 1987.

Q. (BY MS. ZOKAN) Is that everything?

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A. That's it.

Q. Clarification. Throughout the deposition, you have made reference to a compilation of all the information upon which your recommendation is based. When you say "compilation of information", are you referring only to the documents you just listed for me?

A. Yes, the information in those documents that influenced my thinking.

Q. Is it fair to say that you have no evidence that water was beneficially used on the Barnes property on April 1, 1900?

A. As I indicated before, there's no -- nothing in the documents that give a specific date. There's no one specific document that I can rely on. The information, again, you know, is a compilation of all of the information.

Q. And I understand that. But in all of the research that you've done, you haven't found evidence showing beneficial use of water on April 1, 1900 on the Barnes property?

A. No.

Q. I understand your recommendation. Your answer is no?

A. On that specific date, there's nothing in the documents that will give that specific date that says

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water was beneficially applied beginning on April 1st, 1900.

Q. Do you have evidence showing that water was beneficially used in 1900 on the Barnes property?

A. I have information that indicated that water could have been and probably was used on the property in 1900 or maybe even prior to that date, by the information submitted in the deeds that indicates that the ditches were there and whatever it may be, maybe even earlier than 1900.

Q. You're referring to the information in the deeds that belonged to the McCallum property? You just referred to deeds.

A. Yes. Because they make reference to the ditch and the water rights of Wetzel; which was the predecessor of the Barnes.

Q. I'm sorry, which deed was that, the 1881 or the 1888?

A. Both of them, I believe.

Q. And you say these both address water rights?

A. In the 1888 deed --

Q. Is there any reference --

A. In the middle of the paragraph, it's making reference to the ditch again, the ditch that delivers the water to the Charters property and the Wetzel

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Q. (BY MR. BAXTER) Exhibit "C", the map that you drew here --

A. Don't grade me on my hard work.

Q. So, once again, this is just a rough estimation that you created here quickly within a deposition to just generally outlay where is your understanding of the Charters and the Barnes property; correct?

A. Yes.

Q. And if you had more time and your other maps, you could have made a more accurate map?

A. No doubt. With GIS or anything else, I could have made something fancy for you.

MR. BAXTER: That's all I have.

MS. SCHAER: I think my questions have actually been addressed as well. So I have nothing.

MS. ZOKAN: I have a follow-up question based upon responses to questions of Mr. Baxter.

FURTHER EXAMINATION

BY MS. ZOKAN:

Q. You had at the end of my questions for you outlined a list for me of documents you relied upon in making your recommendation. And in Mr. Baxter's questions of you, you identified additional documents,

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specifically Attachment "D"; which was not on your list of documents you recited to me; which is the Order.

A. Is that the --

Q. That's the Court Order Permitting Late Objection.

A. Okay.

Q. Is that something that I should add to your list of specific documents that supported your recommendation?

A. That's not on my list that I gave you here, no.

Q. No, sir, it's not.

A. No.

Q. So do you withdraw your response to Mr. Baxter's question concerning Attachment "D" to the supplemental report?

A. What was the question specifically?

Q. The question was whether or not Attachment "D" to the supplemental report was influential in your recommendation of an April 1, 1900 priority date.

A. No, it wasn't. That and the two letters of 1980, I had not seen. Okay?

Q. You had not seen Attachment "D"?

A. Prior to my recommendation, no.

Q. Another document identified by Mr. Baxter in

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his questions of you included the motion; which is the cover document that includes the deeds. The motion was not listed by you in your list of documents that you relied upon.

A. It was. I did not list it.

Q. So when you referred to compilation of documents you relied upon, you're referring to the list you gave me earlier, in addition to the motion.

I have the same question for you concerning the deeds. Exhibit "A", which is the 1888 deed, you listed for me in support. But Exhibits "B", "C", "D", and "E", four deeds attached to the motion, were not listed by you in your list of documents specifically supporting your recommendation.

A. I did see those.

Q. Do they specifically --

A. Yes.

Q. So they should be on the list as well?

A. Yes.

Q. The list you provided me earlier with the addition of these few documents, does that make up everything which specifically supports your recommendation?

A. Yes.

Q. For 1900 priority date?

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A. Those documents influenced my thinking, yes.

MS. ZOKAN: I have no further questions. Thank you.

THE WITNESS: Okay.

(The deposition was concluded at 12:23 p.m.)

(Signature requested.)

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IN THE MATTER OF:
Lonny B Barnes
Alder Creek water use
Garden Valley

State of Idaho
County of Boise

AFFIDAVIT

Earl F McKee being first duly swor

deposes and says: To the Best of My Knowledge Lonny Barnes George Murray Water Diversion Line been in use since 1920

Earl F McKee
(signature)

Subscribed and sworn to before me this 25 day of January 1993

Kathy Brandon
(notary public)

Residing at Boise.
My commission expires Feb 2, 1996.

IN THE TRICT COURT OF THE THIRD JUDICI[illegible] DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE CO[illegible]TY OF GEM

RECEIVED Bo[illegible]
FEB 7 1974
Department of Water Administration

IN THE MATTER OF THE GENERAL DETERMINATION OF THE RIGHT TO THE USE OF THE SURFACE AND GROUND WATERS OF THE PAYETTE RIVER DRAINAGE BASIN

NOTICE OF CLAIM TO A WATER RIGHT

IDENT. NO. 65-8850 EXPIRES

Notice is hereby given that [illegible] (Name of Claimant)

[illegible] (Mailing Address) claims a right to the di

and beneficial use of the surface or groundwater, of or tributary to the Payette River;

The extent and nature of said claim is as follows:

(1) Date of priority: (When was the water first applied to a beneficial use, or date that permit was issued) JAN 1, 1920

(2) Describe source of water: (Name of stream, lake, spring, etc., or subterranean) Alder Creek, trib. to [illegible]

(3) Describe the purpose for which the water has been used and the time during the year when you have used the right clair (Both Dates Inclusive)

~~360.5 AFA IRR.~~ ~~2.06 CFS~~ 2.51 CFS Use IRR. Irrigation (Domestic, irrigation, stock, etc.) Period of Use From April 1 To Nov. 1 (Mo., Day) (Mo., Day) (Both Dates Inclusive)

~~360.5 AFA~~ ~~.85 CFS~~ 1.06 CFS Use [illegible] (Domestic, irrigation, stock, etc.) Period of Use From Jan. 1 To Dec. 31 (Mo., Day) (Mo., Day) (Both Dates Inclusive)

~~3.29~~ Use AFA STK. (Domestic, irrigation, stock, etc.) Period of Use From [illegible] To [illegible] (Mo., Day) (Mo., Day)

(4) Quantity of water claimed: ~~2.06~~ 3.57 CFS Cubic Feet Per Second, or [illegible] Acre Feet Per and/or [illegible] Gals. Per Minute.

(5) A) Point of Diversion: Give location of point where water is diverted from its source [illegible] ¼ NE ¼ Sec. [illegible], Twp. [illegible], Rge. [illegible], B M.; additional points: [illegible]

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch and fle Give sizes and capacities; be as specific as possible [illegible]

(6) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is irrigation, place an "X" in appropriate box to show location.

T	R	SEC.	NE¼				NW¼				SW¼				SE¼				TOTAL
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
9N	4E	35							Lot 6 29 Lot 5 31				10	8		7			103

Total No. of acres

B) If water is used for other than irrigation, fully describe that use, being as specific as possible: [illegible]

(7) Effluent, sewage waste, or return water from this use is discharged into [illegible]

(8) If you are claiming water as a member of an organization, list name of organization [illegible]

(9) Remarks [illegible] for 1/4 of 3/4 of the water of Alder Creek but cannot exce [illegible] Supplemental right from J. F. Payette covers all grounds. (THIS RT. WHEN COMBINED WITH RT #65-11329 SHALL PROV. NO MORE THAN 3.5 AFA (Apr.) DIV #2

(10) Basis of claim (Check one) ☐ A) Right based on diversion and beneficial use.

☐ B) Right decreed by court, cite title of case [illegible]

☐ C) Right based on application, license, or claim filed with State Reclamation Engineer, Oft

Be it known that the undersigned, after being duly sworn on oath, depose(s) and say(s) that all statements included he true and accurate to the best of (his, her, their) knowledge.

KEYPUNCHED 10-30-78 cla 11-7-78 cla

[illegible] (Date)

Individual [illegible] (Signature of Claimant)

(Signature of Spouse)

Organization [illegible]

(Signature of Authorized Agent)

State of [illegible] } ss.
County of [illegible] }

Organization Seal

On this [illegible] day of January, in the year 197[illegible], be a notary public, personally appeared [illegible] known to me to be the person(s) whose name(s) are subscribed to the above instrument, and acknowledged to me that (he, sh corporation, partnership or [illegible] executed the same.

Notary Public residing at [illegible]

My commission expires

Bruce M. Smith, ISB #3425
Tammy A. Zokan, ISB #5450
MOORE SMITH BUXTON & TURCKE, CHARTERED
Attorneys at Law
225 North 9th Street, Suite 420
Boise, ID 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorney for Charter Mountain Ranch, Inc.

RECEIVED
AUG 22 2001
Department of Water Resources

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 No.: 65-08850
	)	
Case No. 39576	)	**NOTICE OF APPEARANCE**
	)	

COMES NOW Tammy A. Zokan and gives Notice of Appearance on behalf of Charter Mountain Ranch, Inc. in the above Subcase. Ms. Zokan gives further notice that she will present argument on Charter Mountain Ranch, Inc.'s behalf at the August 24, 2001 hearing on Claimant's Motion for Summary Judgment.

DATED this 21 day of August, 2001.

MOORE SMITH BUXTON & TURCKE, CHARTERED

Tammy A. Zokan
Attorney for Charter Mountain Ranch, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21 day of August 2001, I caused to be served a true and correct copy of the foregoing NOTICE OF APPEARANCE by the method indicated below, and addressed to the following:

Clerk of the District Court
Snake River Basin Adjudication
P.O. Box 2707
Twin Falls, ID 83303-2707
Phone: (208) 736-3011
Facsimile: (208) 736-2121

____ via U.S. MAIL
____ via HAND DELIVERY
X via OVERNIGHT MAIL
____ via FACSIMILE

Scott L. Campbell
Angela D. Schaer
ELAM & BURKE, P.A.
Key Financial Center, 10th Floor
702 West Idaho
P.O. Box 1539
Boise, Idaho 83701
Telephone: (208) 343-5454
Facsimile: (208) 384-5844

Moffatt Thomas, 1055 S. Capitol Blvd. 10th Floor Boise, ID 83701-0829

____ via U.S. MAIL
X via HAND DELIVERY 08/22/01
____ via OVERNIGHT MAIL
____ via FACSIMILE

IDWR
Document Depository
P.O. Box 83720
Boise, Idaho 83720-0098

X via U.S. MAIL
____ via HAND DELIVERY
____ via OVERNIGHT DELIVERY
____ via FACSIMILE

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

X via U.S. MAIL
____ via HAND DELIVERY
____ via OVERNIGHT DELIVERY
____ via FACSIMILE

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

X via U.S. MAIL
____ via HAND DELIVERY
____ via OVERNIGHT DELIVERY
____ via FACSIMILE

Tammy A. Zokan

ASSOCIATED REPORTING, INC.

Pamela J. Leaton
Tauna K. Tonks
Holly E. Barnes
Isabel Bruce
Rebecca L. Bowker
Jenn Weekes
Amy E Menlove
Daniel E. Williams
Colleen Kline
Audra Van Vliet

August 14, 2001

RECEIVED
AUG 16 2001
WATER RESOURCES
WESTERN REGION

Melvin T. Schulte
Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

Deponent: Melvin T. Schulte
RE: SRBA Case No. 39576
Case No.Subcase No. 65-08850

Dear Mr. Schulte:

Notice is hereby given that the original of your deposition taken on **July 31st, 2001** is ready for your review and to obtain your signature at our office, located at 200 North 4th Street, Ste. 204, Boise ID 83702.

Please note, this transcript will be sealed and delivered to **Ms. Zokan's** office on **Tuesday, September 11th, 2001** for further processing.

You may contact our office at any time, Monday through Friday, from 8:30 a.m. to 5:00 p.m. to make an appointment.

Sincerely,

Holly E. Barnes

Holly E. Barnes
Associated Reporting, Inc.

9:00 am
8-22

Cc: Tammy Zokan
Scott L. Campbell

West

Ron

RECEIVED
NOV 30 2000
Department of Water Resources

2000 NOV 28 AM 10:32
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

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	)	ORDER SETTING STATUS
	)	CONFERENCE
Case No. 39576	)	
	)	SUBCASE NO: 65-08850

Please be advised that Special Master THOMAS R CUSHMAN has set a Status Conference in the above subcase(s) as follows:

FRIDAY, FEBRUARY 16, 2001 at 01:30 PM

SRBA
DISTRICT COURT
253 3RD AVENUE NORTH
TWIN FALLS, ID

Option: Parties may participate by phone if they contact the clerk at (208) 736-3011 prior to FEBRUARY 14, 2001 .

IT IS SO ORDERED.

Dated: NOVEMBER 28, 2000

/S/ THOMAS R CUSHMAN
Special Master
Snake River Basin Adjudication

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

CERTIFICATE OF MAILING

I Certify that a true and correct copy of the ORDER SETTING STATUS CONFERENCE was mailed on NOVEMBER 28, 2000 , with sufficient first-class postage to the following:

CHARTER MOUNTAIN RANCH
CHARTER MOUNTAIN RANCH, INC
Represented by:
BRUCE M. SMITH
MOORE SMITH BUXTON & TURCKE
225 NORTH 9TH ST, STE 420
BOISE, ID 83702
Phone: 208-331-1800

LENORA B BARNES
LENORA BARNES
Represented by:
SCOTT L. CAMPBELL
PO BOX 1539
BOISE, ID 83701
Phone: 208-343-5454

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

/S/ DEBBIE LASH
Deputy Clerk

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM	USE PERIOD TO	DIVERSION RATE	DIVERSION VOLUME
C	LENORA B BARNES 5120 SORRENTO DR BOISE ID 83704 (208) 375-3740	04/01/1900	IRRIGATION STOCKWATER	04-01 01-01	11-01 12-31	2.510 CFS 0.060 CFS	 3.29 AFA
					TOTAL DIVERSION:	2.570 CFS	3.29 AFA

Water Source: ALDER CREEK Tributary to: PAYETTE RIVER, SOUTH FORK Stage: DECREED

Point(s) of Diversion: T08N R04E S02 SWNE BOISE County

Place of use Legal Description for: IRRIGATION

			NE				NW				SW				SE				
			NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE	
T	R	S	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	SUM
09N	04E	35									06-27	05-51	10	08		07-07			103.0
																TOTAL ACRES			103.0

Place of use location for STOCKWATER is the same location as described for: IRRIGATION

POU County: BOISE

Other Water Rights with Same Point(s) of Diversion with Stage (Includes All Sources):
A65-05633 A65-05696 A65-08850 R65-05633 R65-05696

Other Water Rights Listing Overlapping Place(s) of Use:
A65-05682 A65-05682A A65-05682B A65-08850 A65-10539 A65-11324 R65-05682 R65-05682A R65-05682B R65-10539 R65-11324

Conditions of Approval:

N08 - THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR - STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL - USE.

C18 - THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS - NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT - ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY - DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE - ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.

Remarks: QNT THIS RIGHT WHEN COMBINED WITH RIGHT NO. 65-11324 SHALL PROVIDE NO MORE THAN .02 CFS PER ACRE AT THE FIELD HEADGATE.

POU1 USE OF THIS RIGHT WITH RIGHT NO. 65-11324 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 110 ACRES IN A SINGLE IRRIGATION SEASON.

EXP THE FOLLOWING RIGHTS ARE ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE: 65-05696 & 65-05633.

Remarks: STOCKWATER, 150 RANGE CATTLE.

Dates: Exam Made Date: Verified Date: Objection Filed Date:

Misc: Water District Number: 65 Field Inspection Flag:
Presumption Flag:

Comments: Date: 12/08/1999 User-ID: MSCHULTE Subject: DELIVERY LOSS
THE DIVERSION OF WATER IN EXCESS OF 1"/PER ACRE IS FOR DELIVERY LOSS.

Date: 12/08/1999 User-ID: MSCHULTE Subject: COPIED FROM REMARKS
JON L. BARNES HAS REQUESTED AMENDMENT OF PRIORITY DATE TO APRIL 1, 1900 AND WILL BE SUBMITTING SUPPORTING EVIDENCE.-L.W. 5/2/89
__ADDITIONAL RECEIPT NUMBER W2625.
2/14/90-SEE ATTACHED DOCUMENTS SUPPORTING 4/1/1900 PRIORITY DATE. THIS CLAIM HAS BEEN CHECKED FOR A FIELD EXAM TO ENSURE THAT ALL DOCUMENTS, INCLUDING THOSE SUBMITTED IN THE PAYETTE RIVER ADJUDICATION, BE TAKEN INTO CONSIDERATION. L.R.W.

Date: 01/31/2000 User-ID: AJU10-JS Subject: AJU10 CONDITION UPDATE
CONDITION CODE(S) C18 ADDED IF NOT ALREADY PART OF RECORD THRU AJU10.

Date: 03/23/2000 User-ID: DBUFFING Subject: NAME CHANGE - OWNERSHIP CHANGE
THE DATA IN THE NAME FIELD WAS CHANGED TO SHOW THIS RIGHT HAS AN OWNERSHIP CHANGE.

Date: 03/23/2000 User-ID: DBUFFING Subject: NOTICE OF APPEARANCE
THE DATA IN THE NAME FIELD WAS CHANGED TO SHOW THE ATTORNEY NAMES, PER NOTICE OF APPEARANCE.

Audit: 03/23/00 DBUFFING

State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

March 23, 2000

LENORA B BARNES
5120 SORRENTO DR
BOISE ID 83704

Re: Notice of Claim to a Water Right No. A65-08650, A65-08850 & A65-11324

Dear Claimant:

Enclosed is a copy of the above referenced claim which reflects the change in ownership of the land and appurtenant water right(s) covered under the original filing.

The Department will contact you in the future concerning any requirements that may be needed in order to process this claim for final court decree.

Thank you for your patience and cooperation, as we have had several ownership changes to process. If you have any questions concerning the enclosed claim, please feel free to contact this office.

Sincerely,

Denise Buffington

Denise Buffington
Office Specialist 1
Adjudication Section
Western Region Office

DB:db

Enclosure

cc: Scott L Campbell & Angela D Schaer, Elam & Burke P.A.

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM	USE PERIOD TO	DIVERSION RATE	DIVERSION VOLUME
C	JON L BARNES TRUST	04/01/1900	IRRIGATION	04-01	11-01	2.510 CFS	
C	JULIE BARNES JOHNSTON TRUST		STOCKWATER	01-01	12-31	0.060 CFS	3.29 AFA
C	CECILY BARNES TRUST						
C	LORI LOU BARNES GIRDNER TRUST			TOTAL DIVERSION:		2.570 CFS	3.29 AFA
C	FRANK B BARNES TRUST						

PO BOX 2797
BOISE ID 83701
(208) 345-7515

Water Source: ALDER CREEK Tributary to: PAYETTE RIVER, SOUTH FORK Stage: BENEFICIAL USE

Point(s) of Diversion: T08N R04E S02 SWNE BOISE County

Place of use Legal Description for: IRRIGATION

			NE				NW				SW				SE				
			NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE	
T	R	S	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	SUM
09N	04E	35									06-27	05-51	10	08			07-07		103.0
																	TOTAL ACRES		103.0

Place of use location for STOCKWATER is the same location as described for: IRRIGATION

POU County: BOISE

Conditions of Approval:

N08 - THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR
- STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL
- USE.

Remarks: QNT THE RIGHT WHEN COMBINED WITH RIGHT NO. 65-11324 SHALL PROVIDE NO MORE THAN .02 CFS PER ACRE AT THE FIELD HEADGATE.

POU1 USE OF THIS RIGHT WITH RIGHT NO. 65-11324 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 110 ACRES IN A SINGLE IRRIGATION SEASON.

EXP THE FOLLOWING RIGHTS ARE ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE: 65-05696 & 65-05633.
STOCKWATER, 150 RANGE CATTLE.

Dates: Exam Made Date: Verified Date: Objection Filed Date:

Misc: Water District Number: 65 Field Inspection Flag: Y
Presumption Flag:

Comments: Date: 12/08/1999 User-ID: MSCHULTE Subject: COPIED FROM REMARKS
JON L. BARNES HAS REQUESTED AMENDMENT OF PRIORITY DATE TO APRIL 1, 1900 AND WILL BE SUBMITTING SUPPORTING EVIDENCE.-L.W. 5/2/89
__ADDITIONAL RECEIPT NUMBER W2625.
2/14/90-SEE ATTACHED DOCUMENTS SUPPORTING 4/1/1900 PRIORITY DATE. THIS CLAIM HAS BEEN CHECKED FOR A FIELD EXAM TO ENSURE THAT ALL DOCUMENTS, INCLUDING THOSE SUBMITTED IN THE PAYETTE RIVER ADJUDICATION, BE TAKEN INTO CONSIDERATION. L.R.W.

Date: 12/08/1999 User-ID: MSCHULTE Subject: DELIVERY LOSS
THE DIVERSION OF WATER IN EXCESS OF 1"/PER ACRE IS FOR DELIVERY LOSS.

Audit: 12/08/99 MSCHULTE

PROFILE REPORT

CLAIM NUMBER: A65-08850

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM	USE PERIOD TO	DIVERSION RATE	DIVERSION VOLUME
C	JON L BARNES TRUST	04/01/1900	IRRIGATION	04-01	11-01	2.510 CFS	
C	JULIE BARNES JOHNSTON TRUST		STOCKWATER	01-01	12-31	0.060 CFS	3.29 AFA
C	CECILY BARNES TRUST						
C	LORI LOU BARNES GIRDNER TRUST				TOTAL DIVERSION:	2.570 CFS	3.29 AFA
C	FRANK B BARNES TRUST						

Water Source: ALDER CREEK Tributary to: PAYETTE RIVER, SOUTH FORK Stage: BENEFICIAL USE

Point(s) of Diversion: T08N R04E S02 SWNE BOISE County

Place of use Legal Description for: IRRIGATION

			NE				NW				SW				SE				
			NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE	
T	R	S	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	SUM
09N	04E	35									06-27	05-51	10	08				07-07	103.0
																		TOTAL ACRES	103.0

Place of use location for STOCKWATER is the same location as described for: IRRIGATION

POU County: BOISE

Non-Irrigation Uses: S/150 HD. Exp - 150 range cattle

Other Rights: CLAIM NO. A65-08651(ALDER CK.RES.)& A65-11324(S.FK.PAY.)

Remarks: GEN THIS RIGHT WHEN COMBINED WITH RIGHT 65-~~11329~~ 11324 SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.
JON L. BARNES HAS REQUESTED AMENDMENT OF PRIORITY DATE TO APRIL 1, 1900 AND WILL BE SUBMITTING SUPPORTING EVIDENCE.-L.W. 5/2/89
__ADDITIONAL RECEIPT NUMBER W2625.
2/14/90-SEE ATTACHED DOCUMENTS SUPPORTING 4/1/1900 PRIORITY DATE. THIS CLAIM HAS BEEN CHECKED FOR A FIELD EXAM TO ENSURE THAT ALL DOCUMENTS, INCLUDING THOSE SUBMITTED IN THE PAYETTE RIVER ADJUDICATION, BE TAKEN INTO CONSIDERATION. L.R.W.

Dates: Exam Made Date: Verified Date: Objection Filed Date:

Misc: Water District Number: 65 Field Inspection Flag: Y
Presumption Flag:

POU - CIL - 110 ac w/ 11324
CWT - E28
EXP - F06 with 5633 & 5696.
NO 8
Comment - delivery loss.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

14:30:06
10/07/99

QUICKLOOK INFORMATION

16
CLAIM NUMBER: A65-08850

WR ELEMENT	DATA DISCREPANCY Y/N	CORRESPONDENCE SENT/RECEIVED BY WHOM/DATE	FIELD EXAM BY WHOM/DATE	CHANGE CLAIM Y/N	ELEMENT DOCUMENTED WHOM/DATE	COMPLETED REVIEW WHOM/DATE	COMPLETED DATA ENTRY WHOM/DATE	VERIFIED DATE WHOM/DATE
PRIORITY DATE	Y		In office MS 10-12-99					
POINT OF DIV				N				
SOURCE				N				
PLACE OF USE	Y			Y				
DIV. AMOUNT CFS/VOLUME				N				
CONSUMPTIVE USE	-			NA				
PURPOSES OF USE				N				
PERIOD OF USE				N				
BASIS OF CLAIM				Y				
REMARKS	Y			Y				

BARCODE UPDATED
WHOM/DATE

MAPS AND AERIAL PHOTOGRAPHS USED TO REVIEW THIS NOTICE OF CLAIM TO A WATER RIGHT

TYPE OF MAP OR PHOTOGRAPH (CHECK IF USED)	IF USED, SUPPLY APPROPRIATE DATE AND OTHER INFORMATION		COPY INCLUDED IN FILE?	
( ) ORTHOPHOTOQUAD	DATE OF PHOTO	IDWR ID NO.	Y( ) N( )	
(✓) TOPOGRAPHIC	DATE FIELD CHECKED 1988 map	IDWR ID NO. V61	Y(✓) N( )	6c
(✓) NAPP GIS	DATE OF PHOTO 1987 - 10-12-99	IDWR ID NO.	Y(✓) N( )	6b
(✓) ASCS AERIAL PHOTO	DATE OF PHOTO 1961 PRBA map		Y(✓) N( )	6e
( ) ASCS COLOR SLIDE	DATE OF PHOTO		Y( ) N( )	
( ) BLM OR USFS AERIAL PHOTO	DATE OF PHOTO		Y( ) N( )	
(✓) TOWNSHIP SURVEY (GOVERNMENT PLAT)	DATE OF SURVEY		Y(✓) N( )	6f
( ) SCS SOIL SURVEY MAP	DATE ISSUED		Y( ) N( )	
( ) SUBDIVISION PLAT MAP	DATE OF MAP		Y( ) N( )	
(✓) OTHER GIS Table	DATE 10-12-99		Y(✓) N( )	6a
(✓) OTHER PRBA map	DATE —		Y(✓) N( )	6d
(✓) OTHER Overlap map	DATE —		Y(✓) N( )	6g

LIST OF ATTACHMENTS (CHECK IF ATTACHED)	IF ATTACHED, SUPPLY APPROPRIATE INFORMATION		NO. OF PAGES	NOTES
( ) LICENSING FIELD EXAM	DATE OF FIELD EXAM			
( ) WATER RIGHT LICENSE	DATE LICENSE SIGNED			
( ) IDWR APPROVED TRANSFER	DATE TRANSFER APPROVED			
( ) SYSTEM DESCRIPTION	DATE DRAWN			
( ) PHOTOGRAPHS	DATE(S) PHOTOS TAKEN			
( ) SPLIT RIGHT REVIEW	DATE REVIEW COMPLETED			
( ) HUBBLE ANALYSIS	DATE ANALYSIS COMPLETED			
( ) CONVEYANCE LOSS ANALYSIS	DATE ANALYSIS COMPLETED			
( ) FLOW MEASUREMENT CALCULATIONS	DATE SYSTEM MEASURED			
(✓) OTHER POU review report	DATE 10-12-99		1	
(✓) OTHER POD overlaps	DATE —		1	
Page from decree	3-2-79		1	

IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHT PROFILE REPORT

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM	USE PERIOD TO	DIVERSION RATE	DIVERSION VOLUME
C	LARRY B. BARNES BOX 2797 BOISE ID 83701	06/01/1920	IRRIGATION	04/01	11/01	2.510 CFS	
			STOCKWATER	01/01	12/31	0.060 CFS	3.29 AFA
					TOTAL DIVERSION:	2.570 CFS	3.29 AFA
C	CHARLES CHENEY						

Water Source: ALDER CREEK Tributary to: PAYETTE RIVER, SOUTH FORK Stage: BENEFICIAL USE

Point(s) of Diversion: T08N R04E S02 SWNE BOISE County

Place of use Legal Description for: IRRIGATION

			NE				NW				SW				SE				
			NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE	
T	R	S	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	SUM
09N	04E	35									06-27	05-51	10	08			07-07		103.0
																	TOTAL ACRES		103.0

Place of use location for STOCKWATER is the same location as described for: IRRIGATION

Pou County: BOISE

Other Water Rights with Same Point(s) of Diversion with Stage (Includes All Sources):
65-05633 65-05696

Other Water Rights Listing Overlapping Place(s) of use:
65-05682 65-10539 65-11324

Remarks: GEN THIS RIGHT WHEN COMBINED WITH RIGHT 65-11329 SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.

Dates: App. Received: Priority Date: 06/01/1920
Proof Due Date: Proof Made Date:
Exam Made Date: Exam Sent to S.O.:
Licensed Date:

Misc: Water District Number: 65 Field Exam Fee:

Audit: 04/02/86 04/30/88 CONVERT 11/01/88 CURTIS 06/20/89 CURTIS

GENERAL INFORMATION

1
CLAIM NUMBER: A65-08850

LAST: BARNES FIRST: LARRY B
ADDRESS: BOX 2797
CITY: BOISE STATE: ID ZIP: 83701
PHONE NUMBER: 208-000-0000

OWNER CODE: O

LAST: CHENEY RCH MGR FIRST: CHARLES
ADDRESS:
CITY: XXXXXX STATE: ID ZIP: XXXXXX
PHONE NUMBER: 208-000-0000

OWNER CODE: O

LAST: BARNES TRUST FIRST: JON L
ADDRESS: PO BOX 2797
CITY: BOISE STATE: ID ZIP: 83701
PHONE NUMBER: 208-345-7515

OWNER CODE: C

LAST: JOHNSTON TRUST FIRST: JULIE BARNES
ADDRESS: PO BOX 2797
CITY: BOISE STATE: ID ZIP: 83701
PHONE NUMBER: 208-345-7515

OWNER CODE: C

LAST: BARNES TRUST FIRST: CECILY
ADDRESS: PO BOX 2797
CITY: BOISE STATE: ID ZIP: 83701
PHONE NUMBER: 208-345-7515

OWNER CODE: C

LAST: GIRDNER TRUST FIRST: LORI LOU BARNES
ADDRESS: PO BOX 2797
CITY: BOISE STATE: ID ZIP: 83701
PHONE NUMBER: 208-345-7515

OWNER CODE: C

LAST: BARNES TRUST FIRST: FRANK B
ADDRESS: PO BOX 2797
CITY: BOISE STATE: ID ZIP: 83701
PHONE NUMBER: 208-345-7515

OWNER CODE: C

	DATABASE	FIELD EXAMINER
FIELD EXAM REQUIRED?		
VERIFICATION REQUIRED DUE TO REMARKS?	Y	Y(___) N(___)

CLAIM REMARKS: GEN THIS RIGHT WHEN COMBINED WITH RIGHT 65-11329 SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.
JON L. BARNES HAS REQUESTED AMENDMENT OF PRIORITY DATE TO APRIL 1, 1900 AND WILL BE SUBMITTING SUPPORTING EVIDENCE.-L.W. 5/2/89
__ADDITIONAL RECEIPT NUMBER W2625.
2/14/90-SEE ATTACHED DOCUMENTS SUPPORTING 4/1/1900 PRIORITY DATE. THIS CLAIM HAS BEEN CHECKED FOR A FIELD EXAM TO ENSURE THAT ALL DOCUMENTS, INCLUDING THOSE SUBMITTED IN THE PAYETTE RIVER ADJUDICATION, BE TAKEN INTO CONSIDERATION. L.R.W.

FIELD EXAMINATION INFORMATION

CONTACT PERSON: _____ PHONE NUMBER: (___) ___-____

DATE OF FIELD EXAM: __/__/__ APPOINTMENT MADE: Y(___) N(___) TIME: ___:___ A(___) P(___)

ACCOMPANIED BY:_____ PHONE NUMBER: (___) ___-____

RELATIONSHIP TO CLAIMANT: _____

DIRECTIONS TO PROPERTY / NOTES:
In office review 10-12-99

* A. AJ CLAIM: # A65-08850 PRIORITY DATE: 04-01-1900 STAGE: J

B. WR RECORD: # 65-08850 PRIORITY DATE: 06-01-1920 STAGE: J

C. CAN THE PRIORITY DATE CLAIMED BE CONFIRMED BY A DECREE OR LICENSE? Y(✓) N(___)

D. HAS THERE BEEN A LATER COURT DECREE OF THE WATER RIGHT(S) FROM THIS WATER SOURCE? Y(___) N(✓)

E. IS THERE ANY INDICATION THAT THERE HAS BEEN A FIVE YEAR PERIOD OF CONTINUOUS NONUSE? (IF YES, DESCRIBE BELOW) Y(___) N(✓)

F. IF THIS CLAIM IS BASED ON A PERMIT, WHERE IS THE PERMIT IN THE LICENSING PROCESS?

PROOF OF BENEFICIAL USE SUBMITTED N/A(✓) Y(___) N(___)

FIELD EXAM COMPLETED N/A(✓) Y(___) N(___)

FIELD EXAM SENT TO STATE OFFICE N/A(✓) Y(___) N(___)

LICENSE ISSUED N/A(✓) Y(___) N(___)

* IF THE PERMIT WILL NOT BE LICENSED PRIOR TO THE DIRECTOR'S REPORT, USE CONDITION CODE A01 AND RECOMMEND AS PERMITTED.

G. IF THIS CLAIM IS BASED ON BENEFICIAL USE, IS ADDITIONAL EVIDENCE OF THE PRIORITY DATE REQUIRED? N/A(✓) Y(___) N(___)

* FOR CLAIMS BASED ON BENEFICIAL USE, DESCRIBE THE EVIDENCE OF PRIORITY SUBMITTED, INCLUDING THE ANALYSIS OF THE EVIDENCE.

** H. IS THE STAGE OF THE CLAIM CODED CORRECTLY? Y(___) N(✓)

NOTES:

* Needs further review by legal - priority date decreed was 6-1-1920. Was there an order by the RRBA court granting the 1900 date after an objection?

** Should be a decreed right

See attached Memo dated 1-18-99 labeled 3a

RECOMMENDED PRIORITY DATE: ___-___-___

REVIEWED BY Mel Sekulich DATE 10-12-99

3a

MEMORANDUM

DATE: November 18, 1999

TO: Susan Hamlin

FROM: Mel Schulte MS.

RE: A65-08850

The attached documents relate to a priority date conflict for the above referenced claim.

The above SRBA claim was amended to change the priority date from 6/01/1920 to 4/01/1900. It appears from the evidence we have in the file that the Payette River Adjudication (PRBA) decreed the 6/01/1920 priority date. This priority date issue was addressed in the PRBA but whether the earlier date should have been recognized is not clear. It is also unknown whether the Stipulation Resolving Objection of Larry B. Barnes was approved by the court. If it was, is that sufficient evidence for us to recommend the earlier, 4/01/1900, priority date in the SRBA.

Please research and review this matter and provide me with your opinion as to how I should proceed. We have additional documents in file that relate to this priority date conflict. Let me know if you want to review the whole file.

MTS

12-7-99
Per call from Becky Harvey for Susan Hamlin.
Claim was dismissed without prejudice by the PRBA court rather than enter the stipulated settlements. The result is the claim could be filed in the SRBA claiming the earlier 4-1-1900 priority date with no objections by IDWR.

A. AJ CLAIM POINT OF DIVERSION AND SOURCE:

RIGHT	TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	POD FLAG	COUNTY	DIVERSION NAME	DIVERSION NUMBER
A65-08850	08N	04E	2		SW	NE			BOISE		

OTHER AJ CLAIMS WITH SAME AJ POD

A PREFIX	R PREFIX
A65-05633	NONE
A65-05696	

WR RECORDS IN SAME 40 ACRE TRACT

65-05633
65-05696

SOURCE: ALDER CREEK TRIB: PAYETTE RIVER, SOUTH FORK

B. WR POINT OF DIVERSION AND SOURCE:

RIGHT	TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	POD FLAG	COUNTY	DIVERSION NAME	DIVERSION NUMBER
65-08850	08N	04E	2		SW	NE			BOISE		

OTHER WR RECORDS WITH SAME WR POD

65-05633
65-05696

AJ CLAIMS IN SAME 40 ACRE TRACT

A PREFIX	R PREFIX
A65-05633	NONE
A65-05696	

SOURCE: ALDER CREEK TRIB: PAYETTE RIVER, SOUTH FORK

C. IS THE CLAIMED POD WITHIN THE SAME 40 ACRE TRACT THAT IS DESCRIBED IN THE WATER RIGHT FILE? N/A(___) Y(✓) N(___)

* IF NO, AND IF THE CHANGE IS VERIFIED AS AN ACCOMPLISHED CHANGE IN POD, DESCRIBE THE INJURY ANALYSIS PERFORMED AND ENTER FLAG "C" WITH THE APPROPRIATE EXPLANATORY CODE.

D. CAN THE CLAIMED POD BE VERIFIED USING THE WATER RIGHT FILE OR GPS DATA? N/A(___) Y(✓) N(___)

E. SHOULD THE CLAIMED POD BE VERIFIED BY FIELD EXAM? Y(___) N(✓)

F. IS THE CLAIMED SOURCE THE SAME AS DESCRIBED IN THE WATER RIGHT FILE? N/A(___) Y(✓) N(___)

* IF NO, AND IF THE CHANGE IS VERIFIED AS AN ACCOMPLISHED CHANGE IN SOURCE, DESCRIBE THE INJURY ANALYSIS PERFORMED AND ENTER FLAG "C" WITH THE APPROPRIATE EXPLANATORY CODE.

G. CAN THE CLAIMED SOURCE BE VERIFIED USING THE WATER RIGHT FILE? Y(✓) N(___)

H. SHOULD THE CLAIMED SOURCE BE VERIFIED BY FIELD EXAM? Y(___) N(✓)

I. HOW WAS THE POD AND SOURCE VERIFIED?

LICENSING FIELD EXAM (DATE OF FIELD EXAM _____) Y(___) N(✓)

AJ FIELD EXAM (DATE OF FIELD EXAM _____ NAME OF EXAMINER _____) Y(___) N(✓)

OTHER (DESCRIBE IN NOTES BELOW)

NOTES: Recommended as decreed in the PBBA.

RECOMMENDED POINT(S) OF DIVERSION AND SOURCE: CHECK HERE IF RECOMMENDED AS CLAIMED (___)

TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	POD FLAG	COUNTY	DIVERSION NAME	DIVERSION NBR
08N	04E	2		SW	NE			BOISE		

SOURCE: ALDER CREEK TRIB: PAYETTE RIVER, SOUTH FORK

REVIEWED BY: Mel Schulte DATE: 10-12-99

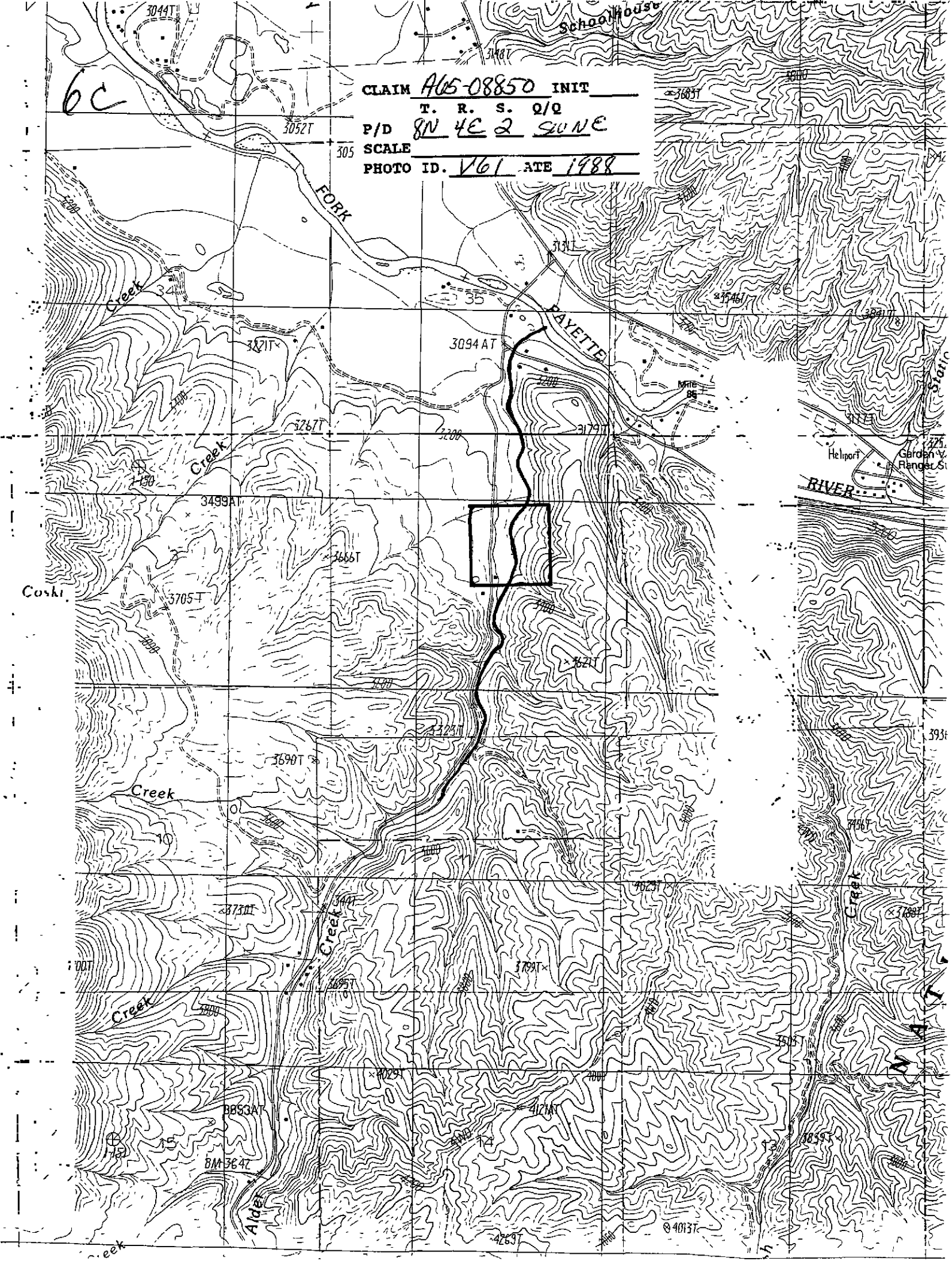
SYSTEM DESCRIPTION: DESCRIBED BELOW (___), SEE LICENSE FILE (___), OR SEE ATTACHMENT (___)

A. ROOT WATER RIGHT NUMBERS: A65-08850

B. POU LISTING

TWP	RNG	SEC	1/4	1/4	LOT	NAME	AJ #/ACRES	WR #/ACRES	LANDSAT DATA	FIELD EXAM.	RECOMM. ACRES
09N	04E	35	NE	SW	6	BARNES TRUST, JON L	A65-08850 / 27.0	65-08850 / 27.0	38.0		
			NE	SW	6	BARNES TRUST, JON L	A65-11324 / 35.0	- /			
			NE	SW	6	BARNES, LENORA B		65-13823 /			
			NE	SW	6	BARNES, LENORA B		65-13824 /			27
09N	04E	35	NW	SW	5	BARNES TRUST, JON L	A65-08850 / 51.0	65-08850 / 51.0	46.0		
			NW	SW	5	BARNES TRUST, JON L	A65-11324 / 48.0	- /			36
09N	04E	35	SW	SW		BARNES TRUST, JON L	A65-08850 / 10.0	65-08850 / 10.0	7.0		
			SW	SW		BARNES TRUST, JON L	A65-11324 / 10.0	65-11324 / 10.0			
			SW	SW		MCKIE, EARL	R65-05682 / 4.0	65-05682 / 4.0			
			SW	SW		MCKIE, EARL	A65-05682A / 4.0	- /			
			SW	SW		BARNES, LENORA B		65-13825 /			10
09N	04E	35	SE	SW		BARNES TRUST, JON L	A65-08850 / 8.0	65-08850 / 8.0	13.0		
			SE	SW		BARNES TRUST, JON L	A65-11324 / 10.0	65-11324 / 10.0			
			SE	SW		MCKIE, EARL	R65-05682 / 16.0	65-05682 / 16.0			
			SE	SW		BARNES, JON L	A65-05682B / 16.0	- /			8
09N	04E	35	SW	SE	7	BARNES TRUST, JON L	A65-08850 / 7.0	65-08850 / 7.0	8.0		
	NW		SW	SE	7	JOHNSTON TRUST, JULIE BARNES	A65-08650 /	- /			
			SW	SE	7	BARNES TRUST, JON L	A65-08651 /	- /			
			SW	SE	7	BARNES TRUST, JON L	A65-11324 / 7.0	- /			
			SW	SE	7	DONLEY, DOUGLAS	A65-10539 / 14.0	65-10539 / 14.0			
			SW	SE	7	BARNES TRUST, JON L	65-08651 /	- /			
			SW	SE	7	BARNES TRUST, JON L	R65-08651 /	- /			
			SW	SE	7	WILSON, THOMAS R	65-10672 /	- /			7
			SW	SE	7	WILSON, THOMAS R	65-10673 /	- /			
ADDITIONAL POU FOUND											
SW NW Lt 5											15
						TOTAL ACRES A65-08850		103.00	103.00	112.00	
											103

POU COUNTY: BOISE


6C
CLAIM AK5-08850 INIT
T. R. S. Q/Q
P/D 8N 4E 2 SWNE
SCALE
PHOTO ID. V61 ATE 1988
FORK
Creek
PAYETTE
RIVER
Heliport
Coski
Creek
Creek
Creek
Creek
Creek
Alder
Creek
3094AT
3499AT
BM 3647
8853AT
4121AT
4013T
4269T
3666T
3705T
3690T
3621T
3325T
3731T
3441
3695T
3709T
3623T
3456T
3688T
3503
3839T
3179T
3267T
3271T
3134T
3052T
3044T
3148T
3603T
3546T
3241T
3177T
3250
Mile 85
Garden V.
Ranger St
N 47

6a

WESTERN REGION

OWNER (S): Barnes Trust

CLAIM NUMBERS: A65-08850

AGENT: MEL SCHULTE **DATE** 10-12-99

				NE				NW				SW				SE				
RIGHT NO	TNS	RNG	SEC	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
	9N	4E	35							LOT 15		LOT 29	LOT 36	10	8		LOT 7			103
																				103

POLYGON CREATED ON 330

POLYGON # ( ) ( ) ( ) ( ) UPDATED BY MTS 12-22-99

ATTRIBUTES OF B65-POU.SHP (1502) ( ) ( ) ( ) ( )

ATTRIBUTES OF B65-POD.SHP (1506) ( ) ( ) ( ) ( )

✓ **B65-DBPOU.DBF UPDATED BY MTS**

✓ **B65-DBPOD.DBF UPDATED BY MTS**

NOTES:

6b

IDAHO DEPARTMENT OF WATER RESOURCES
T09N, R04E, S35

6b



1987 NAPP PHOTO

POINT OF DIVERSION

PLACE OF USE

1/4 1/4 LINES

SECTION LINES

6 ACRES

6 SECTION NUMBERS

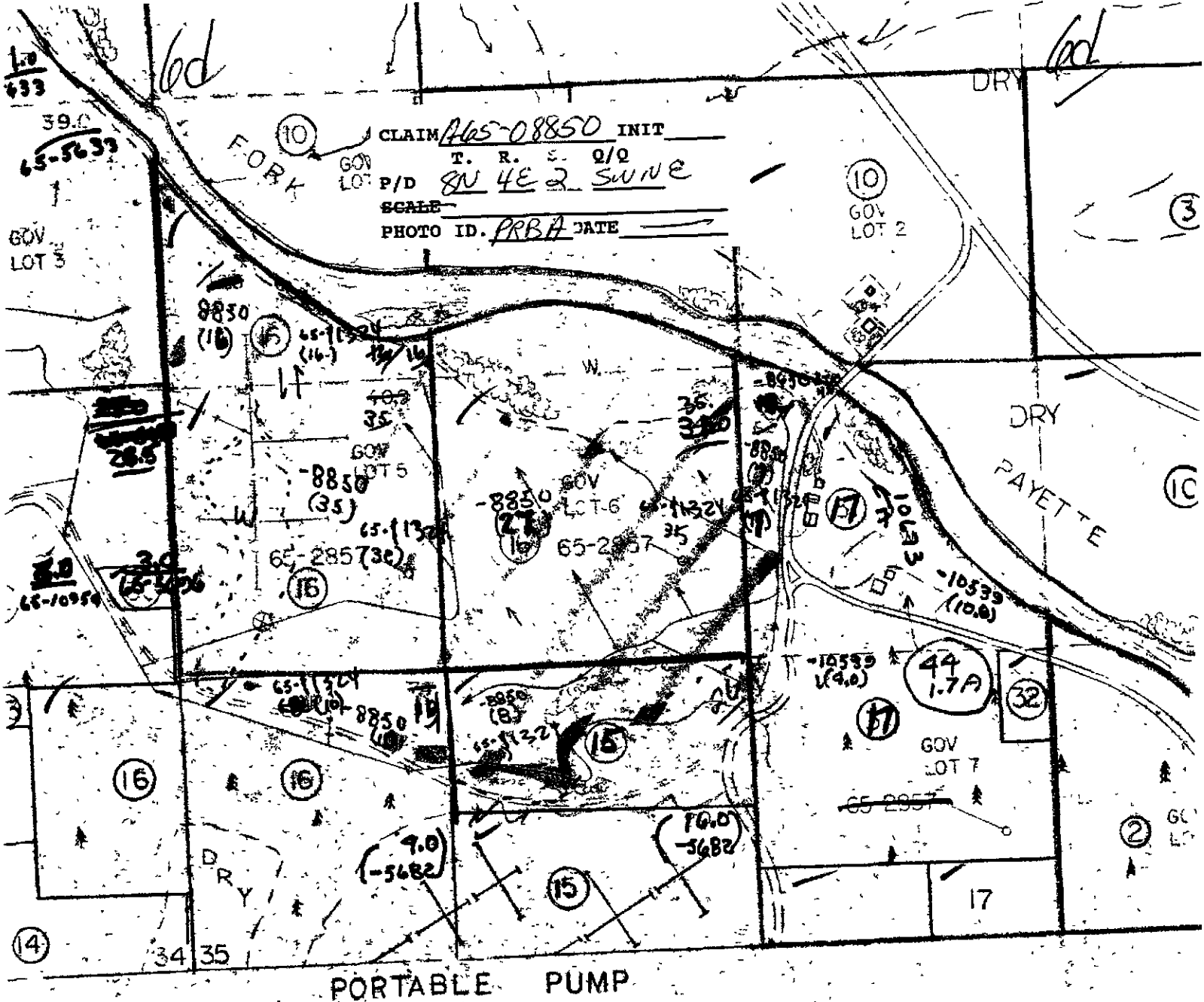
CLAIM(S): 65-08850

OWNER(S): BARNES TRUST

Prepared by Mel Schulte

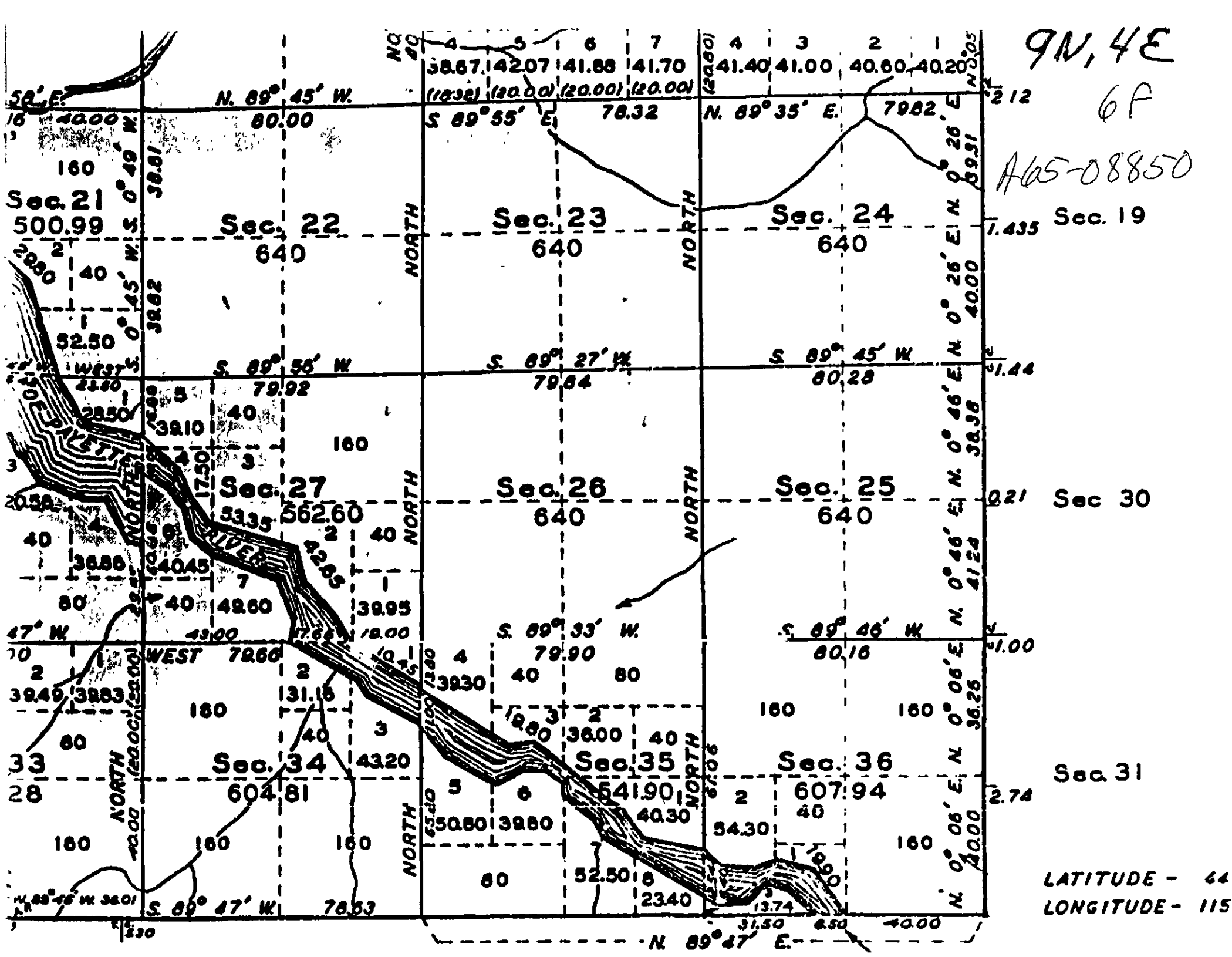
DATE: OCTOBER 12,1999

0 0.25 0.5 0.75 1 Miles



1. Boise Payette Lumber Co.
2. State
3. Gloria Smith Ford
4. Dan Bethoff
5. Jack Tucker
6. Wilbur Tucker
7. Nellie Mills Mills Mt. View Ranch
c/o Warner Mills
8. Scottie Turnbull
9. Marie MacDonald 24A ~~E½NW~~ 26
10. Anna Mae Canaday
11. Gladys Charters
12. Dora Murray &
Guy Canaday
13. Public Domain
14. Edith Cash
15. Dark McKie
16. ~~E. Hench~~
Leroy Rones
17. ~~L. Denley~~ Douglas
18. School Dist. #71
19. Blanche Mills
20. G. V. School District
21. Bea L. Babcock
22. Roy Arbaugh
23. Minnie E. Maxwell 11.4A
24. Delbert Brown
25. Sam Harp .5A
26. ~~Wm. Acr~~ Ben L. BABCOC
c/o ~~Tracy Slater~~
27. Delbert L. Coulter, et al
28. Myron E. Watson 1.1A
29. Ray A. Huston 4A + 12A in
30. Orie Hutchinson
31. ~~Orville Bowles~~
32. George Bates
33. Ray Funk
34. ~~Ed~~
35. ~~L~~ ~~Emma~~
36. Elmer


CLAIM AA508850 INT 6e
T. R. Q/Q
P/D 8N 4E 2 SWNE
PBM map
PHOTO ID. ASCS DATE 1961


9N, 4E
6F
A65-08850
Sec. 21
500.99
Sec. 22
640
Sec. 23
640
Sec. 24
640
Sec. 19
Sec. 27
562.60
Sec. 26
640
Sec. 25
640
Sec 30
Sec. 34
604.81
Sec. 35
541.90
Sec. 36
607.94
Sec. 31
NORTH
RIVER
DEPOT
LATITUDE - 44
LONGITUDE - 115


CLAIM MOS-11324 MOS-08850 UNIT 69
T. R. S Q/Q
P/D Overlap map
SCALE
PHOTO ID. DATE
⑦ = 8850 #1
⑩ = 11324
35
2

C. IS WATER USAGE FOUND IN TRACTS OTHER THAN THOSE CLAIMED? Y(✓) N(___)

* IF YES, ARE THESE TRACTS LISTED ABOVE (✓), OR ARE THEY LISTED ON AN ATTACHED SHEET (___)

LIST OF ALL RIGHTS WITH A SAME POU AND IRRIGATION USAGE

CLAIM NO.	SOURCE	NAME	DIV. RATE	DIV. RATE/ACRE	DIV. VOL.	DIV. VOL./ACRE
A65-08850	ALDER CREEK	BARNES TRUST, JON L	2.570	0.024	3.29	0.03
R65-05682	ALDER CREEK	MCKIE, EARL	2.920	0.024	— different POU & POD	
A65-05682A	ALDER CREEK	MCKIE, EARL	0.100	0.025		
A65-05682B	ALDER CREEK	BARNES, JON L	2.820	0.024	— different POU	
A65-10539	ALDER CREEK	DONLEY, DOUGLAS	0.300	0.021		
A65-11324	PAYETTE RIVER, SOUTH FORK	BARNES TRUST, JON L	2.200	0.020	2.70	0.02 — overlap

LIST ALL RIGHTS WITH SAME POU BUT NOT USED FOR IRRIGATION.

CLAIM NO.	PURPOSES	NAME	MONTH/DAY		RATE	VOLUME
A65-08850	STOCKWATER	BARNES TRUST, JON L	FROM 01-01	TO 12-31	0.060 CFS	
A65-11324	STOCKWATER	BARNES TRUST, JON L	FROM 01-01	TO 12-31	0.050 CFS	2.70 AF/A
A65-08650	STOCKWATER FROM STORAGE	JOHNSTON TRUST, JULIE BARNES	FROM 01-01	TO 12-31		0.50 AF/A
A65-08650	DIVERSION TO STORAGE	JOHNSTON TRUST, JULIE BARNES	FROM 01-01	TO 12-31	0.020 CFS	0.50 AF/A
A65-08650	RECREATION STORAGE	JOHNSTON TRUST, JULIE BARNES	FROM 01-01	TO 12-31		0.50 AF/A
A65-08650	FISH PROP. STORAGE	JOHNSTON TRUST, JULIE BARNES	FROM 01-01	TO 12-31		0.50 AF/A
A65-08650	WILDLIFE STORAGE	JOHNSTON TRUST, JULIE BARNES	FROM 01-01	TO 12-31		0.50 AF/A
A65-08650	STOCKWATER STORAGE	JOHNSTON TRUST, JULIE BARNES	FROM 01-01	TO 12-31		0.50 AF/A
A65-08651	DOMESTIC	BARNES TRUST, JON L	FROM 01-01	TO 12-31	0.040 CFS	1.20 AF/A
65-08651	DOMESTIC	BARNES TRUST, JON L	FROM 01-01	TO 12-31	0.040 CFS	1.20 AF/A
R65-08651	DOMESTIC	BARNES TRUST, JON L	FROM 01-01	TO 12-31	0.040 CFS	1.20 AF/A
65-10672	DOMESTIC	WILSON, THOMAS R	FROM 01-01	TO 12-31	0.040 CFS	1.20 AF/A
65-10673	DOMESTIC	WILSON, THOMAS R	FROM 01-01	TO 12-31	0.040 CFS	1.20 AF/A

D. ARE OTHER WATER RIGHTS USED FOR THE SAME PURPOSE? Y(___) N(___)

* IF YES, COMPLETE OVERLAP REVIEW:

GW

OTHER RIGHTS LISTED IN CLAIM: CLAIM NO. A65-08651(ALDER CK.RES.)& A65-11324(S.FK.PAY.)

E. IS THE CLAIMED POU THE SAME AS DESCRIBED IN THE WATER RIGHT FILE? N/A(___) Y(✓) N(___)

* IF NO, AND IF THE CHANGE IS VERIFIED AS AN ACCOMPLISHED CHANGE IN POU, DESCRIBE THE INJURY ANALYSIS PERFORMED AND ENTER FLAG "C" WITH THE APPROPRIATE EXPLANATORY CODE.

F. CAN THE CLAIMED POU BE VERIFIED USING THE WATER RIGHT FILE AND AVAILABLE AERIAL PHOTOS? N/A(___) Y(✓) N(___)

G. SHOULD THE CLAIMED POU BE VERIFIED BY FIELD EXAM? Y(___) N(✓)

H. IS THERE ANY INDICATION THAT THERE HAS BEEN A FIVE YEAR PERIOD OF CONTINUOUS NONUSE OF THIS RIGHT, OR ANY PORTION OF THIS RIGHT? Y(___) N(✓)

CHECK DOCUMENTS USED TO VERIFY POU: ( ) ORTHOPHOTOQUAD, IDWR NO. _____; ( ) TOPOGRAPHIC QUAD, IDWR NO. _____;
(✓) ~~NAPP~~ GIS, IDWR NO. _____; (✓) ASCS PHOTO; (✓) ~~OTHER~~ PRBA map

NOTES: Corrections were made in the POU legals to reflect the actual QQ's for the goverment lots but no changes were made to the total acres on POU.

RECOMMENDATIONS:

TOTAL ACRES: 103 N/A(___)

REVIEWED BY: Mel Schultz DATE: 10-12-99

A. AJ CLAIMED USES:

	PURPOSE OF USE	PERIOD OF USE (MONTH/DAY)	DIV. RATE FOR EACH USE	DIV. VOL. FOR EACH USE
A65-08850	IRRIGATION	FROM 04-01 TO 11-01	2.510 CFS	
A65-08850	STOCKWATER	FROM 01-01 TO 12-31	0.060 CFS	3.29 AF/A
		TOTAL DIVERSION RATE/VOLUME	2.570 CFS	3.29 AF/A

B. WR RECORDED USES:

	PURPOSE OF USE	PERIOD OF USE (MONTH/DAY)	DIV. RATE FOR EACH USE	DIV. VOL. FOR EACH USE
65-08850	IRRIGATION	FROM 04-01 TO 11-01	2.510 CFS	
65-08850	STOCKWATER	FROM 01-01 TO 12-31	0.060 CFS	3.29 AF/A
		TOTAL DIVERSION RATE/VOLUME	2.570 CFS	3.29 AF/A

C. DOES THE CLAIMED PURPOSE OF USE CORRECTLY DESCRIBE THE WATER USE? Y(✓) N(__)

D. IS THE CLAIMED PURPOSE OF USE THE SAME AS DESCRIBED IN THE WATER RIGHT FILE? N/A(__) Y(✓) N(__)

* IF NO, AND IF THE ACTUAL WATER USE IS VERIFIED AS AN ACCOMPLISHED CHANGE IN PURPOSE OF USE, DESCRIBE THE INJURY ANALYSIS PERFORMED AND ENTER FLAG "C" WITH THE APPROPRIATE EXPLANATORY CODE.

E. SHOULD THE CLAIMED PURPOSE OF USE BE VERIFIED BY FIELD EXAM? Y(__) N(✓)

F. DOES THE CLAIMED PERIOD OF USE CONFORM TO IDWR STANDARDS? Y(__) N(✓)

G. SHOULD THE PERIOD OF USE BE RECOMMENDED TO IDWR STANDARDS? Y(__) N(✓)

* IF THE RECOMMENDED PERIOD OF USE IS DIFFERENT THAN IDWR STANDARDS, EXPLAIN IN NOTES BELOW.

H. IS THE CLAIMED DIVERSION RATE FOR EACH USE THE SAME AS DESCRIBED IN THE WATER RIGHT FILE? N/A(__) Y(✓) N(__)

* IF NO, DESCRIBE IN NOTES BELOW HOW THE RECOMMENDED DIVERSION RATE FOR EACH USE WAS DETERMINED.

I. SHOULD THE CLAIMED DIVERSION RATE FOR EACH USE BE VERIFIED BY FIELD EXAM? N/A(__) Y(__) N(✓)

J. IS THE CLAIMED DIVERSION VOLUME FOR EACH USE THE SAME AS DESCRIBED IN THE WATER RIGHT FILE? N/A(__) Y(✓) N(__)

* IF NO, DESCRIBE IN NOTES BELOW HOW THE RECOMMENDED DIVERSION VOLUME FOR EACH USE WAS DETERMINED.

K. SHOULD THE CLAIMED DIVERSION VOLUME FOR EACH USE BE VERIFIED BY FIELD EXAM? N/A(__) Y(__) N(✓)

NOTES: Recommended as decreed in the PRBA. The diversion rate in excess of 1 "/acre is for conveyance loss as decreed in the PRBA.

AJ CLAIM TOTAL DIVERSION RATE: 2.570 CFS

WR ROOT RIGHT TOTAL DIVERSION RATE: 2.570 CFS

A. IS THE CLAIMED TOTAL DIVERSION RATE THE SAME AS DESCRIBED IN THE WATER RIGHT FILE? N/A(__) Y(✓) N(__)

B. CAN THE CLAIMED TOTAL DIVERSION RATE BE VERIFIED USING THE WATER RIGHT FILE? N/A(__) Y(✓) N(__)

* ALL CLAIMS BASED ON BENEFICIAL USE (INCLUDING POSTED NOTICES AND STATUTORY CLAIMS) REQUIRE A FLOW MEASUREMENT.

C. IS THERE ANY INDICATION THAT THERE HAS BEEN A FIVE YEAR PERIOD OF CONTINUOUS NONUSE OF THIS RIGHT, OR ANY PORTION OF THE DIVERSION RATE? Y(__) N(✓)

* IF AN AMOUNT SMALLER THAN THE ORIGINAL DIVERSION RATE IS CLAIMED AND A FIELD EXAM IS NOT REQUIRED, EXPLAIN IN NOTES.

D. SHOULD THE CLAIMED DIVERSION RATE BE VERIFIED BY FIELD EXAM? Y(__) N(✓)

E. FLOW MEASUREMENT

MEASUREMENT METHOD None, SEE ATTACHED CALCULATIONS.

F. RATE/VOLUME CALCULATIONS: (IRRIGATION)

1a. IRRIGATION RATE
ACRES 103 x 0.02 CFS/ACRE = 2.06 CFS
(Taken from pou review)

1b. CALCULATIONS

IS A DIVERSION RATE PER ACRE GREATER THAN 0.02 CFS/ACRE CLAIMED? Y(✓) N(__)

IF YES, IS AN ADDITIONAL WATER USE FORM FILED AND ATTACHED? Y(__) N(✓) – delivery loss

2. IRRIGATION DIVERSION VOLUME

CLAIMED DIVERSION VOLUME = 3.29 AF/A – stockwater

ACRES _____ x DIVERSION VOL. AF/A FOR AREA _____ =

TOTAL DIVERSION VOLUME _____ AF/A

3. IRRIGATION CONSUMPTIVE USE

CLAIMED CONSUMPTIVE USE = NA AF/A

ACRES _____ x CONSUMPTIVE VOL. AF/A FOR AREA _____ =

TOTAL CONSUMPTIVE USE _____ AF/A

4. CALCULATIONS FOR USES OTHER THAN IRRIGATION: SEE BELOW (__) OR SEE ATTACHMENT (__)

NOTES:

WR RECORD CONDITIONS/REMARKS:

RECOMMENDATIONS: CHECK HERE IF RECOMMENDED AS CLAIMED (___)

REC. PURPOSE OF USE	REC. PERIOD FROM	TO	REC. DIV RATE CFS DATABASE	EXAMINER	REC. DIV VOL. AF/A DATABASE	EXAMINER	REC. CONS. USE DATABASE	EXAMINER
IRRIGATION	04-01	11-01	2.510				0.0	
STOCKWATER	01-01	12-31	0.060		3.29		0.0	
TOTAL FOR THIS RIGHT			2.570		3.29		0.0	

NON-IRRIGATION USES CLAIMED: S/150 HD.

NON-IRRIGATION USES RECOMMENDED: CHECK HERE IF RECOMMENDED AS CLAIMED (___)

REVIEWED BY: _____ DATE: _____

FLAG: ____

STANDARD CONDITIONS (CODE):

STANDARD REMARKS (CODE):

See profile report

EXPLANATORY CONDITIONS (CODE):

N08

EXPLANATORY REMARKS (CODE):

A. CHECK ONLY THE FOLLOWING THAT APPLY:

	ACCEPTED AS CLAIMED	NEEDS REVIEW
OWNERSHIP _____	(✓)	( )
FORFEIT/ABANDON _____	( )	( )
ADDITIONAL DIV. AMOUNT _____	( )	( )

B. SPLIT WATER RIGHT REVIEW N/A

ROOT WATER RIGHT NUMBER: 65-08850

TOTAL DIVERSION RATE OF WR SPLITS — DATABASE 2.570 — EXAMINER _____ CFS

SPLITS:

OLD RIGHT NUMBERS	CURRENT CLAIM NUMBERS	DIVERSION RATE	CURRENT "R" CLAIM NUM.	"R" DIV. RATE	WR RIGHT NUMBERS	DIVERSION RATE
-	A65-08850	2.570	-		65-08850	2.570
	TOTAL CFS	2.570				2.570

DIVERSION RATE REVIEW

	DATABASE	FIELD EXAMINER
DO THE SUM CFS RATE OF THE SPLITS EQUAL THE ROOT RIGHT CFS RATE? (Y/N)	Y	Y(___) N(___)
IF NO, IS THE WRITTEN REVIEW DESCRIBED BELOW (___) OR SEE ATTACHMENT (___)?		

NOTES:

AUTHENTICATION:

SIGNATURE: Mel Lehulte DATE: 10-12-99

NAME OF FIELD EXAMINER: _____ TITLE: _____

AJ5815NP

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM POU REVIEW REPORT

DATE: 10/12/99

OPTION: IRRIGATION USES ONLY

ADJUDICATION CLAIM NUMBER: A65-08850

A. ROOT WATER RIGHT NUMBERS: A65-08850

B. POU LISTING

TWP	RNG	SEC	1/4	1/4	LOT	NAME	AJ #/USE/ACRES		WR #/USE/ACRES		LANDSAT DATA
09N	04E	35	NE	SW	6	BARNES TRUST, JON L	A65-08850	/01/27.0	65-08850	/01/27.0	38.0
			NE	SW	6	BARNES TRUST, JON L	A65-11324	/01/35.0	-	/ /	
09N	04E	35	NW	SW	5	BARNES TRUST, JON L	A65-08850	/01/51.0	65-08850	/01/51.0	46.0
			NW	SW	5	BARNES TRUST, JON L	A65-11324	/01/48.0	-	/ /	
09N	04E	35	SW	SW		BARNES TRUST, JON L	A65-08850	/01/10.0	65-08850	/01/10.0	7.0
			SW	SW		BARNES TRUST, JON L	A65-11324	/01/10.0	65-11324	/01/10.0	
			SW	SW		MCKIE, EARL	R65-05682	/01/ 4.0	65-05682	/01/ 4.0	
			SW	SW		MCKIE, EARL	A65-05682A	/01/ 4.0	-	/ /	
09N	04E	35	SE	SW		BARNES TRUST, JON L	A65-08850	/01/ 8.0	65-08850	/01/ 8.0	13.0
			SE	SW		BARNES TRUST, JON L	A65-11324	/01/10.0	65-11324	/01/10.0	
			SE	SW		MCKIE, EARL	R65-05682	/01/16.0	65-05682	/01/16.0	
			SE	SW		BARNES, JON L	A65-05682B	/01/16.0	-	/ /	
09N	04E	35	SW	SE	7	BARNES TRUST, JON L	A65-08850	/01/ 7.0	65-08850	/01/ 7.0	8.0
			SW	SE	7	BARNES TRUST, JON L	A65-11324	/01/ 7.0	-	/ /	
			SW	SE	7	DONLEY, DOUGLAS	A65-10539	/01/14.0	65-10539	/01/14.0	
			TOTAL ACRES			A65-08850		103.00		103.00	112.00

POU COUNTY: BOISE

POD overlaps

SD-0605-2 Township: 08N Range: 04E Section: 2 Tract: SWNE Lot:

Max # Records 15

SEL	Tract	LOT	RDV	Water Right No.	STATE Name Last, First	OWN	ST	Priority Date	Source	Total Diversion
	SWNE			A65-05696	HUTCHISON, ORI	C	D	04/01/1966	ALDER CREEK	0.04
					HUTCHISON, WIL	C			COSKI CREEK	
	SWNE			A65-08850	BARNES, LARRY	O	J	04/01/1900	ALDER CREEK	2.57
					CHENEY RCH MGR	O				
					BARNES TRUST,	C				
					JOHNSTON TRUST	C				
					BARNES TRUST,	C				
					GIRDNER TRUST,	C				
					BARNES TRUST,	C				
	SWNE			A65-05633	MURRAY, DORA	C	J	04/01/1900	ALDER CREEK	5.27
					CANADAY, GUY	C			CHARTERS CR	
									COSKI CREEK	

(Enter=Continue) (GOLD7=This Query) (Menu _____)

INDICATES TOTAL SOURCE: ALDER CREEK TRIBUTARY TO: SOUTH FORK, PAYETTE RIVER

RIGHT NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM	USE PERIOD TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR RIGHT
65-5633	MURRAY, DORA & CANADAY, GUY GARDEN VALLEY, IDAHO 83622 REMARKS: THIS RIGHT WHEN COMBINED WITH RIGHT 65-12001 SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.	4/ 1/1900	IRRIGATION	4/ 1	11/ 1	--- AFA 5.27 CFS	SWNE S 2 T 8N R 4E SENW S34 T 9N R 4E NESE S34 T 9N R 4E	SWNE(40) SENW(6) NESE(19) NWSE(8) NENW(40) LOT 2(36) LOT 3(50) S34 T 9N R 4E LOT 7(17) S27 T 9N R 4E *216*	BENEFICIAL USE
65-10925	YENSEN, ELZIE & LINDSTROM, SHIRLEY BOX 12, GARDEN VALLEY, IDAHO 83622	9/15/1910	IRRIGATION	4/ 1	11/ 1	--- AFA .10 CFS	SESE S10 T 8N R 4E	SESE(1) S10 T 8N R 4E NENE(4) S15 T 8N R 4E *5*	BENEFICIAL USE
			STOCKWATER	1/ 1	12/31	.20 AFA .02 CFS *17.70*AFA *.10*CFS		SAME AS OTHER USE	
65-10539	DONLEY, DOUGLAS & DONLEY, JANICE GARDEN VALLEY, IDAHO 83622	5/ 1/1911	IRRIGATION	4/ 1	11/ 1	--- AFA .30 CFS	LOT 7 S35 T 9N R 4E SWSE S35 T 9N R 4E	LOT 7(14) S35 T 9N R 4E *14*	BENEFICIAL USE
65-8850	BARNES, LARRY B. & CHENEY, RCH. MGR., CHARLES BOX 2797, BOISE, IDAHO 83701 REMARKS: THIS RIGHT WHEN COMBINED WITH RIGHT 65-11329 SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.	6/ 1/1920	IRRIGATION	4/ 1	11/ 1	--- AFA 2.51 CFS	SWNE S 2 T 8N R 4E	SWSW(10) SESW(8) LOT 7(7) LOT 5(51) LOT 6(27) S35 T 9N R 4E *103*	BENEFICIAL USE
			STOCKWATER	1/ 1	12/31	3.29 AFA .06 CFS *---*AFA *2.57*CFS		SAME AS OTHER USE	
65-5682	MC KIE, EARL & MC KIE, GENEVA C. BOX 208, MERIDIAN, IDAHO 83642	6/ 1/1920	IRRIGATION	4/ 1	11/ 1	--- AFA 2.92 CFS	SESW S 2 T 8N R 4E	SWNW(1) SENW(34) NESW(4) LOT 2(5) LOT 3(40) LOT 4(17) S 2 T 8N R 4E SWSW(4) SESW(16) S35 T 9N R 4E *121*	BENEFICIAL USE
65-11001	VOGEL, MARJORIE 3916 WEST CLEMENT, BOISE, IDAHO 83704	4/ 1/1935	DOMESTIC	1/ 1	12/31	1.20 AFA .02 CFS	SESE S10 T 8N R 4E	SESE S10 T 8N R 4E	BENEFICIAL USE

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

September 19, 1994

JON L BARNES
PO BOX 2797
BOISE ID 83701

RE: Alder Creek Water Right Nos. 65-05633 and 65-08850

Dear Mr. Barnes:

In response to your letter of August 23, 1994 requesting assistance in the delivery of the above-referenced rights, I have reviewed the records available for each right.

Snake River Basin Adjudication (SRBA) claim files A65-05633 and A65-08850 representing these rights do show identical priority dates of 4/1/1900. However, these rights are not previously adjudicated. Claims to both rights were dismissed without prejudice in the 1986 Payette Adjudication (see attached Order). The rights were included in the final Payette Decree with beneficial use (non-adjudicated) status and with unresolved objections. The dates of priority or uses under the rights have not been verified. Our office cannot assist in the delivery or regulation of unadjudicated rights within a decree area.

Alder Creek is situated within a non-active area of the Payette River Water District. Watermaster control in non-active areas may be established by petitioning the District for the assignment of a Deputy Watermaster, with all costs borne by the affected water users. However, per Idaho Code 42-607, Watermasters or their designees may not deliver rights which are not adjudicated, or represented by decree, license or permit on file with the Department of Water Resources. As unadjudicated rights, the two above-referenced rights would not be able to be delivered even if a Watermaster was called. These rights may be adjudicated at your option pursuant to I. C. 42-1405, through District Court in Twin Falls, Idaho, but IDWR would likely object to a petition filed at this time. The rights as claimed are tentatively scheduled to be verified in SRBA in 1996 or 1997.

MICROFILMED
OCT 21 1996

Our office will take no further action in this matter at this time. A copy of this correspondence and your request will be placed in claim file no. A65-08850 for future reference.

Please feel free to contact this office if you have further questions.

Sincerely,

Cindy Hodges

Cindy Hodges
Sr. Water Resource Agent

Enclosure

MICROFILMED
OCT 21 1996

POOR ORIGINAL

Filed
January 4, 1989
1:16 P.M.
Merald Webster, District Judge

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR GEM COUNTY

IN THE MATTER OF THE GENERAL DETERMINATION OF THE RIGHTS TO THE USE OF SURFACE AND GROUND WATER OF THE PAYETTE RIVER DRAINAGE.	Civil Case No. 3667 ORDER DISMISSING CLAIMS WITHOUT PREJUDICE

The motion of the director of the Idaho Department of Water Resources pursuant to I.R.C.P. 41(a)(2) to dismiss certain undecreed water right claims in the Payette Adjudication has been heard by the court.

It is hereby ordered that the following claims be dismissed without prejudice in the Payette Adjudication:

~~65-5631~~ (claimed by Guy and Marilyn Canaday and George and Dora Murray)
~~65-8650~~ (claimed by Larry B. Barnes)

DATED this 4 day of January, 1988.

Merald Webster
For JIM R. DOOLITTLE
District Judge

Post-It™ brand fax transmittal memo 7671 | # of pages ▸ 1

To CINDY H.	From DON S.
Co. IDWR	Co.
Dept. WESTERN REG	Phone # 327-7932
Fax #	Fax #

MICROFILMED
OCT 21 1990

POOR ORIGINAL

CONVERSATION MEMORANDUM

DATE 9/6/94

FILE Complaint - Alder Creek

NAME OF PARTY Christopher Clark 345-7515

EMPLOYEE Steve Lester

Same # as Jon Barnes (CB Industries)

RE: 8/23/94 Complaint Letter

Requesting on-site visit. Although this is typical scenario where Watermaster (#65) control can be established via WM deputy for the creek (currently part on NON-active portion of water district), good idea to inspect in person with J. Barnes &/or C. Clark. Also invite McCullen if can contact (Ø via AJQ1 or AJS for A65-05633).

Probably not realistic to expect WM control prior to next irrig. season but inspection with follow-up letter might help ease the alleged problem.

See copy of Alder Ck rights from decree. Also, are there post-decree rights on Creek? Note that div. are not equal as stated in letter.

WM control means all users on creek would be subject to controllable measurable diversions & initial costs. Then beneficiaries would pay costs in subsequent years based on deliveries.

to Do

CALL for appt. to visit: Jon Barnes 866-0747 (Cellular #) left msg 9/12/94 on " " or C. Clark 345-7515 & McCullen if can locate (via assessor)

If to visit to discuss - Not req'd. Both claims dismissed - not adjudicated

Follow-up letter to summarize options (w/ copy to WM) Not necessary

MICROFILMED
OCT 21 1996

RECEIVED
AUG 2 4 1994
WATER RESOURCES
WESTERN REGION

JON L. BARNES
P.O. BOX 2797
1401 SHORELINE DRIVE
BOISE, IDAHO 83701
FACSIMILE NO.: (208)345-7028
TELEPHONE NO.: (208)345-7515

August 23, 1994

CERTIFIED MAIL
Return Receipt Requested

State of Idaho
Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705-5082

Attention: Appropriation Section

RE: Water Right Dispute

Dear Sir or Madam:

I am writing on behalf of the Jon L. Barnes Trust, the Frank B. Barnes Trust, the Julie Barnes Johnston Trust, the Cecily Barnes Cooper Trust and the Lori Lou Barnes Girdner Trust (collectively, the "Barnes Family Trusts") which in combination own a ranch (the "Barnes Ranch") located near Garden Valley in Boise County, Idaho. Said ranch has several appurtenant water rights. Among them, a water right which has its source at Alder Creek and has a Snake River Basin adjudication number of A65-08850. Water right A65-08850 has an April 1, 1900, priority date.

This letter is being sent to you to request your evaluation of a water right dispute involving A65-08850. The problem we are experiencing has been an ongoing problem for the last two or three water seasons and relates to the use of water by our neighboring land owner, Mr. John McCullum. Mr. McCullum recently acquired a neighboring ranch from Dora Murray and Guy Canaday. Said ranch also claims a water right to use water from Alder Creek which has the same priority date as the Barnes Ranch, April 1, 1900. Mr. McCullum's relevant water right is designated by the Snake River Basin adjudication number of A65-05633. Unfortunately, even though both of the above designated water rights have the same priority date, Mr. McCullum, as the upstream property owner, has taken it upon himself to dam up the water flow and is currently using 100% of the water available in Alder Creek in disregard of our request that he allow us to have our requisite portion of said water.

MICROFILMED
OCT 2 1 1996

Steve ✓

Could your staff
plz check out?

Thanks,
Dave

Accordingly, it is requested that you proceed to examine the usage of water under these two water rights and if appropriate, intercede to prohibit Mr. McCullum from continuing to consume water in disregard of our water right.

Thank you very much for your time and attention to this matter.

Very truly yours,

Jon L. Barnes (on behalf of the above referenced Barnes Family Trusts))

KC/JLB/vw

cc: Larry B. Barnes
Joe D. Davis
Christopher W. Clark

8-4-017 94

MICROFILMED
OCT 21 1996

February 4, 1992

Christopher Clark
L.B. Industries, Inc.
PO Box 2797
Boise, ID 83701

SUBJECT: Notice of Claim to a Water Right, A65-08850

Dear Mr. Clark:

In regard to our telephone conversation of February 3, I have enclosed three proof reading reports. These reports are for adjudication claims A65-05633, A65-10539 and A65-10925. Also enclosed are the maps corresponding to each place of use.

These proofs indicate how the claimants' water usage was claimed in the Snake River Basin Adjudication (SRBA). If you have a disagreement with the claimed water usage you may want to file an exception at this time. We will be reviewing these claims during the basin 65 review period and at that time a determination will be made regarding the priority claimed on A65-08850. In the meantime, we have your letter of February 8, 1990 on record, along with the evidence you sent supporting the 1900 priority date claimed on the Alder creek usage.

If you have any questions feel free to contact me again. I will also enclose a copy of our tentative SRBA report sequence.

Sincerely,

Linda A. Werner
Sr. Water Resource Agent
Adjudication Section

Enclosures

MICROFILMED
SEP 2 3 1992

CONVERSATION MEMORANDUM

DATE 2-4-92

FILE A65-8850

NAME OF PARTY Kit Clark

EMPLOYEE Linda Werner

RE: C. Claimant called w/concerns as to how this claim was recommended in the P.R.B.A. The claimed priority date was contested. Turns out that the objection was dismissed w/out prejudice so we will look at this again in the SRBA. He is concerned as to how to deal w/the water usage in the interim. He is expecting problems this summer w/a new neighbor.

I told him that at this time there was not much we could do. He will be sending in an exception letter to the neighbors usage. Since he doesn't know the new neighbors name he asked that I send him some info. on claim numbers A65-5633, A65-10925 & A65-10539 which may yield the necessary info.

MICROFILMED
SEP 2 3 1992

To: A65-08850
From: Linda Werner
Date: 2/14/90
RE: Affidavits submitted in support of change in priority date.

I received a call on 2/2/90 from Christopher Clark, corporate attorney for L.B.I. Industries in regard to water right A65-08850 filed by the Jon L. Barnes Trust. Mr. Clark was concerned because they had previously amended the priority date on the above claim from June 1, 1920 to April 1, 1900 and wanted assurance that the documents he was submitting would be accepted as supporting evidence.

After checking with Jo Beeman regarding this matter I found that this claim was filed in the Payette River Adjudication and was dismissed without prejuidice. The priority date was recommended to be 4/1/1900. Although why this was not reflected in the data base I do not know.

Mr. Clark submitted to me copies of the same documents which were submitted in the PRBA. However, there may be other documents regarding this on file at the state office. Jo Beeman was the attorney handling the matter during the PRBA and she would have access to these records.

MICROFILMED
SEP 2 3 1992

L&B INDUSTRIES, INC.
Telephone (208) 345-7515
Telex 150059 FAX (208) 345-7028
1401 Shoreline Dr • P O Box 2797 • Boise, Idaho 83701

RECEIVED
FEB 12 1990
Department of Water Resources
Western Regional Office

February 8, 1990

Ms. Linda Werner
Idaho Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705

Re: The General Adjudication Rights For the Use of Water from the Snake River Basin Water System - Case No. 39576 in the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls Water Right Claim No. 65-8850

Dear Ms. Werner:

This will confirm our telephone conversation of Wednesday, February 7, 1990, regarding the above referenced water right claim filed by members of the Barnes family (a copy of which is attached hereto as Exhibit "A"). As we had previously discussed, this particular claim was originally submitted in the Payette River Adjudication (Civil No. 3667), however, no decree was ultimately entered in this matter. A review of copies of documents contained in the Department of Water Resources files does show, however, that the Department of Water Resources has recommended a priority date for this water right of April 1, 1900. Although you have informed me that copies of the prior documentation submitted in the Payette River Adjudication (Civil No. 3667) will be transferred to the Snake River Adjudication (Civil No. 39576), I am enclosing letters dated July 20, 1989 and August 22, 1989 from Jodi I. Schultz, Secretary/Records Manager, Department of Water Resources which include court documents that specifically reference the recommendation by Michael H. Hyer, Deputy Attorney General of the Department of Water Resources, of a priority date of April 1, 1900 for Water Right Claim No. 65-8850. Also enclosed are copies of other original documents from the Payette River Adjudication (Civil No. 3667) which were received from Josephine P. Beeman, Deputy Attorney General on November 9, 1989 regarding water right Claim No. 65-8850.

MICROFILMED
SEP 23 1992

If additional documentation is necessary to show the change of title from the late 1800's through the date of the filing of a water right claim within the above referenced Snake River Adjudication, it is my understanding that the claimants that are referenced in Exhibit "A" will have the opportunity to submit such documentation.

If my interpretation of your comments during our February 7, 1990 telephone conversation (as referenced herein) are incorrect regarding the transfer of original documentation from the Payette River Adjudication (Civil No. 3667) to the Snake River Adjudication (Civil No. 39576) or the ability of the claimants to submit additional information regarding title to property as a function of the right to claim the water right referenced as Claim No. 65-8850, please advise me immediately.

Very truly yours,

Christopher W. Clark
Attorney for Jon L. Barnes, Trust;
Julie Barnes Johnston, Trust;
Cecily Barnes, Trust;
Lori Lou Barnes Girdner, Trust;
Frank B. Barnes, Trust

CWC/vw

Enclosures

cc: Jon B. Barnes
Josephine P. Beeman, Deputy Attorney General
Department of Water Resoures
1301 North Orchard Street
Boise, Idaho 83720
Joe Davis

MICROFILMED
SEP 23 1992

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 327-7900

AUG 23 1989

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

August 22, 1989

Christopher Clark
LB Industries
P.O. Box 2797
Boise, Idaho 83701

Dear Mr. Clark:

Pursuant to your request, enclosed are copies of documents from the Barnes adjudication file.

If I can be of further service, please feel free to contact me.

Sincerely,

Jodi I. Schultz

JODI I. SCHULTZ
Secretary/Records Manager
Department of Water Resources

Encl.

MICROFILMED
SEP 23 1992

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 327-7900

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

July 20, 1989

Christopher Clark
LB Industries
P.O. Box 2797
Boise, Idaho 83701

Dear Mr. Clark:

Pursuant to your request, enclosed is a copy of the Notice of Claim to a Water Right, No. 65-8850 for Larry B. Barnes and/or Charles Cheney.

If I can be of further assistance, please feel free to contact this office.

Sincerely,

Jodi I. Schultz

JODI I. SCHULTZ
Legal Secretary
Department of Water Resources

Encl.

MICROFILMED
SEP 2 3 1992

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705 - (208) 334-2190

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

April 17, 1989

Jon L. Barnes
1401 Shoreline Dr.
Boise, ID 83702

Dear Mr. Barnes;

I have received your letter dated April 13, regarding the priority date for adjudication claim number A65-08850.

In reviewing this claim for modification I noticed it was for irrigation of 103 acres. In view of this, the fee would be $153.00, rather than $25.00. This is based on a flat $50.00 rate for the irrigation claim plus $1.00 per irrigated acre.

I apologize for this inconvenience. Since we have received $25.00, if you would remit $128.00 for the balance, I will be glad to amend the priority date and will send you a copy of the amended claim.

Sincerely,

Linda A. Werner

Linda A. Werner
Sr. Water Resource Agent
Adjudication Section

Enclosure

RECEIVED
Department of Water Resources
Western Regional Office

Payment of $128.00 approved 4-21-89 ewc

MICROFILMED
SEP 2 3 1992

Jon L. Barnes

1401 Shoreline Drive • Boise, Idaho 83702

RECEIVED
APR 14 1989
Department of Water Resources
Western Regional Office

April 13, 1989

Ms. Linda Werner
Idaho Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705

Re: Water Rights Identification No. A65-08850

Dear Ms. Werner:

Enclosed herewith you will find a check in the amount of $25.00 to pay for the filing fee relating to the above referenced water right claimed by members of the Barnes' family in "The General Adjudication Of Rights To The Use Of Water From The Snake River Basin Water System", Civil Case Number 39576. This letter shall also confirm our telephone conversation of Tuesday, April 11, 1989 regarding my request that the date of priority as referenced in the claim to a water right reference the priority date of April 1, 1900 as opposed to the current referenced priority date of June 1, 1920.

As soon as the specific documentary evidence can be compiled to support the claimed April 1, 1900 priority date, that information will be submitted to the Idaho Department of Water Resources Adjudication Bureau for review and analysis.

Upon modification of the claimed water right priority date, please return to me a copy of the amended claim for our records.

Very truly yours,

Jon L. Barnes

JLB/vw

Enclosures

cc: Kit Clark

MICROFILMED
SEP 23 1992

MEMO TO: 65-8850
FROM: FEL 10/27/78

PODRLK DESCRIBED OWNERSHIPS IN RECORDS FROM BOISE CO. IN THESE SECTIONS, BUT 1964 PHOTO DHU-1EE-140 INDICATES AN APPROXIMATE TOTAL OF 103 ACRES IRRIGATED UNDER THIS RT. AND GRAVITY SYSTEM. THE 1975 U-2 PHOTO INDICATES APPROXIMATELY [redacted]-110 ACRES WHICH WOULD REFLECT EXPANSION OF ACREAGE UNDER A LAPSED 1966 PERMIT FOR PUMPING FROM THE SO. FK. BY JAMES WAUGH. THEREFORE RECOMMENDING 103 ACRES FOR ALDER CK. RT. 85
B/D CLAIM SOLICITED ON RT FR. SO. FK.

IN THE [redacted] COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

RECEIVED Boise
FEB 7 1974
Department of Water Administration

IN THE MATTER OF THE GENERAL DETERMINATION OF THE RIGHT TO THE USE OF THE SURFACE AND GROUND WATERS OF THE PAYETTE RIVER DRAINAGE BASIN

NOTICE OF CLAIM TO A WATER RIGHT

IDENT. NO. 65-8850 MAP NO.

Notice is hereby given that Larry B. Barnes &/or Charles Cheney: Ranch Manager (Name of Claimant)

Box 2797, Boise, Idaho 83701 (Mailing Address), claims a right to the diversion and beneficial use of the surface or groundwater, of or tributary to the Payette River;

The extent and nature of said claim is as follows:

(1) Date of priority: (When was the water first applied to a beneficial use, or date that permit was issued) JAN 1, 1920

(2) Describe source of water: (Name of stream, lake, spring, etc., or subterranean) Alder Creek, (trib. to So. Fk. Payette River)

(3) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed: (Both Dates Inclusive)

Use Irrigation (Domestic, irrigation, stock, etc.) 2.51 CFS Period of Use From April 1 (Mo., Day) To Nov. 1 (Mo., Day)

Use Stockwater (Domestic, irrigation, stock, etc.) 1.06 CFS Period of Use From Jan. 1 (Mo., Day) To Dec. 31 (Mo., Day) (Both Dates Inclusive)

Use _____ (Domestic, irrigation, stock, etc.) 3.57 CFS Period of Use From _____ (Mo., Day) To _____ (Mo., Day)

(4) Quantity of water claimed: _____ Cubic Feet Per Second, or _____ Acre Feet Per Annum, and/or _____ Gals. Per Minute.

(5) A) Point of Diversion: Give location of point where water is diverted from its source SW ¼ NE ¼, Sec. 2, Twp. 8 N, Rge. 4 E, B.M.; additional points:

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.) Give sizes and capacities; be as specific as possible. Concrete diversion structure with ½ mile ditch & gravity system.

(6) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

T	R	SEC.	NE¼				NW¼				SW¼				SE¼				TOTAL
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
9N	4E	35						Lot 6				Lot 5							
		34														Lot 7			
9N	4E	35								Lot 6 27			10	8		7			
										Lot 5 38									

Total No. of acres 103

B) If water is used for other than irrigation, fully describe that use, being as specific as possible: Stockwater for 200 beef cattle.

(7) Effluent, sewage waste, or return water from this use is discharged into

(8) If you are claiming water as a member of an organization, list name of organization.

(9) Remarks This use right is for 1/3 of 3/4 of the water of Alder Creek but cannot exceed 3.83 c.f.s. Supplemental right from S. F. Payette covers same grounds. (THIS RT. WHEN COMBINED WITH RT # 65-11329 SHALL PROV. NO MORE THAN .02 CFS

(10) Basis of claim (Check one) ☒ A) Right based on diversion and beneficial use. DH 82

☐ B) Right decreed by court, cite title of case

☐ C) Right based on application, license, or claim filed with State Reclamation Engineer, Office No.

Be it known that the undersigned, after being duly sworn on oath, depose(s) and say(s) that all statements included herein are true and accurate to the best of (his, her, their) knowledge.

February 7, 1974 (Date)

KEYPUNCHED 10-30-18 cm 11-7-18 cm

Individual

(Signature of Claimant)

(Signature of Spouse)

Organization

(Signature of Authorized Agent)

State of Idaho
County of Ada } ss.

Organization Seal

On this 7 day of February, in the year 1974, before me, a notary public, personally appeared [illegible] known to me to be the person(s) whose name(s) are subscribed to the above instrument, and acknowledged to me that (he, she, they, corporation, partnership or) executed the same.

Notary Public residing at Boise, Idaho

My commission expires June 15, 1977

adj. claim by Linda Werner 65-0 8850

1301 North Orchard

PHILLIP J. RASSIER
JOSEPHINE P. BEEMAN
Deputy Attorneys General
Department of Water Resources
Statehouse
Boise, Idaho 83720
Telephone: (208) 334-4448

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR GEM COUNTY

IN THE MATTER OF THE GENERAL DETERMINATION OF THE RIGHTS TO THE USE OF SURFACE AND GROUND WATER OF THE PAYETTE RIVER DRAINAGE.	Civil Case No. 3667 STIPULATION RESOLVING OBJECTION OF LARRY B. BARNES

COME NOW R. Keith Higginson, Director of the Idaho Department of Water Resources; Larry B. Barnes; George and Dora Murray ("Murrays"), husband and wife; and Guy and Marilyn Canaday ("Canadays"), husband and wife; through their respective counsel, stipulate that water right No. 65-8850 have its priority date changed from 6/1/1920 to 4/1/1900. The 1900 priority date is the same as for water right No. 65-5633 held by the Murrays and Canadays. Both these water rights divert from Alder Creek (tributary to the South Fork, Payette River) with a similar distribution system. This stipulation resolves the objection of Larry B. Barnes which was allowed to be filed by order of District Judge

Gilbert C. Norris in May 1980.

DATED this _____ day of _____, 1988.

JIM JONES
Attorney General

JOSEPHINE P. BEEMAN
Deputy Attorney General
Idaho Department of Water Resources

DATED this _____ day of _____, 1988.

BERNE JENSEN
Counsel for Larry B. Barnes

DATED this 17th day of November, 1988.

DALE HIGER
Counsel for George and Dora Murray and Guy and Marilyn Canaday

The above stipulation having come before the court, it is hereby approved this _____ day of _____, 1988.

JIM R. DOOLITTLE
District Judge

The above stipulation having come before the court, it is hereby approved this _____ day of _____, 1988.

_____
JIM R. DOOLITTLE
District Judge

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
BOISE 83720

JIM JONES
ATTORNEY GENERAL

DEPARTMENT OF WATER RESOURCES
STATEHOUSE, BOISE IDAHO 83720
TELEPHONE (208) 334-4448

July 1, 1987

Berne Jensen, Esq.
Attorney at Law
P.O. Box 454
Boise, Idaho 83701

Re: Payette Adjudication - (Gem Co. Civil No. 3667)
Stipulation Resolving the Objection of Larry B. Barnes

Dear Mr. Jensen:

I am enclosing for your signature a stipulation resolving the objection of Larry B. Barnes in the above referenced case. The stipulation asks that the priority date for water right 65-8850 held by the Barnes be changed from 6/1/1920 to 4/1/1900, which is the priority date of right 65-5633 which is the right held by the Murrays and the Canadays.

Within a few months, Water Resources intends to file a motion seeking a partial decree incorporating this stipulation. You will be notified of the hearing.

Once you have signed the stipulation, please forward it to Dale Higer for his signature. He will then forward it to Judge Doolittle for his signature and ultimately, the clerk of the court in Emmett for filing. I have enclosed letters and postage-paid envelopes to Dale Higer, Judge Doolittle and the clerk. I have requested that you, Dale Higer and I receive conformed copies of the signed stipulation once it has been filed.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Very truly yours,

Jo Beeman

JOSEPHINE P. BEEMAN
Deputy Attorney General
Idaho Department of
Water Resources

JPB:dc

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
BOISE 83720

JIM JONES
ATTORNEY GENERAL

DEPARTMENT OF WATER RESOURCES
STATEHOUSE BOISE IDAHO 83720
TELEPHONE (208) 334-4448

July 1, 1987

Dale Higer, Esq.
EBERLE, BERLIN, KADING,
TURNBOW & GILLESPIE
P.O. Box 1368
Boise, Idaho 83702

Re: Payette Adjudication - (Gem Co. Civil No. 3667)
Stipulation Resolving the Objection of Larry B. Barnes

Dear Mr. Higer:

I am enclosing for your signature a stipulation resolving the objection of Larry B. Barnes in the above referenced case. The stipulation asks that the priority date for water right 65-8850 held by the Barnes be changed from 6/1/1920 to 4/1/1900, which is the priority date of right 65-5633 held by your clients, the Murrays and Canadays.

Within a few months, Water Resources intends to file a motion seeking a partial decree incorporating this stipulation. You will be notified of the hearing.

Once you have signed the stipulation, please forward it to Judge Doolittle for his signature. He will then forward it to the clerk of the court in Emmett for filing. I have enclosed letters and postage-paid envelopes to Judge Doolittle and the clerk of the court in Emmett. I have requested that you, Berne Jensen and I receive conformed copies of the signed stipulation once it has been filed.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Very truly yours,

Jo Beeman

JOSEPHINE P. BEEMAN
Deputy Attorney General
Idaho Department of
Water Resources

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
BOISE 83720

JIM JONES
ATTORNEY GENERAL

DEPARTMENT OF WATER RESOURCES
STATEHOUSE BOISE IDAHO 83720
TELEPHONE (208) 334 4448

June 30, 1987

Honorable Jim R. Doolittle
District Judge
1115 Albany
Caldwell, Idaho 83605

Re: Payette Adjudication (Gem Co. Civil No. 3667):
Stipulation Resolving Objections of Larry B. Barnes

Dear Judge Doolittle:

Enclosed is a stipulation signed by counsel for the Idaho Department of Water Resources, counsel for Larry B. Barnes and counsel for the George and Dora Murray and Guy and Marily Canady. The parties are stipulating that the priority date for water right number 65-8850 be changed from 6/1/1920 to 4/1/1900. If you would also sign the stipulation and forward it to the court clerk in Emmett, I would appreciate it. I have enclosed a letter to the clerk and a postage-paid envelope.

Within a few months, Water Resources intends to file a motion with you seeking a partial decree incorporating the stipulations already finalized and the stipulations we anticipate finalizing to settle the outstanding matters in the Payette Adjudication.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Very truly yours,

Jo Beeman

JOSEPHINE P. BEEMAN
Deputy Attorney General
Department of Water Resources

JPB/dc
Enclosure

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
BOISE 83720

JIM JONES
ATTORNEY GENERAL

DEPARTMENT OF WATER RESOURCES
STATEHOUSE BOISE IDAHO 83720
TELEPHONE (208) 334-4448

June 30, 1987

Thelma Kolodziej
Clerk of the District Court
Gem County Courthouse
Emmett, Idaho 83617

Re: Payette Adjudication (Gem Co. Civil No. 3667)
Stipulation of Water Resources and Larry B. Barnes

Dear Thelma,

Enclosed for filing with the court is an original of the stipulation signed by counsel for Larry B. Barnes, counsel for George and Dora Murray and Guy and Marilyn Canaday, counsel for the Idaho Department of Water Resources, and Judge Doolittle.

Please file this document in the above-entitled matter. Also enclosed are three copies of the document. Please conform the copies and return one to Berne Jensen, one to Dale Higer and one to me. Self-addressed stamped envelopes are enclosed.

Thank you for your assistance.

Sincerely,

Jo Beeman

JOSEPHINE P. BEEMAN
Deputy Attorney General
Department of Water Resources

JPB/dc

Enclosure

JIM JONES
Attorney General

PHILLIP J. RASSIER
JOSEPHINE P. BEEMAN
Deputy Attorneys General
Department of Water Resources
Statehouse
Boise, Idaho 83720
Telephone: (208) 334-4448

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR GEM COUNTY

IN THE MATTER OF THE GENERAL DETERMINATION OF THE RIGHTS TO THE USE OF SURFACE AND GROUND WATER OF THE PAYETTE RIVER DRAINAGE.	)	Civil No. 3667 STIPULATION RESOLVING OBJECTION OF LARRY B. BARNES

A. Kenneth Dunn, Director of the Idaho Department of Water Resources, Larry B. Barnes, George and Dora Murray, husband and wife, and Guy and Marilyn Canaday, husband and wife, through their respective undersigned counsel, stipulate that water right 65-8850 have its priority date changed from 6/1/1920 to 4/1/1900. The 1900 priority date is the same as for water right 65-5633 held by the Murrays and Canadays. Both these water rights divert from Alder Creek (tributary to the South Fork, Payette River) with a similar distribution system. This stipulation resolves the objection of Larry B. Barnes which was allowed to be filed by order of District Judge Gilbert C. Norris in May 1980.

DATED this 6th day of July, 1987.

JIM JONES
Attorney General

Josephine P. Beeman

JOSEPHINE P. BEEMAN
Deputy Attorney General
Idaho Department of
Water Resources

DATED this _____ day of _____, 1987.

_____
BERNE JENSEN
Counsel for Larry B. Barnes

DATED this _____ day of _____, 1987.

_____
DALE HIGER
Eberle, Berlin, Kading,
Turnbow & Gillespie
Counsel for George and Dora
Murray and Guy and Marilyn
Canaday

The above stipulation having come before the court, it is hereby approved this _____ day of _____, 1987.

_____
JIM R. DOOLITTLE
District Judge

MEMO TO: 65-8850
FROM: F.E.L 2/15/79

THIS RIGHT ON LAND WHICH WAS ORIGINALLY KNOWN AS THE WETZEL PLACE, POSSIBLY HAS A CONSIDERABLY EARLIER PRIORITY DATE. VERY POSSIBLY THE DATE SHOULD BE THE SAME ~~AS 65-5633~~, SINCE THE SUPPORTING DOCUMENTS + TRANSFERS FOR THAT PROPERTY DESCRIBE THE CHARTERS-WETZEL DITCH. HOWEVER, PHONE CONVERSATION WITH CHARLES CHANEY INDICATED THE 1920 DATE WAS THE EARLIEST WITH DEFINITE SUPPORTING EVIDENCE, THOUGH HE WAS AWARE IT WENT BACK FAR EARLIER.

02/14/79 F.E.L.

****
* MACALLISTER'S MODIFICATION OF MORITZ *
* LOSS CALCULATION FOR *
* THE ALDER CR. DIVERSION #2 *
* WATER RIGHT NO. 65-8850 *
****

Q DIVERTED: 7.84
Q DELIVERED: 6.43
PERCENTAGE LOSS: 21.9

TYPE OF SOIL: SANDY LOAM
SOIL CONSTANT= 1.50 (FEET/DAY)
LENGTH OF HEAD OF DITCH: .75
LENGTH OF DELIVERY SECTION: 1.38

LOSS TABLE FOR HEAD OF DITCH

MILE	Q (CFS)	LOSS (CFS)
.75	7.28	.56

LOSS TABLE FOR DELIVERY

MILE	Q (CFS)	LOSS (CFS)	Q DELIVERED (CFS)
1.00	1.91	.72	4.66
1.38	-.01	.14	1.77

CFS = AFA CALCS

LOSS CONSTANT FROM ABOVE 1.219

2.06 CFS x 1.219 = 2.51 CFS IRR.

2.7 AFA STK x 1.219 = 3.29 AFA STK

.05 CFS STK x 1.219 = .06 CFS STK.

)OURCE: GROUNDWATER

USE	USE PERIOD FROM	TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR CLAIM
COMMERCIAL	1/ 1	12/31	1.20 AFA .04 CFS *2.40*AFA *.06*CFS		SAME AS OTHER USE	
INDUSTRIAL	1/ 1	12/31	94.50 AFA 2.00 CFS	NENE S 7 T 6N R 1W	SAME AS OTHER USE	BENEFICIAL USE
DOMESTIC	1/ 1	12/31	5.50 AFA .04 CFS *100.00*AFA *2.00*CFS		NENE S 7 T 6N R 1W	
MUNICIPAL	1/ 1	12/31	--- AFA .27 CFS	SWSE S 4 T 7N R 4W		BENEFICIAL USE
DOMESTIC	1/ 1	12/31	1.20 AFA .04 CFS	NWSW S36 T 8N R 5W	NWSW S36 T 8N R 5W	BENEFICIAL USE
COMMERCIAL	1/ 1	12/31	361.40 AFA 1.46 CFS *362.60*AFA *1.50*CFS		SAME AS OTHER USE	
COMMERCIAL	1/ 1	12/31	24.00 AFA .20 CFS	SWNE S 7 T 6N R 1W	SWNE S 7 T 6N R 1W	BENEFICIAL USE
COMMERCIAL	1/ 1	12/31	14.40 AFA .04 CFS	SWSE S10 T16N R 3E	SWSE S10 T16N R 3E	BENEFICIAL USE

F.L.B. No. 125395

THE FEDERAL LAND BANK OF SPOKANE

Transfer of Stock to Borrower in Federal Land Bank Association, Acceptance of Assignment and Assumption of Mortgage by Purchaser and Approval of Association

KNOW ALL MEN BY THESE PRESENTS, That the undersigned, for value received, does hereby sell, assign, transfer and set over unto Larry B. Barnes

* | | | Social Security Number

all my right, title and interest in and to 133 shares of stock registered in my name in the Federal Land Bank Association of Boise which stock is held as collateral security in connection with the above designated mortgage made under the Federal Farm Loan Act and I hereby authorize and direct the officers of said Association and The Federal Land Bank of Spokane to make the necessary transfer of such stock interests, with full power of substitution.

Signed at Boise, Idaho, this 5th day of July, 19 67

James D. Wright

*Underline name to which social security number applies.

CERTIFICATE OF PURCHASE AND ELIGIBILITY AND ASSUMPTION BY PURCHASER

WHEREAS, I (we), the undersigned, have purchased of

the land described in mortgage to The Federal Land Bank of Spokane, designated by it as F.L.B. No.

given to secure a note of Dollars ($);

Now, I the undersigned, purchaser and present owner of said land, have assumed and do hereby assume said mortgage and the stock interests of said vendor in the Federal Land Bank Association named in the foregoing assignment, and hereby make application for membership in said Association.

I further certify that the terms of said purchase of said lands are as follows:

Cash - $

By assuming mortgage to said Federal Land Bank - - - - - - - - - - - - - $

By assuming or executing other mortgages - - - - - - - - - - - - - - $

By trading other property, cash value of which is - - - - - - - - - - - $

- $

Total purchase price - - - $

Dated , 19

Important: Give permanent P. O. Address:

(Joint purchasers should all sign this certificate. In case of joint ownership, all joint owners should be elected to membership and one joint owner must be designated to act in association affairs and a power of attorney must be executed by all joint owners authorizing him so to act.)

ELECTION TO MEMBERSHIP

The undersigned Loan Committee of the Federal Land Bank Association of , by unanimous vote, at a meeting held on this day of , 19 , approves the foregoing transfer and assumption and elects to membership in said association.

FLB FORM 418 (REV 4-64)

IN THE MATTER OF:
Lonny B Barnes
Alder Creek water use
Garden Valley

AFFIDAVIT

State of Idaho)
County of Boise)

Carl F McKee being first duly sworn, deposes and says: To the Best of My Knowledge Lonny Barnes & George Mercury Water Diversion has been in use since 1920

Carl F McKee
(signature)

Subscribed and sworn to before me this 25 day of January 1974.

Lubby Brandon
(notary public)

Residing at Boise.
My commission expires Feb 2, 1976.

REAL ESTATE CONTRACT

THIS AGREEMENT, Made and entered into this 23rd day of May, 1967, by and between JAMES E. WAUGH and DONNA J. WAUGH, husband and wife, of Meridian, Idaho, hereinafter called Sellers, and LARRY B. BARNES and LENORA B. BARNES, husband and wife, of Boise, Idaho, hereinafter called Buyers;

WITNESSETH: That for and in consideration of the covenants and agreements herein contained, Sellers agree to sell and convey unto Buyers, and Buyers agree to purchase and pay for the following described real property situate in Boise County, Idaho, to-wit:

Lots Five and Six, the North Half of the Southeast Quarter of the Southwest Quarter, the Southwest Quarter of the Southwest Quarter, Section 35; all of Lot Seven less the South ten chains, Section Thirty-five; the North Half of the East Half of the Southeast Quarter of the Southeast Quarter, the North Half of the South Half of the East Half of the Southeast Quarter of the Southeast Quarter, Section 34; all in Township 9 North, Range 4 East, Boise Meridian, containing approximately 198.10 acres; Excepting and reserving therefrom, however, that portion of Lot Seven, Section Thirty-five, Township 9 North, Range 4 East, Boise Meridian, lying East of Alder Creek, being approximately eighteen acres.

together with all appurtenances thereon or appertaining thereto of every kind and nature.

PURCHASE PRICE: It is understood and agreed that the total purchase price is the sum of $55,000.00, of which Buyers have paid Sellers the sum of $1,000.00,

constitutes a lien against the premises. Sellers are making the July 1, 1967 payment upon the mortgage to the Federal Land Bank of Spokane, and Buyers are assuming the unpaid balance of said mortgage from and after that date. At the time the contract is paid in full, the Buyers shall repay the Sellers in full for the Federal Land Bank stock held in connection with said loan, which is in the amount of $665.00.

WATER RIGHTS: It is understood that the conveyance to Buyers includes all water rights appurtenant to the property, including one-third of three-fourths of the water in Alder Creed established as a user's right upon said property, and also all of Sellers' right, title and interest in Filing Number 33049 with the State of Idaho in connection with 198 miners inches of water in the South Fork of the Payette River.

TITLE EVIDENCE: Concurrently herewith, Sellers shall furnish Buyers with a policy of title insurance showing merchantable title in Sellers in the amount of $55,000.00, subject to the existing Federal Land Bank Loan, existing ditch, road rights-of-way and existing easements and current taxes and assessments. Buyers shall have ten days from the receipt of said title insurance policy within which to have the same examined. If there are objections to Sellers' title, Sellers shall have a reasonable time, according to the nature thereof, within which to correct the same, provided said objections shall be made in writing wherein it is specified in what particulars and by what legal authority said title is not marketable. If no objections are made within said ten days, then Buyers shall be presumed to have accepted said title as merchantable. After said title insurance policy has been examined, the same shall be placed with the escrowholder.

ASSIGNING AND SUBLETTING: Buyers agree that they will not sell, assign, or otherwise transfer their interest in this contract or the real property herein described, and that they will not sublet the same without the prior written consent of the Sellers.

and the prompt performance of each and every obligation of Buyers is agreed to be of the essence of this contract, and should Buyers fail or neglect to make any payment of principal, interest, taxes and assessments, or insurance premiums when due, and before the same become delinquent, or fail or

INDICATES TOTAL SOURCE: ALDER CREEK TRIBUTARY TO: SOUTH FORK, PAYETTE RIVER

RIGHT NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM	USE PERIOD TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR RIGHT
65-5633	MURRAY, DORA & CANADAY, GUY GARDEN VALLEY, IDAHO 83622 REMARKS: THIS RIGHT WHEN COMBINED WITH RIGHT 65-12001 SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.	4/ 1/1900	IRRIGATION	4/ 1	11/ 1	--- AFA 5.27 CFS	SWNE S 2 T 8N R 4E SENW S34 T 9N R 4E NESE S34 T 9N R 4E	SWNE(40) SENW(6) NESE(19) NWSE(8) NENW(40) LOT 2(36) LOT 3(50) S34 T 9N R 4E LOT 7(17) S27 T 9N R 4E *216*	BENEFICIAL USE
65-10925	YENSEN, ELZIE & LINDSTROM, SHIRLEY BOX 12, GARDEN VALLEY, IDAHO 83622	9/15/1910	IRRIGATION	4/ 1	11/ 1	--- AFA .10 CFS	SESE S10 T 8N R 4E	SESE(1) S10 T 8N R 4E NENE(4) S15 T 8N R 4E *5*	BENEFICIAL USE
			STOCKWATER	1/ 1	12/31	.20 AFA .02 CFS *17.70*AFA *.10*CFS		SAME AS OTHER USE	
65-10539	DONLEY, DOUGLAS & DONLEY, JANICE GARDEN VALLEY, IDAHO 83622	5/ 1/1911	IRRIGATION	4/ 1	11/ 1	--- AFA .30 CFS	LOT 7 S35 T 9N R 4E SWSE S35 T 9N R 4E	LOT 7(14) S35 T 9N R 4E *14*	BENEFICIAL USE
65-8850	BARNES, LARRY B. & CHENEY, RCH. MGR., CHARLES BOX 2797, BOISE, IDAHO 83701 REMARKS: THIS RIGHT WHEN COMBINED WITH RIGHT 65-11329 SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.	6/ 1/1920	IRRIGATION	4/ 1	11/ 1	--- AFA 2.51 CFS	SWNE S 2 T 8N R 4E	SWSW(10) SESW(8) LOT 7(7) LOT 5(51) LOT 6(27) S35 T 9N R 4E *103*	BENEFICIAL USE
			STOCKWATER	1/ 1	12/31	3.29 AFA .06 CFS *---*AFA *2.57*CFS		SAME AS OTHER USE	
65-5682	MC KIE, EARL & MC KIE, GENEVA C. BOX 208, MERIDIAN, IDAHO 83642	6/ 1/1920	IRRIGATION	4/ 1	11/ 1	--- AFA 2.92 CFS	SESW S 2 T 8N R 4E	SWNW(1) SENW(34) NESW(4) LOT 2(5) LOT 3(40) LOT 4(17) S 2 T 8N R 4E SWSW(4) SESW(16) S35 T 9N R 4E *121*	BENEFICIAL USE
65-11001	VOGEL, MARJORIE 3916 WEST CLEMENT, BOISE, IDAHO 83704	4/ 1/1935	DOMESTIC	1/ 1	12/31	1.20 AFA .02 CFS	SESE S10 T 8N R 4E	SESE S10 T 8N R 4E	BENEFICIAL USE

INDICATES TOTAL SOURCE: ALDER CREEK TRIBUTARY TO: SOUTH FORK, PAYETTE RIVER

RIGHT NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM	USE PERIOD TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR RIGHT
65-2555X	LOONEY, WILLIAM O. & LOONEY, WILMA S. 9510 HALSTEAD, BOISE, IDAHO 83702	7/17/1951	IRRIGATION	4/ 1	11/ 1	--- AFA .02 CFS	SENE S15 T 8N R 4E	SENE(1) S15 T 8N R 4E *1*	LICENSE
65-2555A	RUSSELL, L. A. & RUSSELL, HAZEL ROUTE 3, BOX 136, EMMETT, IDAHO 83617	7/17/1951	IRRIGATION	4/ 1	11/ 1	--- AFA .04 CFS	SENE S15 T 8N R 4E	SENE(2) S15 T 8N R 4E *2*	LICENSE
65-10673	NEIBUHR, WENDELL O. & NEIBUHR, DANELL M. STAR ROUTE, GARDEN VALLEY, IDAHO 83622	7/ 1/1957	DOMESTIC	1/ 1	12/31	1.20 AFA .04 CFS	LOT 7 S35 T 9N R 4E	LOT7 S35 T 9N R 4E	BENEFICIAL USE
65-5696	HUTCHISON, CRIS J. & HUTCHISON, WILMA M. BOX 15, GARDEN VALLEY, IDAHO 83622 REMARKS: SOURCES FOR THIS RIGHT ARE ALDER CREEK & COSKI CREEK.	4/ 1/1966	IRRIGATION	4/ 1	11/ 1	--- AFA .04 CFS	NESE S34 T 9N R 4E SWNE S 2 T 8N R 4E	NESE(3) S34 T 9N R 4E *3*	BENEFICIAL USE
65-8650	BARNES, LARRY B. & CHENEY, CHARLES BOX 2797, BOISE, IDAHO 83701	6/ 1/1969	STOCKWATER FROM STOR	1/ 1	12/31	.50 AFA --- CFS	LOT 7 S35 T 9N R 4E	LOT7 S35 T 9N R 4E	BENEFICIAL USE
			DIVERSION TO STORAGE	1/ 1	12/31	--- AFA .02 CFS		SAME AS OTHER USE	
			RECREATION STORAGE	1/ 1	12/31	.50 AFA --- CFS		SAME AS OTHER USE	
			FISH PROP STORAGE	1/ 1	12/31	.50 AFA --- CFS		SAME AS OTHER USE	
			WILDLIFE FROM STOR	1/ 1	12/31	.50 AFA --- CFS		SAME AS OTHER USE	
						*.50*AFA *.02*CFS			
65-10864	BROWN, G. RICHARD & BROWN, BARBARA J. ROUTE 3, NAMPA, IDAHO 83651 REMARKS: THIS RIGHT WHEN COMBINED WITH RIGHT 65-10865 SHALL PROVIDE NO MORE THAN 1.2 AFA FOR HOUSEHOLD USE.	5/ 1/1970	IRRIGATION	4/ 1	11/ 1	--- AFA .04 CFS	SESE S10 T 8N R 4E	SESE(2) S10 T 8N R 4E *2*	BENEFICIAL USE
			DOMESTIC	1/ 1	12/31	1.20 AFA .02 CFS		SAME AS OTHER USE	
						*---*AFA *.04*CFS			

INDICATES TOTAL SOURCE: ALDER CREEK TRIBUTARY TO: SOUTH FORK, PAYETTE RIVER

RIGHT NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR RIGHT
65-7619	COTA, JACK G STRIEMATTER, LESTER BOX 165, ELMA, WASHINGTON 98541 REMARKS: THIS PERMIT RIGHT IS NOT DECREED BY THE PRESENT ADJUDICATION PROCEDURE, AND IS INCLUDED FOR INFORMATION PURPOSES ONLY. NORMAL STATUTORY PROCEDURES MUST BE COMPLETED FOR LICENSING.	7/ 9/1976	MINING	1/ 1 12/31	--- AFA .12 CFS	NWNE S35 T 8N R 4E	NENE NWNE S35 T 8N R 4E	PERMIT

INDICATES TOTAL SOURCE: ALLEN CREEK TRIBUTARY TO: PAYETTE RIVER

RIGHT NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR RIGHT
65-11322	PATTERSON, CAROLYN ROUTE 3, NAMPA, IDAHO 83651	6/ 1/1912	IRRIGATION	4/ 1 11/ 1	--- AFA 1.10 CFS	SWSW S17 T 9N R 4E NWNW S20 T 9N R 4E	SWSW(3) S17 T 9N R 4E NWNW(16) SWNW(17) NWSW(15) S20 T 9N R 4E *51*	DECREE
			DOMESTIC	1/ 1 12/31	2.40 AFA .04 CFS *---*AFA *1.10*CFS		SAME AS OTHER USE	
65-2325	ROTHERMEL, ALICE M. & GULDHAUG, ALICE 421 SOUTH CURTIS ROAD #18, BOISE, IDAHO 83705	7/21/1924	IRRIGATION	4/ 1 11/ 1	--- AFA .06 CFS	SESE S19 T 9N R 4E	LOT 1(3) S29 T 9N R 4E *3*	LICENSE

RECEIVED
MAR 5 1980
Department of Water Resources

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

In the Matter of the General Determination of the Rights to the Use of Service and Ground Water of the Payette River Drainage Basin.	Civil No: 3667 MOTION TO ALLOW SUBMISSION OF OBJECTION AND TO MODIFY DIRECTOR OF DEPARTMENT OF WATER RESOURCES' REPORT

COMES NOW Larry B. Barnes &/or Charles Cheney and respectfully moves the above entitled Court to consider his objections to the report filed herein by the Director of the Department of Water Resources for the State of Idaho pursuant to Section 42-1410, Idaho Code.

This motion is made on the grounds and for the reasons that new information has been discovered which has a direct bearing on the determination of water rights in this area. The recorders office of Boise County has apparently undergone a catastrophy which has eliminated certain of the earlier records regarding the initial land grant and subsequent sale of the property and related water rights in dispute. An examination of related parcels has led to the discovery of a much earlier "beneficial use" then originally reported.

The objections presented by Larry B. Barnes &/or Charles Cheney to the Director's report are made on the grounds and for the reasons that the Director in his report shows a priority date of 6/1/69, which date Probably 6/1/1920 is clearly subsequent to that shown hereafter. Exhibit "A" is a warranty deed filed approximately April 20, 1888 which makes reference to the lands and farms of one N. Wetzel and of the fact that the water rights being transferred by said 1888 deed flow from the ditch crossing the lands and farms of N. Wetzel. Through a chain of title shown on Exhibit "B" and illustrated by the corresponding warranty deeds Exhibits "C through E", Larry Barnes has acquired that same water right described in the 1888 deed attached as Exhibit "A". Further Exhibits Affidavit I and Affidavit II demonstrate that at least as far back as 1907 these waters have been in "beneficial use".

Pursuant to Section 42-1410, Idaho Code, this Court, in its sound discretion ". . . may allow such additional or amended pleadings as may be necessary for a final determination of the proceedings."

Therefore, Larry B. Barnes &/or Charles Ch ney respectfully requests that this Court grant his Motion to allow the submission of these objections to the Department of Water Resources report on the Payette River Drainage Basin, after the required sixty (60) days filing time, in order that this Court may make a complete and final determination of all water rights within this area.

In summation, Larry B. Barnes &/or Charles Cheney respectfully requests that this Court allow this submission of these objections to the Director's report on the Payette River Drainage Basin and further requests that his report be modified to reflect these objections as revisions.

Dated this 20th day of September, 1979

By: Charles Cheney Barnes Mgr

Larry B. Barnes &/or Charles Cheney

STATE OF IDAHO, COUNTY OF Ada

On this 20th day of Sept., 1979
before me, a notary public in and for said State,
personally appeared

Charles Cheney

known to me to be the person whose name subscribed
to the within instrument, and acknowledged to
me that he executed the same

Shirley M. Linke
Notary Public

Residing at Boise, Idaho
Commission Expires 7-16-82

Exhibit A

Year 1888 Warranty Deed Witt to Charters

Exhibit B

Year 1952 Wetzel to Allen

Exhibit C

Year 1960 Allen to Waugh

Exhibit D

Year 1965 R. Waugh to James & Donna Waugh

Exhibit E

Year 1967 James & Donna Waugh to Larry Barnes

Affidavit I

William Tucker

Affidavit II

A. D. Rane

S.K.Goldtrap.and
Anna C.Goldtrap.wife.

— TO —

5.

William Charters,

Dated April 17,1888.
Ackl April 17,1888
Filed April 20,1888
Book 16 of Deeds, Page 132
Consid $2000.00

Grant,Bargain,Sell, Alien, Convey and Confirm the Lots 2 and 3, and the SW¼ of the NE¼, and the NE¼, and the NE¼ of the SE¼, of Section 34,Township 9 North, Range 4 East, [illegible]. Also a water right and ditch covering the South end of said land, taking the water from the Gulch coursing down through the premises in a Northerly directio, also an un-divided 1/3 interes of, in and to that certain ditch and w ater right belonging to said land, and by which the same is irrigated which said ditch takes the water from Alder Creek, and conveyed the same along the west bank thereof, to the lands and farms of N .Witzell, and said parties of the first and second part, the above described land and water ditches and rights being the same formerly owned by A.Bael,deceased, and purchased by said party of the first part, of and from the estate of said A.Bael,deceased.
Subject to a certain Mortgage executed by parties of the first part, to Martha E.McCarthy, bearing date tNovember 25,1885, secures payment of $1500.00, evidence by a certain promissory note.executed by party of the first part, to Martha E.McCarthy.due one year after date, with interest thereon from date, at the rate of 1½% per month, Mortgage recorded in Book 4 of Mortgages, Pages 684,5,6, and 7, the consideration money shall be appropriated toward the payment of Nota and Mortgage now due.

Acknowledged by the Grantors, before T.S.Hart. Judge of the Probate Court, County of Boise, Idaho. Seal.

Two Witnesses.

William Charters.

— TO —

16.

Whom it may Concern.

DECLARATION OF HOMESTEAD:

Dated June 6,1904
Ackl June 6,1904.
Filed June 7,1904.
Book 1 of Declar-of Homestead,Pg 195

Declaration of Homestead on the W½ of the SE¼ of the SE¼, and the SW¼ of the SE¼, and the NW¼ of the SE¼, Section 34, Township 9 North, and the Lots 2 and 3, and the SW¼ of the NE¼, and the NE¼ of the SE¼ of Section 34, Township 9 North, Range 4 East, and the E½ of the NW¼, of Section 34, and the Lots 6 and 7, of Section 27, Township 9 North, Range 4 East.B.M. Recites that he and family actually reside on said land, that his family consists of himself and five children, estimated value $5000.00

Acknowledged by William Charters, before James McDivitt, Notary Public, Boise County, Idaho. Seal.

Probate Judge.

INSTRUMENT NO. 61542

THIS INDENTURE, Made this 3rd day of December in the year of our Lord one thousand nine hundred and fifty-two, between THOMAS H. METZEL and KATHERINE METZEL, husband and wife, of Garden Valley, County of Boise, State of Idaho, the parties of the first part, and WILLIAM L. ALLEN and GLADYS M. ALLEN, husband and wife, of , County of Boise, State of Idaho, the parties of the second part.

WITNESSETH, That the said parties of the first part, for and in consideration of the sum of TEN and 00/100 DOLLARS, lawful money of the United States of America, and other good and valuable consideration to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain, sell, convey and confirm unto the said parties of the second part, and to their heirs and assigns forever, all of the following described real estate, situated in , County of Boise, State of Idaho, to-wit:

Lots five (5) and six (6), $N\frac{1}{2}SE\frac{1}{4}SW\frac{1}{4}$, $S\frac{1}{2}SW\frac{1}{4}$, Section thirty-five (35); all of Lot seven (7) less the South ten chains, Section thirty-five (35); $N\frac{1}{2}SE\frac{1}{4}SE\frac{1}{4}$, $N\frac{1}{2}S\frac{1}{2}SE\frac{1}{4}SE\frac{1}{4}$, Section thirty-four (34); all in Twp. 9 N. Range 4 E. B. M., containing approximately 198.10 acres;

Excepting and reserving therefrom, however, that portion of Lot 7, Section 35, Twp. 9 N. Range 4 E., B. M., lying East of Alder Creek, being approximately eighteen acres.

TOGETHER, With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said parties of the first part.

TO HAVE AND TO HOLD All and singular the above mentioned and described premises, together with the appurtenances, unto the parties of the second part, and to their heirs and assigns forever and the said parties of the first part, and their heirs, the said premises in the quiet and peaceable possession of the said parties of the second part, their heirs and assigns, against the said parties of the first part, and their heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same shall and will WARRANT and by these presents forever DEFEND.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

Thomas H. Metzel (SEAL)
Katherine E. Metzel (SEAL)

STATE OF IDAHO,)
COUNTY of Ada) ss
)

On this 3rd day of December in the year 1952, before me, A Notary Public in and for said state, personally appeared Thomas H. Metzel and Katherine Metzel, husband and wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

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

(SEAL) Claude V. Parcus
Notary Public for the State of Idaho,
Residing at Boise, Idaho.

STATE OF IDAHO,)
COUNTY of Boise) ss

I hereby certify that this instrument was filed for record at request of Robert Copper at 33 minutes past 10 o'clock A. M., this 23 day of July, A. D. 1953, in my office, and duly recorded in Book 54 of Deeds at page 573.

Katherine L. Brogan
Ex-Officio Recorder

By Aileen Hutchison
Deputy

Fee $1.50

4pg 32/7/14/53 11:10

INSTRUMENT NO. 70615

Exhibit C

WARRANTY DEED

THIS INDENTURE, Made this 1st day of September in the year of our Lord one thousand nine hundred and sixty, between WILLIAM E. ALLEN and GLADYS M. ALLEN, husband and wife of Boise, County of Ada, State of Idaho, the parties of the first part, and JAMES E. WAUGH and DONNA JEAN WAUGH, husband and wife and ROY WAUGH a Bachelor, of Boise, County of Ada, State of Idaho, the parties of the second part.

WITNESSETH, That the said parties of the first part, for and in consideration of the sum of TEN DOLLARS, lawful money of the United States of America, and other valuable consideration, to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain, sell, convey and confirm unto the said parties of the second part, and to their heirs and assigns forever, all of the following described real estate, situated in the County of Boise, State of Idaho, to-wit:

Lots Five and Six, the North Half of the Southeast Quarter of the Southwest Quarter, the Southwest Quarter of the Southeast Quarter, Section Thirty-five; all of Lot Seven less the South ten chains, Section thirty-five; the North Half of the East Half of the Southeast Quarter of the Southeast Quarter, the North Half of the South Half of the East Half of the Southeast Quarter of the Southeast Quarter, Section Thirty-four; all in Township Nine North, Range Four East Boise Meridian, containing approximately 198.10 acres;

EXCEPTING and RESERVING therefrom, however, that portion of Lot Seven, Section Thirty-five, Township Nine North, Range Four East, Boise Meridian, lying East of Alder Creek, being approximately eighteen acres.

TOGETHER, With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said parties of the first part.

TO HAVE AND TO HOLD, All and singular the above mentioned and described premises, together with the appurtenances, unto the parties of the second part, and to their heirs and assigns forever and the said parties of the first part, and their heirs, the said premises in the quiet and peaceable possession of the said parties of the second part, their heirs and assigns, against the said parties of the first part, and their heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same shall and will WARRANT and by these presents forever DEFEND.

TOGETHER, With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all estate, right, title and interest in and to the said property, as well in law as in equity of the said parties of the first part.

TO HAVE AND TO HOLD, All and singular the above mentioned and described premises, together with the appurtenances, unto the parties of the second part, and to their heirs and assigns forever and the said parties of the first part, and their heirs, the said premises in the quiet and peaceable possession of the said parties of the second part, their heirs and assigns, against the said parties of the first part, and their heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same shall and will WARRANT and by these presents forever DEFEND.

IN WITNESS WHEREOF The said parties of the first part have hereunto set their hands and seals the day and year first above written.

William T. Allen (SEAL)
Gladys M. Allen (Seal)

INSTRUMENT NO. 79560

WARRANTY DEED

THIS INDENTURE, Made this 27th day of September in the year of our Lord one thousand nine hundred and sixty-five, between ROY WAUGH, a Bachelor of Garden Valley, County of Boise, State of Idaho, the party of the first part, and JAMES E. WAUGH and DONNA JEAN WAUGH husband and wife of Gardea Valley, County of Boise, State of Idaho, the parties of the second part.

WITNESSETH, That the said party of the first part, for and in consideration of the sum of TEN DOLLARS lawful money of the United States of America, and other valuable consideration to him in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargain, sell, convey and confirm unto the said parties of the second part, and to their heirs and assigns forever, all of the following described real estate, situated in the County of Boise, State of Idaho, to-wit:

Lots Five and Six, the North Half of the Southeast Quarter of the Southwest Quarter, the Southwest Quarter of the Southwest Quarter, Section Thirty-five; all of Lot Seven less the South ten chains, Section Thirty-five; the North Half of the East Half of the Southeast Quarter of the Southeast Quarter, the North Half of the South Half of the East Half of the Southeast Quarter of the Southeast Quarter, Section Thirty-four; all in Township Nine North, Range Four East, Boise Meridian, containing approximately 198.16 acres;

EXCEPTING and RESERVING therefrom, however, that portion of Lot Seven, Section Thirty-five, Township Nine North, Range Four East, Boise Meridian, lying East of Alder Creek, being approximately eighteen acres.

TOGETHER, With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said party of the first part.

TO HAVE AND TO HOLD, All and singular the above mentioned and described premises, together with the appurtenances, unto the parties of the second part, and to their heirs and assigns forever and the said party of the first part, and their heirs, the said premises in the quiet and peaceable possession of the said parties of the second part, their heirs and assigns, against the said party of the first part, and his heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same shall and will WARRANT and by these presents forever DEFEND.

IN WITNESS WHEREOF, The said party of the first part has hereunto set his hand and seal the day and year first above written.

Roy Waugh (SEAL)

STATE OF IDAHO,)
COUNTY of ----)ss

On this 1st day of October in the year 1965, before me the undersigned, a Notary Public in and for said State, personally appeared Roy Waugh, a bachelor known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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

(SEAL) Helen Harbaugh
Notary Public for the State of Idaho,
Residing at ----, Idaho.

STATE OF IDAHO,)
COUNTY of Boise)ss

I hereby certify that this instrument was filed for record at request of Idaho Title Co. at 20 minutes past 10 o'clock A. M., this 7th day of October, A. D. 1965, in my office, and duly recorded in Book 58 of Deeds at page 46.

Katherine M. Brogan
Ex-Officio Recorder

By [signature]
Deputy

Fee $1.50

WARRANTY DEED

REVENUE STAMPS

For Value Received

JAMES E. WAUGH and DONNA J. WAUGH, husband and wife,

the grantor s, do hereby grant, bargain, sell and convey unto

LARRY B. BARNES and LENORA B. BARNES, husband and wife,

the grantee s, the following described premises, to-wit

Lots Five and Six, the North Half of the Southeast Quarter of the Southwest Quarter, the Southwest Quarter of the Southwest Quarter, Section Thirty-five; all of Lot Seven less the South ten chains, Section Thirty-five; the North Half of the East Half of the Southeast Quarter of the Southeast Quarter, the North Half of the South Half of the East Half of the Southeast Quarter of the Southeast Quarter, Section Thirty-four, all in Township Nine North, Range Four East, Boise Meridian, containing approximately 198.10 acres

Excepting and reserving therefrom, however, that portion of Lot Seven, Section Thirty-five, Township Nine North, Range Four East, Boise Meridian, lying East of Alder Creek, being approximately eighteen acres.

Subject to a mortgage in favor of the Federal Land Bank of Boise, Idaho, Loan Number 125395, the unpaid balance of which is $13,167.00, which Grantees assume and agree to pay according to the terms thereof.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantees, their heirs and assigns forever. And the said Grantor s do hereby covenant to and with the said Grantee s, that they are the owners in fee simple of said premises; that said premises are free from all incumbrances except the mortgage in favor of Federal Land Bank of Boise, Idaho, above described, existing ditch, road rights-of-way, existing easements and current taxes and assessments.

and that they will warrant and defend the same from all lawful claims whatsoever

Dated: May 23, 1975

James E. Waugh

Donna J. Waugh

STATE OF IDAHO, COUNTY OF ADA

On this 23 day of May, 1975, before me, a notary public, personally appeared JAMES E. WAUGH and DONNA J. WAUGH, his wife,

known to me to be the person s whose name s is subscribed to the within instrument, and acknowledged to me that they executed the same.

Libby [illegible]
Notary Public
Residing at Boise, Idaho
Comm. Expires Dec 14, 1981

STATE OF IDAHO, COUNTY OF [illegible]

I hereby certify that this instrument was filed for record at the request of [illegible]

at 30 minutes past 12 o'clock P. M., this 30th day of May, 1975, in my office, and duly recorded in Book 68 of Deeds at page 147

Robert J. Tuppeck
Ex Officio Recorder

By Grace M. Shearer
Deputy

Fees $ 12

Mail to [illegible]
Boise, Idaho 83701

INSTRUMENT No. 87373

Warranty Deed 2814-B

Printed and For Sale by Cyma-Tech Company, Boise

IN THE MATTER OF:

Payette River Adj.

AFFIDAVIT #1

State of Idaho
County of Boise

William Tucker being first duly sworn, deposes and says: I was born and raised in Garden Valley in the year 1898 and am a member of the Thurston-Wetzel ditch. Been in operation since the year of 1912.

Department of [illegible]
Western Region

William Tucker
(signature)

Subscribed and sworn to before me this 1 day of September 19 77.

M Beulah Reay
(notary public)

Residing at Garden Valley, Idaho
My commission expires [illegible]

IN THE MATTER OF:

Payette River Adj.

AFFIDAVIT #2

State of Idaho

County of Boise

A. D. Rane being first duly sworn, deposes and says: I can remember water in the Abbarten - Wetzel ditch as early as the year 1907 — I was born in 1897 and have lived in Garden Valley all my life.

RECEIVED
SEP 24 1971
Department of Water Resources
Western Regional Office

A. D. Rane
(signature)

Subscribed and sworn to before me this 1 day of September 19 77.

M. Beulah Reay
(notary public)

Residing at Garden Valley, Idaho

INDICATES TOTAL SOURCE: ALDER CREEK TRIBUTARY TO: SOUTH FORK, PAYETTE RIVER

RIGHT NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM	USE PERIOD TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR RIGHT
65-2555X	LOUNEY, WILLIAM O. & LOUNEY, WILMA S. 9510 HALSTEAD, BOISE, IDAHO 83702	7/17/1951	IRRIGATION	4/ 1	11/ 1	--- AFA .02 CFS	SENE S15 T 8N R 4E	SENE(1) S15 T 8N R 4E *1*	LICENSE
65-2555A	RUSSELL, L. A. & RUSSELL, HAZEL ROUTE 3, BOX 136, EMMETT, IDAHO 83617	7/17/1951	IRRIGATION	4/ 1	11/ 1	--- AFA .04 CFS	SENE S15 T 8N R 4E	SENE(2) S15 T 8N R 4E *2*	LICENSE
65-10673	NEIBUHR, WENDELL O. & NEIBUHR, DARELL M. STAR ROUTE, GARDEN VALLEY, IDAHO 83622	7/ 1/1957	DOMESTIC	1/ 1	12/31	1.20 AFA .04 CFS	LOT 7 S35 T 9N R 4E	LOT7 S35 T 9N R 4E	BENEFICIAL USE
65-5696	HUTCHISON, CRIS J. & HUTCHISON, WILMA P. BOX 15, GARDEN VALLEY, IDAHO 83622 REMARKS: SOURCES FOR THIS RIGHT ARE ALDER CREEK & COSKI CREEK.	4/ 1/1966	IRRIGATION	4/ 1	11/ 1	--- AFA .04 CFS	NESE S34 T 9N R 4E SWNE S 2 T 8N R 4E	NESE(3) S34 T 9N R 4E *3*	BENEFICIAL USE
65-8650	BARNES, LARRY B. & CHENEY, CHARLES BOX 2797, BOISE, IDAHO 83701	6/ 1/1969	STOCKWATER FROM STGR	1/ 1	12/31	.50 AFA --- CFS	LOT 7 S35 T 9N R 4E	LOT7 S35 T 9N R 4E	BENEFICIAL USE
			DIVERSION TO STORAGE	1/ 1	12/31	--- AFA .02 CFS		SAME AS OTHER USE	
			RECREATION STORAGE	1/ 1	12/31	.50 AFA --- CFS		SAME AS OTHER USE	
			FISH PROP STORAGE	1/ 1	12/31	.50 AFA --- CFS		SAME AS OTHER USE	
			WILDLIFE FROM STGR	1/ 1	12/31	.50 AFA --- CFS		SAME AS OTHER USE	
						*.50*AFA *.02*CFS			
65-10864	BROWN, G. RICHARD & BROWN, BARBARA J. ROUTE 3, NAMPA, IDAHO 83651 REMARKS: THIS RIGHT WHEN COMBINED WITH RIGHT 65-10865 SHALL PROVIDE NO MORE THAN 1.2 AFA FOR HOUSEHOLD USE.	5/ 1/1970	IRRIGATION	4/ 1	11/ 1	--- AFA .04 CFS	SESE S10 T 8N R 4E	SESE(2) S10 T 8N R 4E *2*	BENEFICIAL USE
			DOMESTIC	1/ 1	12/31	1.20 AFA .02 CFS		SAME AS OTHER USE	
						*---*AFA *.04*CFS			

INDICATES TOTAL

SOURCE: ALDER CREEK TRIBUTARY TO: SOUTH FORK, PAYETTE RIVER

RIGHT NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR RIGHT
65-7639	COTA, JACK E STRIMATTER, LESTER BOX 165, ELMA, WASHINGTON 98541 REMARKS: THIS PERMIT RIGHT IS NOT DECREED BY THE PRESENT ADJUDICATION PROCEDURE, AND IS INCLUDED FOR INFORMATION PURPOSES ONLY. NORMAL STATUTORY PROCEDURES MUST BE COMPLETED FOR LICENSING.	7/ 9/1976	MINING	1/ 1 12/31	--- AFA .12 CFS	NWNE S35 T 8N R 4E	NENE NWNE S35 T 8N R 4E	PERMIT

INDICATES TOTAL

SOURCE: ALLEN CREEK TRIBUTARY TO: PAYETTE RIVER

RIGHT NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR RIGHT
65-11322	PATTERSON, CAROLYN ROUTE 3, NAMPA, IDAHO 83651	6/ 1/1912	IRRIGATION	4/ 1 11/ 1	--- AFA 1.10 CFS	SWSW S17 T 9N R 4E NWNW S20 T 9N R 4E	SWSW(3) S17 T 9N R 4E NWNW(16) SWNW(17) NWSW(15) S20 T 9N R 4E *51*	DECREE
			DOMESTIC	1/ 1 12/31	2.40 AFA .04 CFS *---*AFA *1.10*CFS		SAME AS OTHER USE	
65-2325	ROTHERMEL, ALICE N. & GULDHAUG, ALICE 421 SOUTH CURTIS ROAD #18, BOISE, IDAHO 83705	7/21/1924	IRRIGATION	4/ 1 11/ 1	--- AFA .06 CFS	SESE S19 T 9N R 4E	LOT 11 3) S29 T 9N R 4E *3*	LICENSE

765-885 - Priority date documentation - some of the documents used for priority date review

706 1) 9-1-77 Affidavit by A D Rose
" as early as the year 1907.

706 2) 9-1-77 Affidavit by Wilbur Tucker "ditch in operation since 1912."

706 3. Response to Motion of Bowes, etc by Michael Dyer, Deputy A.G.

706 4. Deed dated 4-17-1888
"references the ditch that delivered water to the farms of N. Wetzell.

706 5. Deed dated 1-8-1881
"references the ditch from Alder Creek to the N. Wetzel."

706 6. Stipulation signed by Berne Jensen 11-17-88

7 " " " Jo Beeman 7-6-87

8. Memo dated 8-15-79 from Dorothy Luthy

#9. Affidavit by McRae dated 1-25-94
"Bowes & Murray Water Diversion since 1920"

legal #10 Letter dated 5-2-1980 Jensen to Jessi
file-706 "water rights should be at same level"

Legal 11.
Lake-706

Letter dated 5-12-1980 Vogel to Judge Nowis
"want to show 5633 as 1879 priority ---- no problem with establishing the water right of Barnes"

12. Three letters from Jr Beeman to Jnson, Vogel, Judge Doolittle dated 7-1-87
"the stipulation asks that the priority date for 65-8850 be changed from 6-1-1920 to 4-1-1900 -- the priority date of 65-5633.

RECEIVED
JUL 20 2001
WATER RESOURCES
WESTERN REGION

SUPPLEMENTAL DIRECTOR'S REPORT REGARDING SUBCASE NO. 65-08850

In Re SRBA
Twin Falls County Civil Case No 39576

Report to the SRBA District Court

Prepared by the Idaho Department of Water Resources
Karl J Dreher, Director
David R. Tuthill Jr , Adjudication Bureau Chief

July 18, 2001

In a letter to the Idaho Department of Water Resources ("IDWR") dated June 13, 2001, Charter Mountain Ranch, Inc., ("Charter Mountain") requested that IDWR present the basis for its priority date recommendation for Snake River Basin Adjudication ("SRBA") Claim No. 65-08850, claimed in the name of Lenora Barnes. In response to this request, IDWR submits this Supplemental Director's Report Regarding Subcase No. 65-08850 in accordance with Idaho Code § 42-1412(4), Administrative Order 1, and I.R E. 706 This report was prepared under the supervision of Karl J. Dreher, Director, and David R. Tuthill Jr., Adjudication Bureau Chief for IDWR.

The following IDWR employee has knowledge of the information contained in this report. Senior Water Resource Agent Mel Schulte

I. INTRODUCTION

This Supplemental Director's Report discusses IDWR's recommendation in subcase no 65-08850 Charter Mountain has filed an objection to IDWR's recommendation for this water right, challenging the April 1, 1900 priority date claimed by Lenora Barnes and recommended by IDWR Charter Mountain claims that the priority date should instead be June 1, 1920 This report details the extensive procedural history for subcase no 65-08850, discusses Charter Mountain's objection and explains the basis of IDWR's priority date recommendation

II. PROCEDURAL HISTORY

The litigation regarding this water right dates back to the Payette River Adjudication. The Payette River Adjudication was commenced in 1969 in the Gem County District Court for the general adjudication of rights to use the surface and ground

water of the Payette River and its tributaries. On April 26, 1979, the Director of IDWR filed a three volume, 2348 page, Proposed Finding of Water Rights in the Adjudication of the Payette River Drainage Basin ("Proposed Finding") with the Gem County District Court. The Proposed Finding consisted of a list of the defendants, findings of fact, conclusions of law, statutory and decreed rights not claimed, claims submitted, claims recommended to be disallowed and recommended rights. Water right no 65-08850 was included in the Proposed Finding in the names Larry Barnes and Charles Cheney (ranch manager for Larry Barnes) [1] IDWR's report for claim no 65-08850 recommended that Larry Barnes ("Barnes") be decreed 2.51 cfs for irrigation from April 1 to November 1 and 3.29 afa with 06 cfs for year 'round stockwater, all with a priority date of June 1, 1920. A copy of the page from the Proposed Findings showing IDWR's recommendation for this right is attached as Attachment "A"

On September 20, 1979, Barnes filed with the Gem County Court a Motion to Allow Submission of Objection and to Modify Director of Department of Water Resources' Report. A copy of the motion is attached as Attachment "B" In the motion, Barnes stated that the recorders office of Boise County had undergone a catastrophe which eliminated records regarding the initial land grant and subsequent sale of the land and water in dispute Barnes stated that examination of related parcels of land had led to the discovery of new information that supported an earlier priority date for this water right. In support of an earlier priority date, Barnes included with the motion (1) a warranty deed filed April 20, 1888 which makes reference to the farm and land owned by Barnes's predecessor-in-interest; (2) an affidavit by Wilbur Tucker stating he was born in

[1] For brevity, this report will hereafter delete reference to Charles Cheney

the Garden Valley in 1898 and can remember that Barnes's predecessor's ditch was in operation since 1912, and (3) an affidavit by A. D. Rane stating that he was born in Garden Valley in 1897 and can remember water in Barnes's predecessor's ditch as early as 1907

IDWR filed a response to the motion in March of 1980, a copy of which is attached as Attachment "C" In the response, IDWR stated that it was without jurisdiction to address the issue without an order from the court, but that IDWR believed that this water right should be the same priority date as an adjacent water right IDWR stated.

> The [Barnes] objection concerns the recommended priority date of 6/1/1920 for Right No 65-8850 from Alder Creek. While it is difficult to ascertain the exact date water from Alder Creek was first applied to beneficial use on the land covered by No 65-8850, water was probably applied to beneficial use on that land at the same time water from Alder Creek was applied to beneficial use on the land covered by Right No 65-5633, owned by Dora Murray and Guy Canada [sic] This is suggested by the Goldtrap-Charters deed (Exhibit A to Claimants' Motion), by the use by both rights of the same ditch from Alder Creek and by the physical location of the two parcels with respect to each other and the ditch In his proposed findings, the Director recommended a priority date of 4/1/1900 for No 65-5633, and no objections were filed with respect to that right Accordingly, if the Court grants the motion to submit a late claim, the Department would ask the Court to order that the proposed findings for Right No 65-8850 be amended to state a priority date of 4/1/1900.

Attachment "C," at 1-2

In response to Barnes's motion and IDWR's response, George and Dora Murray and Guy and Marilyn Canaday (Charter Mountain's predecessors-in-interest) objected to IDWR's recommendation for their water right, no 65-05633 Documents in IDWR's files suggest that in light of the deed uncovered by Barnes, the Murrays and the Canadays wanted to claim a priority date earlier than the April 1, 1900 priority date recommended for their water right On April 28, 1980, Gem County District Judge Gilbert Norris

granted Barnes's motion to file a late objection to water right no 65-08850 and ordered that the Murrays and the Canadays be permitted to file an objection to their own water right, no. 65-05633. A copy of the Order is attached as Attachment "D"

In a letter dated May 12, 1980, C H Higer, attorney for the Murrays and the Canadays, wrote the Gem County court, suggesting that the Barnes water right is a derivative of the Murray-Canaday water right and asking that the Murray-Canaday water right and the Barnes water right have the same priority date. In his letter, Higer attached a copy of a letter sent to him by Barnes attorney, Berne K Jensen, which also suggests that the two water rights are derivative rights. Furthermore, Higer attached a copy of a quit claim deed filing, dated 1881, which again specifically mentions N Wetzel (Barnes's predecessor-in-interest) as having ownership of an associated water right out of Alder creek. A copy of these letters and the quit claim filing is attached as Attachment "E"

Shortly thereafter, a stipulation was drafted by IDWR stating that the priority date for water right no 65-08850 be changed from June 1, 1920 to April 1, 1900. A copy of the stipulation signed by IDWR and the attorney for Barnes is in IDWR records For reasons unknown to IDWR, it appears that the stipulation was not signed by the Murray's and Canaday's attorney and was never filed with the court. A copy of the stipulation is attached as Attachment "F" No action was taken on these subcases for the next eight years

On November 30, 1988, IDWR filed with the Gem County District Court a motion to dismiss water right claim nos 65-05633 (Murray-Canaday) and 65-08850 (Barnes) without prejudice. IDWR sought to have claims dismissed from the Payette

Adjudication so that the issues could be resolved in the SRBA On January 4, 1989, Gem County District Judge Jim Doolittle signed an order dismissing the claims without prejudice

On March 10, 1989, Barnes re-filed claim no. 65-08850 in the SRBA, seeking a June 1, 1920 priority date On May 2, 1989, Barnes amended the claim to reflect the April 1, 1900 priority date. On May 5, 1989 the Murrays and the Canadays re-filed claim no 65-05633 in the SRBA, seeking an April 1, 1900 priority date Subsequently, the Murrays and the Canadays sold their land and water rights to Charter Mountain IDWR issued its directors report for these rights in April of 2000 No objections to Charter Mountain's water right were filed and it was partially decreed on November 3, 2000.

On August 10, 2000, Charter Mountain filed a *Motion to File Late Objection* and *Standard Form 1 Objection* to Barnes's water right priority date In its objection Charter Mountain argues, "Historical data clearly indicates the priority date for this claim is 1920, not 1900 " On August 18, 2000, Lenora Barnes, the current owner of water right 65-08850, filed a *Standard Form 2 Response to Objection*, disagreeing that historical data shows that the priority is 1920 At a hearing on September 1, 2000, Special Master Thomas R Cushman granted the *Motion to file Late Objection* filed by Charter Mountain. This subcase is currently set for trial on October 10, 2001

III. IDWR'S BASIS FOR PRIORITY DATE RECOMMENDATION:

IDWR based its recommendation on the record that had been developed through the Payette Adjudication As discussed above, Barnes's motion of September 20, 1979 provides a copy of a warranty deed filing and affidavits that suggesting a priority date earlier than the 1920 priority date originally claimed by Barnes. The affidavit of Wilbur

Tucker states, "I was born and raised in Garden Valley in the year 1898 and can remember the Charters-Wetzel ditch being in operation since the year 1912 " Attachment "B," at 9. The affidavit of A D Rane states, "I can remember water in the Charter-Wetzel ditch as early as the year 1907. I was born in 1897 and have lived in Garden Valley all my life." Attachment "B," at 10. In addition, the warranty deed, filed April 20, 1888, makes reference to the farm and land owned by Barnes's predecessor-in-interest, Wetzel. See Attachment "B," at 4 This implies that Wetzel had an operating farm as early as 1888 Furthermore, the fact that both water rights come out of the same ditch from Alder Creek and the close proximity of these lands suggests to IDWR that these two parcels commenced irrigation in the same time frame. Finally, letters from both Barnes's and Murray-Canaday's attorneys further support a priority date prior to 1920. In his letter to the court of May 12, 1980, Murray-Canaday's attorney, C.H. Higer, states:

> All we want to do is have permission to show that the water right, which is claimed by Mr. and Mrs. Murray and Mr. and Mrs Canaday goes back to 1879. I can see no problem with this as far as the Court is concerned, or as far as Mr Barnes is concerned, because from the records that I have dug up, the Barnes water right is a derivative of the Murray-Canaday water right

Attachment "E," at 1.

In addition, the letter from Barnes's attorney, Berne Jensen, states, "It is my client's contention that although this water right may be no better than your clients, that it should be at the same level This is based on the Barnes chain of title stemming from the Wetzels " Attachment "E," at 2

Finally, additional support is found in the abstract of the quit claim deed filing provided to the court by Higer. The record states that J.V R. Witt quit claimed to

William Charters certain lands along with "[a]ll right, title and interest in a certain Water-right and ditch, for irrigation purposes, taking waters of Alder Creek, owned by first party, and N. Wetzel, and Estate of A. Bail, being the undivided ½ interest in said water-right and ditch " Attachment "E." at 3 This filing suggests that Wetzel (Barnes's predecessor-in-interest) diverted water from Alder Creek as early as 1881

In summary, the copy of the warranty deed filing and the affidavits provided in Barnes's Motion of September 20, 1979, the property's close proximity and fact that they draw from the same ditch, the letters from both Barnes's and Murray-Canaday's attorney stating that the Barnes water right is a derivative of the Murray-Canaday water right and the associated copy of the quit claim filing were deemed by IDWR to be sufficient evidence that the priority date for 65-08850 was equal to or before the claimed priority date of April 1, 1900 Therefore, IDWR recommended the priority date as claimed

Respectfully submitted this 18th day of July 2001.

David R Tuthill, Jr., P.E
Adjudication Bureau Chief

CERTIFICATE OF MAILING

I certify that on 7-19, 2001 I mailed and/or delivered the original and copies of this form, including all attachments, to the following interested parties, by placing them in sealed envelopes, addressed as follows:

1 Original to

Clerk of the District Court Snake River Basin Adjudication 253 Third Avenue North P O. Box 2707 Twin Falls, ID 83303-2707	__ Overnight Mail X Regular Mail __ Hand-Delivered __ Facsimile

2. Copies to

Idaho Department of Water Resources Document Repository Box 83720 Boise, ID 83720-0098	__Overnight Mail X Regular Mail __Hand-Delivered __Facsimile
Bruce Smith Moore Smith Buxton & Turke, Chtd 225 N. 9th St., Suite 420 Boise, ID 83702	__Overnight Mail X Regular Mail __Hand-Delivered __Facsimile
Scott Campbell/Angela Schaer Elam & Burke P O Box 1539 Twin Falls, ID 83301	__Overnight Mail X Regular Mail __Hand-Delivered __Facsimile

Sandy Egbert
Signature of person delivering form

Attachment A

INDICATES TOTAL SOURCE: ALDER CREEK TRIBUTARY TO: SOUTH FORK, PAYETTE RIVER

RIGHT NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM	USE PERIOD TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR RIGHT
65-5613	MURRAY, DORA C CANADAY, GUY GARDEN VALLEY, IDAHO 83622 REMARKS: THIS RIGHT WHEN COMBINED WITH RIGHT 65-12001 SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.	4/ 1/1900	IRRIGATION	4/ 1	11/ 1	--- AFA 5.27 CFS	SWNE S 2 T 8N R 4E SENW S34 T 9N R 4E NESE S34 T 9N R 4E	SWNE(40) SENW(6) NESE(19) NWSE(8) NENW(40) LOT 2(36) LOT 3(50) S34 T 9N R 4E LOT 7(17) S27 T 9N R 4E *216*	BENEFICIAL USE
65-10925	YENSEN, ELZIE C LINDSTROM, SHIRLEY BOX 12, GARDEN VALLEY, IDAHO 83622	9/15/1910	IRRIGATION	4/ 1	11/ 1	--- AFA .10 CFS	SESE S10 T 8N R 4E	SESE(1) S10 T 8N R 4E NENE(4) S15 T 8N R 4E *5*	BENEFICIAL USE
			STOCKWATER	1/ 1	12/31	.20 AFA .02 CFS *17.70*AFA *.10*CFS		SAME AS OTHER USE	
65-10539	DONLEY, DOUGLAS C DONLEY, JANICE GARDEN VALLEY, IDAHO 83622	5/ 1/1911	IRRIGATION	4/ 1	11/ 1	--- AFA .30 CFS	LOT 7 S35 T 9N R 4E SWSE S35 T 9N R 4E	LOT 7(14) S35 T 9N R 4E *14*	BENEFICIAL USE
65-8850	BARNES, LARRY B. C CHENEY, RCH. MGR., CHARLES BOX 2797, BOISE, IDAHO 83701 REMARKS: THIS RIGHT WHEN COMBINED WITH RIGHT 65-11329 SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.	6/ 1/1920	IRRIGATION	4/ 1	11/ 1	--- AFA 2.51 CFS	SWNE S 2 T 8N R 4E	SWSW(10) SESW(8) LOT 7(7) LOT 5(51) LOT 6(27) S35 T 9N R 4E *103*	BENEFICIAL USE
			STOCKWATER	1/ 1	12/31	3.29 AFA .06 CFS *---*AFA *2.57*CFS		SAME AS OTHER USE	
65-5682	MC KIE, EARL C MC KIE, GENEVA C. BOX 204, MERIDIAN, IDAHO 83642	6/ 1/1920	IRRIGATION	4/ 1	11/ 1	--- AFA 2.92 CFS	SESW S 2 T 8N R 4E	SWNW(1) SENW(34) NESW(4) LOT 2(5) LOT 3(40) LOT 4(17) S 2 T 8N R 4E SWSW(4) SESW(16) S35 T 9N R 4E *121*	BENEFICIAL USE
65-11001	VOGEL, MARJORIE 3916 WEST CLEMENT, BOISE, IDAHO 83704	4/ 1/1935	DOMESTIC	1/ 1	12/31	1.20 AFA .02 CFS	SESE S10 T 8N R 4E	SESE S10 T 8N R 4E	BENEFICIAL USE

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

FILED

SEP 20 1979

O'CLOCK

CLERK

DEPUTY

In the Matter of the General Determination of the Rights to the Use of Service and Ground Water of the Payette River Drainage Basin.	)	Civil No: 3667 MOTION TO ALLOW SUBMISSION OF OBJECTION AND TO MODIFY DIRECTOR OF DEPARTMENT OF WATER RESOURCES' REPORT

COMES NOW Larry B. Barnes &/or Charles Cheney and respectfully moves the above entitled Court to consider his objections to the report filed herein by the Director of the Department of Water Resources for the State of Idaho pursuant to Section 42-1410, Idaho Code.

This motion is made on the grounds and for the reasons that new information has been discovered which has a direct bearing on the determination of water rights in this area. The recorders office of Boise County has apparently undergone a catastrophy which has eliminated certain of the earlier records regarding the initial land grant and subsequent sale of the property and related water rights in dispute. An examination of related parcels has led to the discovery of a much earlier "beneficial use" then originally reported.

The objections presented by Larry B. Barnes &/or Charles Cheney to the Director's report are made on the grounds and for the reasons that the Director in his report shows a priority date of 6/1/69, which date is clearly subsequent to that shown hereafter. Exhibit "A" is a warranty deed filed approximately April 20, 1888 which makes reference to the lands and farms of one N. Wetzel and of the fact that the water rights being transferred by said 1888 deed flow from the ditch crossing the lands and farms of N. Wetzel. Through a chain of title shown on Exhibit "B" and illustrated by the corresponding warranty deeds Exhibits "C through E", Larry Barnes has acquired that same water right described in the 1888 deed attached as Exhibit "A". Further Exhibits Affidavit I and Affidavit II demonstrate that at least as far back as 1907 these waters have been in "beneficial use".

Attachment B

Pursuant to Section 42-1410, Idaho Code, this Court, in its sound discretion ". . . may allow such additional or amended pleadings as may be necessary for a final determination of the proceedings."

Therefore, Larry B. Barnes &/or Charles Ch ney respectfully requests that this Court grant his Motion to allow the submission of these objections to the Department of Water Resources report on the Payette River Drainage Basin, after the required sixty (60) days filing time, in order that this Court may make a complete and final determination of all water rights within this area.

In summation, Larry B. Barnes &/or Charles Cheney respectfully requests that this Court allow this submission of these objections to the Director's report on the Payette River Drainage Basin and further requests that his report be modified to reflect these objections as revisions.

Dated this 20th day of September, 1979

By: Charles Cheney Barnes Atty.
Larry B. Barnes &/or Charles Cheney

STATE OF IDAHO, COUNTY OF Ada

On this 20th day of Sept. , 1979
before me, a notary public in and for said State,
personally appeared

Charles Cheney

known to me to be the person whose name subscribed
to the within instrument, and acknowledged to
me that he executed the same

Shirley M Lamb
Notary Public

Residing at Boise , Idaho
Commission Expires 7-16-82

Exhibit A

Year 1888 Warranty Deed Witt to Charters

Exhibit B

Year 1952 Wetzel to Allen

Exhibit C

Year 1960 Allen to Waugh

Exhibit D

Year 1965 R. Waugh to James & Donna Waugh

Exhibit E

Year 1967 James & Donna Waugh to Larry Barnes

Affidavit I

William Tucker

Affidavit II

A. D. Rane

EXHIBIT A

S.K.Goldtrap.and
Anna C.Goldtrap.wife.

— TO —

15.

William Charters,

Dated April 17,1888
Ackl April 17,1888
Filed April 20,1888
Book 16 of Deeds, Page 132
Consid $2000.00

Grant,Bargain,Sell, Alien, Convey and Confirm the Lots 2 and 3, and the SW¼ of the NE¼, and the NE¼, and the NE¼ of the SE¼, of Section 24,Township 9 North, Range 4 East, ~~xxxxxxxxxxxx~~. Also a water right and ditch covering the South end of said land, taking the water from the Gulch coursing down through the premises in a Northerly directio also an un-divided 1/3 interes of, in and to that certain ditch and w ater right belonging to said land, and by which the same is irrigated which said ditch takes the water from Alder Creek, and conveyed the same along the west bank thereof, to the lands and ~~f~~ms of N .Witzell, and said parties of the first and second part, the above described land and water ditches and rights being the same formerly owned by A.Bael,deceased, and purchased by said party of the first part, of and from the estate of said A.Bael,deceased.
Subject to a certain Mortgage executed by parties of the first part, to Martha E.McCarthy, bearing date tNovember 25,1885, secures payment of $1500.00, evidence by a certain promissory note.executed by party of the first part, to Martha E.McCarthy.due one year after date, with interest thereon from date, at the rate of 1½% per month, Mortgage recorded in Book 4 of Mortgages, Pages 684,5,6, and 7, the consideration money shall be appropriated toward the payment of Note and Mortgage now due.

#4

Acknowledged by the Grantors, before T.S.Hart, Judge of the Probate Court, County of Boise, Idaho. Seal.

Two Witnesses.

William Charters.

— TO —

16.

Whom it may Concern.

DECLARATION OF HOMESTEAD:

Dated June 6,1904
Ackl June 6,1904.
Filed June 7,1904.
Book 1 of Declar-of Homestead,Pg 195

Declaration of Homestead on the W½ of the SE¼ of the SE¼, and the SW¼ of the SE¼, and the NW¼ of the SE¼, Section 34, Township 9 North, and the Lots 2 and 3, and the SW¼ of the NE¼, and the NE¼ of the SE¼ of Section 34, Township 9 North, Range 4 East, and the E½ of the NW¼, of Section 34, and the Lots 6 and 7, of Section 27, Township 9 North, Range 4 East.B.M. Recites that he and family actually reside on said land, that his family consists of himself and five children, estimated value $5000.00

Acknowledged by William Charters, before James McDivitt, Notary Public, Boise County,Idaho. Seal.

Probate Judge.

INSTRUMENT NO. 61542

THIS INDENTURE, Made this 3rd day of December in the year of our Lord one thousand nine hundred and fifty-two, between THOMAS H. METZEL and KATHERINE METZEL, husband and wife, of Garden Valley, County of Boise, State of Idaho, the parties of the first part, and WILLIAM L. ALLEN and GLADYS H. ALLEN, husband and wife, of , County of Boise, State of Idaho, the parties of the second part.

WITNESSETH, That the said parties of the first part, for and in consideration of the sum of TEN and 00/100 DOLLARS, lawful money of the United States of America, and other good and valuable consideration to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain, sell, convey and confirm unto the said parties of the second part, and to their heirs and assigns forever, all of the following described real estate, situated in , County of Boise, State of Idaho, to-wit:

Lots five (5) and six (6), $N\frac{1}{2}SE\frac{1}{4}SW\frac{1}{4}$, $S\frac{1}{2}SW\frac{1}{4}$, Section thirty-five (35); all of Lot seven (7) less the South ten chains, Section thirty-five (35); $N\frac{1}{2}SE\frac{1}{4}SE\frac{1}{4}$, $N\frac{1}{2}S\frac{1}{2}SE\frac{1}{4}SE\frac{1}{4}$, Section thirty-four (34); all in Twp. 9 N. Range 4 E., B. M., containing approximately 195.10 acres;

Excepting and reserving therefrom, however, that portion of Lot 7, Section 35, Twp. 9 N. Range 4 E., B. M., lying East of Alder Creek, being approximately eighteen acres.

TOGETHER, With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all estate, right, title and interest in and to the said property, as well at law as in equity, of the said parties of the first part.

TO HAVE AND TO HOLD All and singular the above mentioned and described premises, together with the appurtenances, unto the parties of the second part, and to their heirs and assigns forever; and the said parties of the first part, and their heirs, the said premises in the quiet and peaceable possession of the said parties of the second part, their heirs and assigns, against the said parties of the first part, and their heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same shall and will WARRANT and by these presents forever DEFEND.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

Thomas H. Metzel (SEAL)
Katherine Metzel (SEAL)

STATE OF IDAHO,)
County of Ada)

On this 3rd day of December in the year 1952, before me, a Notary Public in and for said State, personally appeared Thomas H. Metzel and Katherine Metzel, husband and wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

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

Notary Public for Idaho
Residing at Boise

STATE OF IDAHO,)
County of Boise) ss

I hereby certify that this instrument was filed for record at the request of Idaho Title & Trust Co. at 10 minutes past 10 o'clock A. M., this 23 day of Dec., 1952, in my office, and duly recorded in Book 53 of Deeds at page 573.

Katherine Marshall
Ex-Officio Recorder

By [illegible] Deputy

50

[illegible]

F 72

E BIT C

INSTRUMENT NO. 70615

WARRANTY DEED

THIS INDENTURE, Made this 1st day of September in the year of our Lord one thousand nine hundred and sixty, between WILLIAM E. ALLEN and GLADYS M. ALLEN, husband and wife of Boise, County of Ada, State of Idaho, the parties of the first part, and JAMES E. WAUGH and DONNA JEAN WAUGH, husband and wife and ROI WAUGH a Bachelor, of Boise, County of Ada, State of Idaho, the parties of the second part.

WITNESSETH, That the said parties of the first part, for and in consideration of the sum of TEN DOLLARS, lawful money of the United States of America, and other valuable consideration, to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain, sell, convey and confirm unto the said parties of the second part, and to their heirs and assigns forever, all of the following described real estate, situated in the County of Boise, State of Idaho, to-wit:

Lots Five and Six, the North Half of the Southeast Quarter of the Southwest Quarter, the Southwest Quarter of the Southwest Quarter, Section Thirty-five; all of Lot Seven less the South ten chains, Section thirty-five; the North Half of the East Half of the Southeast Quarter of the Southeast Quarter, the North Half of the South Half of the East Half of the Southeast Quarter of the Southeast Quarter, Section Thirty-four; all in Township Nine North, Range Four East Boise Meridian, containing approximately 198.10 acres;

EXCEPTING and RESERVING therefrom, however, that portion of Lot Seven, Section Thirty-five, Township Nine North, Range Four East, Boise Meridian, lying East of Alder Creek, being approximately eighteen acres.

TOGETHER, With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said parties of the first part.

TO HAVE AND TO HOLD, All and singular the above mentioned and described premises, together with the appurtenances, unto the parties of the second part, and to their heirs and assigns forever and the said parties of the first part, and their heirs, the said premises in the quiet and peaceable possession of the said parties of the second part, their heirs and assigns, against the said parties of the first part, their heirs, and against all and every person and persons whomsoever lawfully claiming or to claim the same, shall and will WARRANT and by these presents forever DEFEND.

TO HAVE AND TO HOLD, All and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said parties of the first part.

TO HAVE AND TO HOLD, All and singular the above mentioned and described premises, together with the appurtenances, unto the parties of the second part, and to their heirs and assigns forever and the said parties of the first part, and their heirs, the said premises in the quiet and peaceable possession of the said parties of the second part, their heirs and assigns, against the said parties of the first part, their heirs, and against all and every person and persons whomsoever lawfully claiming or to claim the same, shall and will WARRANT and by these presents forever DEFEND.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

William E. Allen (SEAL)
Gladys M. Allen (SEAL)

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EXHIBIT D

INSTRUMENT NO. 79260

WARRANTY DEED

THIS INDENTURE, Made this 27th day of September in the year of our Lord one thousand nine hundred and sixty-five, between ROY WAUGH, a Bachelor of Cardem Valley, County of Boise, State of Idaho, the party of the first part, and JAMES E. WAUGH and DONNA JEAN WAUGH husband and wife of Cardem Valley, County of Boise, State of Idaho, the parties of the second part.

WITNESSETH, That the said party of the first part, for and in consideration of the sum of TEN DOLLARS lawful money of the United States of America, and other valuable consideration to him in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargain, sell, convey and confirm unto the said parties of the second part, and to their heirs and assigns forever, all of the following described real estate, situated in the County of Boise, State of Idaho, to-wit:

Lots Five and Six, the North Half of the Southeast Quarter of the Southeast Quarter, the Southwest Quarter of the Southwest Quarter, Section Thirty-five; all of Lot Seven less the South ten chains, Section Thirty-five; the North Half of the East Half of the Southeast Quarter of the Southeast Quarter, the North Half of the South Half of the East Half of the Southeast Quarter of the Southeast Quarter, Section Thirty-four; all in Township Nine North, Range Four East, Boise Meridian, containing approximately 198.18 acres;

EXCEPTING and RESERVING therefrom, however, that portion of Lot Seven, Section Thirty-five, Township Nine North, Range Four East, Boise Meridian, lying East of Alder Creek, being approximately eighteen acres.

TOGETHER, With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said party of the first part.

TO HAVE AND TO HOLD, All and singular the above mentioned and described premises, together with the appurtenances, unto the parties of the second part, and to their heirs and assigns forever and the said party of the first part, and their heirs, the said premises in the quiet and peaceable possession of the said parties of the second part, their heirs and assigns, against the said party of the first part, and his heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same shall and will WARRANT and by these presents forever DEFEND.

IN WITNESS WHEREOF, The said party of the first part has hereunto set his hand and seal the day and year first above written.

Roy Waugh (SEAL)

STATE OF IDAHO,)
COUNTY of ———)ss

On this 1st day of October in the year 1965, before me the undersigned, a Notary Public in and for said State, personally appeared Roy Waugh, a bachelor known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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

Notale Helen Harbaugh
Notary Public for the State of Idaho,
Residing at ———, Idaho.

STATE OF IDAHO,)
COUNTY of Boise)ss

I hereby certify that this instrument was filed for record at request of Idaho Title Co. at 20 minutes past 10 o'clock A. M., this 7th day of October, A. D. 1965, in my office, and duly recorded in Book 5d of Deeds at page 46.

Katherine M. Brogan
Ex-Officio Recorder

By [signature]
Deputy

Fee $1.50

INSTRUMENT NO. 80373

Ex. of E

147

REVENUE STAMPS

WARRANTY DEED

For Value Received

JAMES E. WAUGH and DONNA J. WAUGH, husband and wife,

the grantor s, do hereby grant, bargain, sell and convey unto

LARRY B. BARNES and LENORA B. BARNES, husband and wife,

the grantee s, the following described premises, to-wit.

Lots Five and Six, the North Half of the Southeast Quarter of the Southwest Quarter, the Southwest Quarter of the Southwest Quarter, Section Thirty-five; all of Lot Seven less the South ten chains, Section Thirty-five; the North Half of the East Half of the Southeast Quarter of the Southeast Quarter, the North Half of the South Half of the East Half of the Southeast Quarter of the Southeast Quarter, Section Thirty-four, all in Township Nine North, Range Four East, Boise Meridian, containing approximately 198.10 acres

Excepting and reserving therefrom, however, that portion of Lot Seven, Section Thirty-five, Township Nine North, Range Four East, Boise Meridian, lying East of Alder Creek, being approximately eighteen acres.

Subject to a mortgage in favor of the Federal Land Bank of Boise, Idaho, Loan Number 125395, the unpaid balance of which is $13,167.00, which Grantees assume and agree to pay according to the terms thereof.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee s, their heirs and assigns forever. And the said Grantor s do hereby covenant to and with the said Grantee s, that they are the owners in fee simple of said premises; that said premises are free from all encumbrances except the mortgage in favor of Federal Land Bank of Boise, Idaho, above described, existing ditch, road rights-of-way, existing easements and current taxes and assessments.

and that they will warrant and defend the same from all lawful claims whatsoever.

Dated: May 23, 1967.

James E. Waugh

Donna J. Waugh

STATE OF IDAHO, COUNTY OF ADA

On this 23 day of May, 1967, before me, a notary public in and for said State, personally appeared

JAMES E. WAUGH and DONNA J. WAUGH, his wife,

known to me to be the person s whose name s subscribed to the within instrument, and acknowledged to me that they executed the same.

Robby J. Barnes
Notary Public
Residing at Boise, Idaho
Comm. Expires Dec 15, 1967

STATE OF IDAHO, COUNTY OF Ada

I hereby certify that this instrument was filed for record at the request of Grant M. Jones Atty

at 3 minutes past 10 o'clock A.M., this 23rd day of May, 1974, in my office, and duly recorded in Book 68 of Deeds at page 147

Robert J. Tupper
Ex-Officio Recorder

By Lois M. Nelson Deputy

Fee $ 1.50

Mail to P.O. Box 454 Boise, Idaho 83701

INSTRUMENT NO. 80373

Warranty Deed 160-A

Printed and For Sale By Ryan-Tarr Company, Boise

IN THE MATTER OF:

Payette River Rd.

AFFIDAVIT #1

State of Idaho
County of Boise

F2

Wilbur Tucker being first duly sworn, deposes and says: I was born and raised in Garden Valley in the year 1898 and remember the Charters-Wetzel Ditch Company in operation since the year 1912.

Wilbur Tucker
(signature)

Subscribed and sworn to before me this 1 day of September 19 77.

M Beulah Reay
(notary public)

Residing at Garden Valley Idaho
My commission expires Next Expiring.

IN THE MATTER OF:

Payette River Adj.

State of Idaho

County of Boise

AFFIDAVIT #2

#1

A. D. Rane being first duly sworn, deposes and says: I can remember water use the Adaton - Wetzel ditch as early as the year 1907 - I was born in 1897 and have lived in Garden Valley all my life.

RECEIVED
SEP 2? 19
Department of Water Re
Western Regional Office

A. D. Rane
(signature)

Subscribed and sworn to before me this 1 day of September 19 77.

M. Beulah Reay
(notary public)

Residing at Garden Valley, Idaho
My commission expires March 1, 1981.

INDICATES TOTAL SOURCE: ALDER CREEK TRIBUTARY TO: SOUTH FORK, PAYETTE RIVER

RIGHT NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM	USE PERIOD TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR RIGHT
65-5633	MURRAY, DORA C CANADAY, GUY GARDEN VALLEY, IDAHO 83622 REMARKS: THIS RIGHT WHEN COMBINED WITH RIGHT 65-12001 SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.	4/ 1/1900	IRRIGATION	4/ 1	11/ 1	--- AFA 5.27 CFS	SWNE S 2 T 8N R 4E SENW S34 T 9N R 4E NESE S34 T 9N R 4E	SWNE(40) SENE(6) NESE(19) NWSE(8) NENW(40) LOT 2(36) LOT 3(50) S34 T 9N R 4E LOT 7(17) S27 T 9N R 4E *216*	BENEFICIAL USE
65-10925	YEIGEN, ELZIE C LINDSTROM, SHIRLEY BOX 12, GARDEN VALLEY, IDAHO 83622	9/15/1910	IRRIGATION	4/ 1	11/ 1	--- AFA .10 CFS	SESE S10 T 8N R 4E	SESE(1) S10 T 8N R 4E NENE(4) S15 T 8N R 4E *5*	BENEFICIAL USE
			STOCKWATER	1/ 1	12/31	.20 AFA .02 CFS *17.70*AFA *.10*CFS		SAME AS OTHER USE	
65-10539	DONLEY, DOUGLAS C DONLEY, JANICE GARDEN VALLEY, IDAHO 83622	5/ 1/1911	IRRIGATION	4/ 1	11/ 1	--- AFA .30 CFS	LOT 7 S35 T 9N R 4E SWSE S35 T 9N R 4E	LOT 7(14) S35 T 9N R 4E *14*	BENEFICIAL USE
65-8850	HARNES, LARRY B, & CHENEY, RCH. MGR., CHARLES BOX 2797, BOISE, IDAHO 83701 REMARKS: THIS RIGHT WHEN COMBINED WITH RIGHT 65-11329 SHALL PROVIDE NO MORE THAN .02 CFS/ACRE.	6/ 1/1920	IRRIGATION	4/ 1	11/ 1	--- AFA 2.51 CFS	SWNE S 2 T 8N R 4E	SWSW(10) SESW(8) LOT 7(7) LOT 5(51) LOT 6(27) S35 T 9N R 4E *103*	BENEFICIAL USE
			STOCKWATER	1/ 1	12/31	3.29 AFA .05 CFS *---*AFA *2.53*CFS		SAME AS OTHER USE	
65-5682	MC KIE, EARL C MC KIE, GENEVA C. BOX 209, MERIDIAN, IDAHO 83642	6/ 1/1920	IRRIGATION	4/ 1	11/ 1	--- AFA 2.92 CFS	SESW S 2 T 8N R 4E	SWNW(1) SENW(34) NESW(4) LOT 2(5) LOT 3(40) LOT 4(17) S 2 T 8N R 4E SWSW(4) SESW(16) S35 T 9N R 4E *121*	BENEFICIAL USE
65-11001	VOGEL, MARJORIE 3910 WEST CLEMENT, BOISE, IDAHO 83704	4/ 1/1935	DOMESTIC	1/ 1	12/31	1.20 AFA .02 CFS	SESE S10 T 8N R 4E	SESE S10 T 8N R 4E	BENEFICIAL USE

INDICATES TOTAL SOURCE: ALDER CREEK TRIBUTARY TO: SOUTH FORK, PAYETTE RIVER

RIGHT NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM	USE PERIOD TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR RIGHT
65-2555X	LOONEY, WILLIAM D. & LOONEY, WILMA S. 9510 HALSTEAD, BOISE, IDAHO 83702	7/17/1951	IRRIGATION	4/ 1	11/ 1	--- AFA .02 CFS	SENE S15 T 8N R 4E	SENE(1) S15 T 8N R 4E *1*	LICENSE
65-2555A	RUSSELL, L. A. & RUSSELL, HAZEL ROUTE 3, BOX 136, EMMETT, IDAHO 83617	7/17/1951	IRRIGATION	4/ 1	11/ 1	--- AFA .04 CFS	SENE S15 T 8N R 4E	SENE(2) S15 T 8N R 4E *2*	LICENSE
-10673	NEIBUHR, WENDELL D. & NEIBUHR, DARELL M. STAR ROUTE, GARDEN VALLEY, IDAHO 83622	7/ 1/1957	DOMESTIC	1/ 1	12/31	1.20 AFA .04 CFS	LOT 7 S35 T 9N R 4E	LOT7 S35 T 9N R 4E	BENEFICIAL USE
65-5696	HUTCHISON, LEWIS J. & HUTCHISON, ELENA P. BOX 15, GARDEN VALLEY, IDAHO 83622 REMARKS: SOURCES FOR THIS RIGHT ARE ALDER CREEK & COSKI CREEK.	4/ 1/1966	IRRIGATION	4/ 1	11/ 1	--- AFA .04 CFS	NESE S34 T 9N R 4E SWNE S 2 T 8N R 4E	NESE(3) S34 T 9N R 4E *3*	BENEFICIAL USE
65-8650	BARNES, LARRY B. & CHENEY, CHARLES BOX 2797, BOISE, IDAHO 83701	6/ 1/1969	STOCKWATER FROM STCR	1/ 1	12/31	.50 AFA --- CFS	LOT 7 S35 T 9N R 4E	LOT7 S35 T 9N R 4E	BENEFICIAL USE
			DIVERSION TO STORAGE	1/ 1	12/31	--- AFA .02 CFS		SAME AS OTHER USE	
			RECREATION STORAGE	1/ 1	12/31	.50 AFA --- CFS		SAME AS OTHER USE	
			FISH PROP STORAGE	1/ 1	12/31	.50 AFA --- CFS		SAME AS OTHER USE	
			WILDLIFE FROM STCR	1/ 1	12/31	.50 AFA --- CFS *.50*AFA *.02*CFS		SAME AS OTHER USE	
65-10864	BROWN, G. RICHARD & BROWN, BARBARA J. ROUTE 3, KAMPA, IDAHO 83651 REMARKS: THIS RIGHT WHEN COMBINED WITH RIGHT 65-10865 SHALL PROVIDE NO MORE THAN 1.2 AFA FOR HOUSEHOLD USE.	5/ 1/1970	IRRIGATION	4/ 1	11/ 1	--- AFA .04 CFS	SESE S10 T 8N R 4E	SESE(2) S10 T 8N R 4E *2*	BENEFICIAL USE
			DOMESTIC	1/ 1	12/31	1.20 AFA .02 CFS *---*AFA *.04*CFS		SAME AS OTHER USE	

INDICATES TOTAL SOURCE: ALDER CREEK TRIBUTARY TO: SOUTH FORK, PAYETTE RIVER

RIGHT NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM	USE PERIOD TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR RIGHT
65-7619	CUTA, JACK E SMITHATTER, LESTER BOX 165, ELMA, WASHINGTON 98541 REMARKS: THIS PERMIT RIGHT IS NOT DECREED BY THE PRESENT ADJUDICATION PROCEDURE, AND IS INCLUDED FOR INFORMATION PURPOSES ONLY. NORMAL STATUTORY PROCEDURES MUST BE COMPLETED FOR LICENSING.	1/ 9/1976	MINING	1/ 1	12/31	--- AFA .12 CFS	NWNE S35 T 8N R 4E	NENE NWNE S35 T 8N R 4E	PERMIT

INDICATES TOTAL SOURCE: ALLEN CREEK TRIBUTARY TO: PAYETTE RIVER

RIGHT NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM	USE PERIOD TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR RIGHT
65-11322	PATTERSON, CAROLYN ROUTE 3, NAMPA, IDAHO 83651	6/ 1/1912	IRRIGATION	4/ 1	11/ 1	--- AFA 1.10 CFS	SWSW S17 T 9N R 4E NWNW S20 T 9N R 4E	SWSW(3) S17 T 9N R 4E NWNW(16) SWNW(17) NWSW(15) S20 T 9N R 4E *51*	DECREE
			DOMESTIC	1/ 1	12/31	2.40 AFA .04 CFS *---*AFA *1.10*CFS		SAME AS OTHER USE	
65-2325	ROTHERMEL, ALICE M. & GULDHAUG, ALICE 421 SOUTH CURTIS ROAD #16, BOISE, IDAHO 83705	7/21/1924	IRRIGATION	4/ 1	11/ 1	--- AFA .06 CFS	SESE S19 T 9N R 4E	LOT 11 3) S29 T 9N R 4E *39*	LICENSE

DAVID H. LEROY
Attorney General
State of Idaho
Statehouse, Room 210
Boise Idaho 83720
Telephone (208) 384-2400

Thelma T. Kolodzey
Debbie Bacon

#B

JOSEPHINE P. BEEMAN
MICHAEL H. HYER
Deputy Attorneys General
Department of Water Resources
Statehouse
Boise, Idaho 83720
Telephone: (208) 334-4448

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

IN THE MATTER OF THE GENERAL DETERMINATION OF THE RIGHT TO THE USE OF SURFACE AND GROUNDWATERS OF THE PAYETTE RIVER DRAINAGE BASIN.	Civil No. 3667 RESPONSE TO MOTION OF BARNES AND/OR CHENEY

COMES NOW, C. Stephen Allred, Director of the Idaho Department of Water Resources, and responds to the Motion to Allow Submission of Objection and to Modify Director of Department of Water Resources' Report filed by Larry B. Barnes and/or Charles Cheney, dated September 20, 1979, as follows:

I.

The Department takes no position on whether these claimants have good cause to file a late objection. However, it is the Department's position that it has no jurisdiction or authority to receive a late objection without an order from this Court.

II.

Nevertheless, the Department has reviewed the claimants' objection. The objection concerns the recommended priority date of 6/1/1920 for Right No. 65-8850 from Alder Creek. While it is difficult to ascertain the exact date water from Alder Creek was first applied to beneficial use on the land covered by No. 65-8850, water was probably applied to beneficial use on that land

Attachment C

at the same time water from Alder Creek was applied to beneficial use on the land covered by Right No. 65-5633, owned by Dora Murray and Guy Canada. This is suggested by the Goldtrap-Charters deed (Exhibit A to Claimants' Motion), by the use by both rights of the same ditch from Alder Creek and by the physical location of the two parcels with respect to each other and the ditch. In his proposed findings, the Director recommended a priority date of 4/1/1900 for No. 65-5633, and no objections were filed with respect to that right.

Accordingly, if the Court grants the motion to submit a late claim, the Department would ask the Court to order that the proposed findings for Right No. 65-8850 be amended to state a priority date of 4/1/1900.

III.

A copy of this Response and the Notice of Hearing filed herewith will be served upon those holders of rights which may be affected by this proposed change, specifically: Dora Murray and Guy Canada, owners of Right No. 65-5633, Elzie Yensen and Shirley Lindstrom, owners of No. 65-10925, and Douglas and Janice Donley, owners of No. 65-10539.

DATED this 11 day of March, 1980.

Michael H. Hyer

MICHAEL H. HYER
Deputy Attorney General
Department of Water Resources

DAVID H LEROY
Attorney General
State of Idaho
Statehouse Room 210
Boise Idaho 83720
Telephone (208) 384-2400

FILED

MAY 22 1980

_____ O'CLOCK P.M.

_____ CLERK

_____ DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

IN THE MATTER OF THE GENERAL DETERMINATION OF THE RIGHT TO THE USE OF SURFACE AND GROUNDWATERS OF THE PAYETTE RIVER DRAINAGE BASIN.	)	Civil No. 3667 ORDER PERMITTING LATE OBJECTION OF BARNES AND/OR CHENEY

UPON MOTION being duly presented to this Court, and the matter being duly considered by this Court,

IT IS HEREBY ORDERED that Larry B. Barnes and/or Charles Cheney be and is hereby permitted to file a late objection to Right No. 65-8850 of the Proposed Findings of Water Rights by the Director of the Department of Water Resources; and it appearing that there may be some relationship between the water rights of Larry B. Barnes and/or Charles Cheney and the rights of George and Dora Murray, husband and wife, and Guy and Marilyn Canaday, husband and wife,

IT IS FURTHER ORDERED that George and Dora Murray, husband and wife, and Guy and Marilyn Canaday, husband and wife, be and are hereby permitted to file objections to Right No. 65-5633 of the Proposed Findings of Water Rights of the Director of the Department of Water Resources.

DATED this 28th day of April, 1980.

Gilbert C. Norris

GILBERT C. NORRIS
District Judge

Attachment D

RECEIVED

MAY 13 1980

Department of Water Resources

May 12, 1980

Hon. Gilbert C. Norris
District Judge
Washington County Courthouse
P. O. Box 667
Weiser, Idaho 83672

Re: Water rights - Murray-Canaday/Barnes appropriation
Gem County Case No. 3667

Dear Judge:

I have a copy of Mr. Carsman's letter of May 8, 1980, to you, regarding the above-captioned water right. All we want to do is have permission to show that the water right, which is claimed by Mr. and Mrs. Murray and Mr. and Mrs. Canaday goes back to 1879. I can see no problem with this as far as the Court is concerned, or as far as Mr. Barnes is concerned, because from the records that I have dug up, the Barnes water right is a derivative of the Murray-Canaday water right.

It would appear to me, from the letter that I received from Mr. Berne K. Jensen, Mr. Barnes' attorney, a copy of which is enclosed, that there would be no problem with the establishment of the water right. I particularly feel that this should be done because, otherwise, the record will disclose that Mr. Barnes had a water right prior to Mr. and Mrs. Murray and Mr. and Mrs. Canaday, which just would not be the factual situation. I have enclosed a copy of the abstract sheet, dated January 11, 1880, for your reference.

Very truly yours,

HIGER & ASSOCIATES

C. H.

#11

C. H. Higer

CHH:js

Enclosures

cc: Berne K. Jensen
Howard Carsman, Deputy Attorney General

Attachment E

BERNE K. JENSEN
ATTORNEY-AT-LAW
BOISE, IDAHO 83701

TELEPHONE 344-7211
AREA CODE 208

P O BOX 454

May 2, 1980

Mr. C. H. Higer
Attorney at Law
Emmett, Idaho

Re: Payette Adjudication, Gem County Civil No. 3667
Water Right No. 65-8850

Dear Clarence,

This letter is written with respect to the above captioned matter and in accordance with the suggestion of Michael H. Hyer, Deputy Attorney General. Mr. Hyer has suggested that we try to reach an agreement with you with respect to respective water rights.

It is my client's contention that although his water right may be no better than your clients, that it should be at the same level. This is based on the Barnes chain of title stemming from the Wetzels.

Would you please consider this matter and advise me.

Personal regards. Come and visit us.

Sincerely yours,

Berne

Berne K. Jensen

#10

J.V.R.Witt.

7. TO

William Charters.

QUIT CLAIM DEED:

Dated January 8,1881.
Ackl January 8,1881
Filed January 10,1881
Book 15 of Deeds,Page 114.
Consid $2800.00

Remise,Release and forever Quit-claim the E½ of the NW¼, of Section 34, and the Lots 6 and 7, of Section 27,Township 9 North, Range 4 East B.M. containin 170.05 Acres.
With all right,title and interest in a certain Water-right and ditch, for irrigation purposes, taking waters of Alder Creek, owned by first party, and L.Setzel, and Estate of A.Pail, being the un-divided ½ interest in said water-right and ditch.

Acknowledged by J.V.R.Witt, before Jonas W.Brown. Notary Public, County of Boise, Idaho, Seal.

One Witness.

#5.

William Charters.

TO

8. N.Haug.

MORTGAGE:

Dated January 8,1881
Ackl January 8,1881.
Filed January 10,1881.
Book 4 of Mtgs,Page 324.
Consd. $1600.00

Mortgages the E½ of the NW¼, of Section 34, and the Lots 6 and 7, of 27, Township 9 North, Range 4 East, containing 170.05 Acres.

Secures Two Note of even date herewith for $800.00, each, two and two yrs. after date, with interest thereon at 1½ % per month, Payable at the end of every 12 months

Acknowledged by Mortgagors before Jonas W. Brown. Notary Boise County. Idaho. Seal.

RECORDED INDEXED

6

RECEIVED
DEC 01 1988
Department of Water Resources

PHILLIP J. RASSIER
JOSEPHINE P. BEEMAN
Deputy Attorneys General
Department of Water Resources
Statehouse
Boise, Idaho 83720
Telephone: (208) 334-4448

#6

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR GEM COUNTY

IN THE MATTER OF THE GENERAL DETERMINATION OF THE RIGHTS TO THE USE OF SURFACE AND GROUND WATER OF THE PAYETTE RIVER DRAINAGE.	Civil Case No. 3667 STIPULATION RESOLVING OBJECTION OF LARRY B. BARNES

COME NOW R. Keith Higginson, Director of the Idaho Department of Water Resources; Larry B. Barnes; George and Dora Murray ("Murrays"), husband and wife; and Guy and Marilyn Canaday ("Canadays"), husband and wife; through their respective counsel, stipulate that water right No. 65-8850 have its priority date changed from 6/1/1920 to 4/1/1900. The 1900 priority date is the same as for water right No. 65-5633 held by the Murrays and Canadays. Both these water rights divert from Alder Creek (tributary to the South Fork, Payette River) with a similar distribution system. This stipulation resolves the objection of Larry B. Barnes which was allowed to be filed by order of District Judge

Attachment F

Gilbert C. Norris in May 1980.

DATED this _____ day of _____, 1988.

JIM JONES
Attorney General

JOSEPHINE P. BEEMAN
Deputy Attorney General
Idaho Department of Water Resources

DATED this _____ day of _____, 1988.

BERNE JENSEN
Counsel for Larry B. Barnes

DATED this _____ day of _____, 1988.

CLARENCE H. HIGER
Counsel for George and Dora Murray and Guy and Marilyn Canaday

The above stipulation having come before the court, it is hereby approved this _____ day of _____, 1988.

JIM R. DOOLITTLE
District Judge

West

RECEIVED
FEB 20 2001
Department of Water Resources

RECEIVED
MAR 09 2001
WATER RESOURCES
WESTERN REGION

2001 FEB 16 PM 02:40
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

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	)	ORDER SETTING STATUS
	)	CONFERENCE
Case No. 39576	)	
	)	SUBCASE NO: 65-08850

Please be advised that Special Master THOMAS R CUSHMAN has set a Status Conference in the above subcase(s) as follows:

TUESDAY, MARCH 27, 2001 at 02:30 PM

SRBA
DISTRICT COURT
253 3RD AVENUE NORTH
TWIN FALLS, ID

Option: Parties may participate by phone if they contact the clerk at (208) 736-3011 prior to MARCH 26, 2001 .

IT IS SO ORDERED.

Dated: FEBRUARY 16, 2001

/S/ THOMAS R CUSHMAN
Special Master
Snake River Basin Adjudication

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

CERTIFICATE OF MAILING

I Certify that a true and correct copy of the ORDER SETTING STATUS CONFERENCE was mailed on FEBRUARY 16, 2001 , with sufficient first-class postage to the following:

CHARTER MOUNTAIN RANCH
CHARTER MOUNTAIN RANCH, INC
Represented by:
BRUCE M. SMITH
MOORE SMITH BUXTON & TURCKE
225 NORTH 9TH ST, STE 420
BOISE, ID 83702
Phone: 208-331-1800

LENORA B BARNES
LENORA BARNES
Represented by:
SCOTT L. CAMPBELL
PO BOX 1539
BOISE, ID 83701
Phone: 208-343-5454

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

/S/ DEBBIE LASH
Deputy Clerk

RECEIVED
JUL 18 2001
WATER RESOURCES
WESTERN REGION

Bruce M Smith, ISB #3425
Tammy A Zokan, ISB #5450
MOORE SMITH BUXTON & TURCKE, CHARTERED
Attorneys at Law
225 North 9th Street, Suite 420
Boise, ID 83702
Telephone (208) 331-1800
Facsimile (208) 331-1202

Attorney for Charter Mountain Ranch, Inc

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 No. 65-08850
	)	
	)	**NOTICE OF TAKING**
Case No 39576	)	**DEPOSITION DUCES TECUM**
	)	**RULE 30(b)(6)**

Pursuant to Rule 30(b)(6), *Idaho Rules of Civil Procedure*, please take notice that Defendant Charter Mountain Ranch, Inc (hereinafter "Charter Mountain"), by and through its attorney of record, Bruce M. Smith, Moore Smith Buxton & Turcke Chartered, will take the deposition of The Idaho Department of Water Resources -- and specifically of the person most knowledgeable of the investigation and records of the Idaho Department of Water Resources as they relate to the priority date determination for the water right described as 65-08850 -- on Thursday, July 26, 2001, at 9 00 a m at the office location of 225 North 9th Street, Suite 420, Boise, Idaho (208) 331-1800

Matters on which the examination and production are requested includes the following.

1 Everything the Department did to investigate the priority date for claim 65-08850

2 All the information that the Department considered prior to recommending a priority date for claim 65-08850

3 The basis for the Department's priority date recommendation for claim 65-08850

4 The name of the Department agent(s) who recommended the priority date for claim 65-08850 to the Director

5 Any historical investigation and/or on-site investigation of the priority date conducted by the Department for 65-08850

DATED this 18th day of July, 2001

MOORE SMITH BUXTON & TURCKE, CHARTERED

BRUCE M SMITH
TAMMY A ZOKAN
Attorney for Charter Mountain Ranch, Inc

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18 day of July, 2001, I caused to be served a true and correct coy of the foregoing **NOTICE OF TAKING DEPOSITION DUCES TECUM RULE 30(b)(6)** by the method indicated below, and addressed to the following:

Scott L. Campbell
Angela D. Schaer
ELAM & BURKE, P A
Key Financial Center. 10th Floor
P O Box 1539
Boise, Idaho 83701

X via U.S MAIL
____ via HAND DELIVERY
____ via OVERNIGHT MAIL
____ via FACSIMILE

Idaho Department of Water Resources
Document Depository
PO Box 83720
Boise, Idaho 83720-0098

X via U S MAIL
____ via HAND DELIVERY
____ via OVERNIGHT MAIL
____ via FACSIMILE

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

X via U S MAIL
____ via HAND DELIVERY
____ via OVERNIGHT MAIL
____ via FACSIMILE

The U S Dept of Justice
Environment & Natural Resources Division
550 West Fort Street, MSC 033
Boise, Idaho 83724

X via U S MAIL
____ via HAND DELIVERY
____ via OVERNIGHT MAIL
____ via FACSIMILE

Garrick L Baxter
Deputy Attorney General
Idaho Department of Water Resources
1301 N Orchard
P.O Box 83720
Boise, Idaho 83720-0098

____ via U S MAIL
X via HAND DELIVERY
____ via OVERNIGHT MAIL
____ via FACSIMILE

Mel Schulte
IDWR/Regional Office
2735 Airport Way
Boise, ID 83702

____ via U.S. MAIL
X via HAND DELIVERY
____ via OVERNIGHT MAIL
____ via FACSIMILE

TAMMY A ZOKAN

RECEIVED
AUG 15 2000
Department of Water Resources

RECEIVED
AUG 29 2000
WATER RESOURCES
WESTERN REGION

2000 AUG 14 AM 8:41
FILED
SRBA

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	)	**Water Right No. 65-08850**
Case No. 39576	)	**ORDER OF REFERENCE TO SPECIAL MASTER CUSHMAN**

On August 10, 2000, Charter Mountain Ranch, Inc., by and through its attorney of record Bruce M. Smith, filed a *Motion to File Late Objection.*

IT IS HEREBY ORDERED that the matter be referenced to Special Master Thomas R. Cushman for review and recommendation.

DATED August 14, 2000.

BARRY WOOD
Administrative District Judge
Presiding Judge of the
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the **ORDER OF REFERENCE TO SPECIAL MASTER CUSHMAN** was mailed on August 14, 2000, via first-class mail to the following:

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

Charter Mountain Ranch, Inc.
Represented by:
Bruce M. Smith
Moore Smith Buxton & Turcke, Chtd
225 North 9th Street, Suite 420
Boise, ID 83702

Lenora B. Barnes
Represented by:
Scott Campbell
Elam & Burke
PO Box 1539
Boise, ID 83701-1539

Deputy Clerk of the Court

RECEIVED
AUG 29 2000
WATER RESOURCES
WESTERN REGION

RECEIVED
AUG 21 2000
Department of Water Resources

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

In Re SRBA)
)
Case No. 39576)
)
)
)
_____)

A. **Subcase** 65-08850
(Insert water right number From the Objection Form)

STANDARD FORM 2 RESPONSE TO OBJECTION

Please **print or type** the following information:

B. NAME AND ADDRESS OF PERSON RESPONDING

Name: Lenora Barnes

Address: 5120 Sorrento Drive

Boise, ID 83704

Daytime phone: _____

Name & Address of Attorney, if any:

Scott L. Campbell and Angela Schaer

ELAM & BURKE, P.A.

PO Box 1539

Boise, ID 83701

C. NAME AND ADDRESS OF PERSON WHO FILED THE OBJECTION TO WHICH YOU ARE RESPONDING

Name: Charter Mountain Ranch, Inc.

Address: Rt. 1 Box 451

Glens Ferry, ID 83623

D. I am responding to the objections to the following elements. (Please check the appropriate box(es)).

1. ☐ **Name and Address**
2. ☐ **Source**
3. ☐ **Quantity**
4. ☒ **Priority Date**
5. ☐ **Point(s) of Diversion**
6. ☐ **Instream Flow Description**
7. ☐ **Purpose(s) of Use**
8. ☐ **Period of Year**
9. ☐ **Place of Use**

11. **Recommendation**

☐ This water right should not exist.

☐ This water right was not recommended, but should be recommended with the elements described above.

E. **VERIFICATION** (Must be Completed)

State of Idaho)
)ss.
County of Ada)

Angela D. Schaer, duly sworn, upon oath, deposes and says:
(Name of person filing response)

That I am the party/claimant filing this response as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant responding and that I have read this response, know its contents and believe that the statements are true to the best of my knowledge.

(Signature of person filing response)
Angela D. Schaer
(Attorney signing in representative capacity)

Subscribed and sworn to before me on: August 17, 2000

DAWN A. PECKHAM NOTARY PUBLIC STATE OF IDAHO

Dawn A. Peckham
Notary Public for Idaho
Residing at: Boise, Idaho
My Commission Expires: 07/17/2006

INSTRUCTIONS FOR MAILING

You must mail the response, including all attachments, to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

F. CERTIFICATE OF MAILING

I certify that on August 17th, 2000, I mailed the original and copies of this response, including all attachments, to the following persons:

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. One copy to the claimant of the water right at the following address:

Name: Bruce Smith, Moore Smith Buxton & Turcke, Chtd
Address: 225 North 9th Street, Suite 420, Boise, ID, 83702

3. One copy to the party who filed the objection at the following address:

Name: Lenora Barnes
Address: _____

4. 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 & Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

Bruce Smith
Moore Smith Buxton & Turcke, Chtd
225 North 9th Street, Suite 420
Boise, ID 83702

Angela D. Schaag
Your signature or signature of attorney mailing on your behalf

RECEIVED
AUG 2 1 2000
Department of Water Resources

RECEIVED
AUG 2 9 2000
WATER RESOURCES
WESTERN REGION

Attorneys for Lenora B. Barnes

Scott L. Campbell
Angela D. Schaer
ELAM & BURKE, P.A.
Key Financial Center, 10th Floor
702 West Idaho
P.O. Box 1539
Boise, Idaho 83701
Telephone: (208) 343-5454
Facsimile: (208) 384-5844

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 No. 65-08850
	)	
Case No. 39576	)	RESPONSE TO MOTION TO FILE LATE OBJECTION
	)	

Lenora Barnes ("Claimant"), by and through her attorneys of record Elam & Burke, P.A., hereby responds to the Motion to File Late Objection filed by Charter Mountain Ranch, Inc. The Claimant does not oppose the motion to file late objection, but completely disagrees with the merits of the objection, and will contest the objection on its merits. Specifically, Claimant disagrees that historical data "clearly indicates" that the priority date is 1920, not 1900.

A Standard Form 2, Response to Objection, is filed concurrently herewith.

Respectfully submitted this 17th day of August, 2000.

ELAM & BURKE, P.A.

By Scott L. Campbell
Scott L. Campbell

By Angela D. Schaer
Angela D. Schaer

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing RESPONSE TO MOTION TO FILE LATE OBJECTION was mailed on this 17th day of August, 2000, with sufficient first-class postage to each of the following:

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

The United States Department of Justice
Environment and Natural Resources Division
550 West Fort Street, MSC 033
Boise, Idaho 83724

Idaho Department of Water Resources
Document Depository
Post Office Box 83720
Boise, Idaho 83720-0098

Bruce Smith
Moore Smith Buxton & Turcke, Chtd
225 North 9th Street, Suite 420
Boise, ID 83702

Scott L. Campbell

RECEIVED
AUG 11 2000
Department of Water Resources

RECEIVED
AUG 29 2000
WATER RESOURCES
WESTERN REGION

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

In Re SRBA)
)
Case No. 39576)
)
)
)

A. Subcase 65-08850
(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Charter Mountain Ranch, Inc. by John B. McCallum
Address: Rt 1. Box 451
Glenns Ferry, ID 83623
Daytime Phone: (208) 366-7931

Name & Address of Attorney, if any:
Bruce M. Smith of Moore Smith Buxton Turcke
225 N. 9th Street, Ste 420
Boise, ID 83702

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: Lenora B. Barnes
Address: 5120 Sorrento Drive
Boise, Idaho 83704

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ **Name and Address**
   Should be: _____

2. ☐ **Source**
   Should be: _____

3. ☐ **Quantity**
   Should be: _____

4. ☒ **Priority Date**
   Should be: 1920

5. ☐ **Point(s) of Diversion**
   Should be: _____

6. ☐ **Instream Flow Description**
   Should be: _____

7. ☐ **Purpose(s) of Use**
   Should be: _____

8. ☐ **Period of Year**
   Should be: _____

9. ☐ **Place of Use**
   Should be: _____

11. **I object because:**

☐ This water right should not exist.

☐ This water right was not recommended, but should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTION(S): Historical data clearly indicates the priority date for this claim is 1920, not 1900.

F. **VERIFICATION** (Must be Completed)

State of Idaho)
)ss.
County of Ada)

JOSEPH D. MALLET, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

(Signature of person filing objection)

Joseph D. Mallet for Bruce Smith
(Attorney signing in representative capacity)

Subscribed and sworn to before me on: August 16, 2000

Amber M. Valdez
Notary Public for State of Idaho
Residing at: Boise, Idaho
My Commission Expires: 6/29/04

AMBER M. VALDEZ NOTARY PUBLIC STATE OF IDAHO

INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the Court. **FAX filings will not be accepted**. You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on August 9, ~~199~~ 2000, I mailed the original and copies of this objection, including all attachments, to the following persons:

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. One copy to the claimant of the water right at the following address:

   Name: Scott Campbell/Angela Schaer of Elam & Burke
   Address: PO Box 1539
   Boise, Idaho 83701

3. 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

Joseph D. Mitt
Signature of Objector or attorney mailing on Objector's behalf for Bruce Smith

Bruce M Smith, ISB #3425
Tammy A Zokan, ISB #5450
MOORE SMITH BUXTON & TURCKE, CHARTERED
Attorneys at Law
225 North 9th Street, Suite 420
Boise, ID 83702
Telephone. (208) 331-1800
Facsimile (208) 331-1202

Attorney for Charter Mountain Ranch, Inc.

RECEIVED
JUL 25 2001
WATER RESOURCES
WESTERN REGION

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA,	)	Subcase No.. 65-08850
	)	
	)	**AMENDED NOTICE OF TAKING**
Case No 39576	)	**DEPOSITION DUCES TECUM**
	)	**RULE 30(b)(6)**

Pursuant to Rule 30(b)(6), *Idaho Rules of Civil Procedure*, please take notice that Defendant Charter Mountain Ranch, Inc (hereinafter "Charter Mountain"), by and through its attorney of record, Bruce M. Smith, Moore Smith Buxton & Turcke Chartered, will take the deposition of The Idaho Department of Water Resources -- and specifically of the person most knowledgeable of the investigation and records of the Idaho Department of Water Resources as they relate to the priority date determination for the water right described as 65-08850 -- on Tuesday, July 31, 2001, at 9:00 a m at the office location of 225 North 9th Street, Suite 420, Boise, Idaho (208) 331-1800.

Matters on which the examination and production are requested includes the following

1. Everything the Department did to investigate the priority date for claim 65-08850.

2. All the information that the Department considered prior to recommending a priority date for claim 65-08850.

3 The basis for the Department's priority date recommendation for claim 65-08850

4. The name of the Department agent(s) who recommended the priority date for claim 65-08850 to the Director

5 Any historical investigation and/or on-site investigation of the priority date conducted by the Department for 65-08850

DATED this 25 day of July, 2001.

MOORE SMITH BUXTON & TURCKE, CHARTERED

BRUCE M. SMITH
TAMMY A. ZOKAN
Attorney for Charter Mountain Ranch, Inc

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25 day of July, 2001, I caused to be served a true and correct coy of the foregoing **AMENDED NOTICE OF TAKING DEPOSITION DUCES TECUM RULE 30(b)(6)** by the method indicated below, and addressed to the following:

Scott L. Campbell Angela D. Schaer ELAM & BURKE, P A Key Financial Center, 10th Floor P.O Box 1539 Boise, Idaho 83701	____ via U S. MAIL X via HAND DELIVERY ____ via OVERNIGHT MAIL ____ via FACSIMILE
Idaho Department of Water Resources Document Depository PO Box 83720 Boise, Idaho 83720-0098	X via U.S MAIL ____ via HAND DELIVERY ____ via OVERNIGHT MAIL ____ via FACSIMILE
Chief, Natural Resources Division Office of the Attorney General State of Idaho PO Box 44449 Boise, Idaho 83711-4449	X via U S MAIL ____ via HAND DELIVERY ____ via OVERNIGHT MAIL ____ via FACSIMILE
The U S. Dept. of Justice Environment & Natural Resources Division 550 West Fort Street, MSC 033 Boise, Idaho 83724	X via U.S MAIL ____ via HAND DELIVERY ____ via OVERNIGHT MAIL ____ via FACSIMILE
Garrick L. Baxter Deputy Attorney General Idaho Department of Water Resources 1301 N Orchard P.O. Box 83720 Boise, Idaho 83720-0098	____ via U S. MAIL X via HAND DELIVERY ____ via OVERNIGHT MAIL ____ via FACSIMILE
Mel Schulte IDWR/Regional Office 2735 Airport Way Boise, ID 83702	____ via U.S. MAIL X via HAND DELIVERY ____ via OVERNIGHT MAIL ____ via FACSIMILE

TAMMY A. ZOKAN

MKL

RECEIVED
AUG 11 2000
Department of Water Resources

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MOORE SMITH BUXTON & TURCKE, CHARTERED
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Telephone: (208) 331-1800
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Attorney for Charter Mountain Ranch, Inc.

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,	)	**MOTION TO FILE LATE OBJECTION**
Case No. 39576	)	Subcase No.: 65-08850

COMES NOW Charter Mountain Ranch, Inc. (herein after "Charter Mountain"), by and through its attorney of record, Bruce M. Smith, Moore Smith Buxton & Turcke Chartered, hereby file this Motion to File Late Objection to SRBA Claim Number 65-08850. The deadline for filing an objection to the Director's Report for this claim was April 14, 2000. The motion is predicated upon the standards set forth in Administrative Order 1, Rule 4(d)(2), and Idaho Rule of Civil Procedure 55(c). As shown herein, good cause exists for allowing Charter Mountain to file an objection to the Director's Report for SRBA Claim Number 65-08850, and there is a strong likelihood that they would prevail on the merits of their objection.[1]

Charter Mountain does not necessarily protest the water right's existence, given Idaho authority that Idaho's public waters, including groundwater, are subject to appropriation.

[1] An objection form is filed concurrently herewith, via mail instead of fax, per the instructions on the Objection form.

However, Charter Mountain does contest the priority date recommended in SRBA Claim Number 65-08850.

I.

THE LEGAL STANDARDS FOR FILING A LATE OBJECTION

In 1997, Special Master Dolan set forth the standards to be applied in determining whether to grant a Motion to File Late Objection, and held:

> **SRBA Administrative Order 1, Rules of Procedure** (AO-1), does not provide guidance for review of motions to file late *objections*. AO-1 only refers to late *claims* which are reviewed under the criteria of I.R.C.P. 55(c), "Setting aside default judgment." [Footnote omitted]. However, customary practice in the SRBA court has been to apply the same criteria to both late claims and late objections. Hence, Buckeye Farms' *Motion* will be considered under Rule 55(c):...
>
> Idaho courts follow a dual-track standard to determine when a party is entitled to relief from default. A party wanting to set aside a clerk's entry of default need only show "good cause" under Rule 55(c). If a final judgment by default has been entered, then a party must, in addition to good cause, satisfy the requirements of Rule 60(b). That is, the party must show some basis such as newly discovered evidence.
>
> A motion to set aside a default judgment presents the trial court with a factual determination. *Reeves v. Wisenor*, 102 Idaho 271, 629 P.2d 667 (1981). In determining whether to set aside a default judgment, a standard of liberality must be applied rather than one of strictness and the party moving to vacate a default judgment must be given the benefit of any genuine doubt. *Johnson v. Pioneer Title Co. of Ada County*, 104 Idaho 727, 662 P.2d 1171 (App. 1983). A motion to set aside a default judgment is addressed to the sound discretion of the trial court whose decision will not be reversed in the absence of abuse of that discretion. However, it would be an abuse of discretion for the trial court to grant such a motion without an adequate legal basis for doing so. *Newbold v. Arvidson*, 105 Idaho 663, 672 P.2d 231 (1983).

...

Whether part of good cause or in addition to it, Idaho courts have imposed further requirements. First, a party must show that he or she has acted in good faith and exercised due diligence in the prosecution of his or her rights, such as an ordinarily prudent person would exercise under similar conditions. *Council Improvement Co v. Draper*, 16 Idaho 541, 102 P. 7 (1909), and *Kovachy v. Deleusomme*, 122 Idaho 973, 842 P.2d 309 (App. 1992). Second, a party must show a meritorious defense to set aside a default. *Thomas v. Stevens*, 78 Idaho 266, 300 P.2d 811 (1956).

(Order Granting Motion to File Late Objections, *In re SRBA Case No. 39576, Subcases 36-02338, 36-02414, 36-02734, and 36-04011*). Charter Mountain can meet the requirements set forth in that opinion.

II.

ANALYSIS

A. Good Cause And Proper Diligence Can Be Shown.

As a factual matter, Charter Mountain only recently learned the details of the recommendations in the Director's Report for SRBA Claim Number 65-08850 ("Barnes claim"). Specifically, Charter Mountain was unaware that the priority date recommended in the Director's Report was inconsistent with historical records and use of Claim Number 65-08850. As with may parties, because of the expense and significant amount of time required to research and participate in the adjudication of water rights claims in the SRBA, Charter Mountain did not initially obtain legal counsel to assist with their claims in Basin 65. Therefore, in good faith, Charter Mountain believed, based on its knowledge of historical use of water rights in the area involved, that pursuing the appropriate decree of its water rights in Basin 65 would adequately meet its needs. Accordingly, Charter Mountain was unaware that the Director's Report recommendation as to Claim Number 65-08850 would have a substantially negative impact on Charter Mountain's water rights claims in Basin 65.

Based on Charter Mountain's records from the Department of Water Resources, the original priority date for right 65-08850 was 1920; not 1900, as is currently recommended in the Director's Report for the Barnes claim (see attached exhibit A).

Charter Mountain filed claims in the SRBA for the following rights: 65-02949B, 65-05633, 65-03587. When Charter Mountain received the Director's Report recommendations on these claims, it carefully reviewed each one of them. Charter Mountain proceeded under the belief that attention to its water right claims would be sufficient to protect its right to use water because of its understanding of the issues relative to historical use within Basin 65. Had Charter Mountain known that a priority date of 1900, instead of 1920 was recommended on Claim Number 65-08850, a more timely Notice of Objection would have been filed with the SRBA Court in this matter.

Therefore, based on its recent discovery of the priority date recommendation as to this right, Charter Mountain respectfully requests that this Court find that there is good cause to allow Charter Mountain to file a late objection to SRBA Claim Number 65-08850.

If the standards of Rule 60(b) do apply, Charter Mountain should be permitted to file a late objection due to mistake or excusable neglect. The Idaho Court of Appeals has noted that:

> To obtain relief from a default judgment on the ground of excusable neglect, the moving party must demonstrate that **his conduct was of a type expected from a reasonably prudent person under the circumstances**. *Gro-Mor, Inc. v. Butts*, 109 Idaho 1020, 712 P.2d 721 (Ct. App. 1985). In determining whether a party's conduct constitutes excusable neglect, the courts must consider **each case in light of its unique facts.**

Baldwin v. Baldwin, 114 Idaho 525, 527, 757 P.2d 1244, 1246 (Ct. App. 1988) (additional citations omitted and emphasis added). The SRBA's magnitude and scope lends itself to the very type of unique facts which justify granting Charter Mountain's motion. In the SRBA, each individual water right claimant is ***not*** served with a copy of every other claim in their particular basin. Instead, they are served only with a copy of the Director's Report for their own claims, if any. Thus, Charter Mountain received a copy of the Director's Report for its water right numbers

65-02949B, 65-05633, 65-03587 (see attached Exhibit B). However, without checking every detail on every claim in Basin 65, they had no way of knowing that the Barnes' claim (65-08850) was in conflict with their own and that an improper priority date had been recommended. Again, constraints of time and funds limit a layman's ability to immediately review and fully understand the implications of all aspects of each detail in the adjudication.

Importantly, the Court has not yet decreed this right. Therefore, this is not a situation wherein an objector is attempting to undo that which has already been done. Instead, Charter Mountain is simply contesting an issue within a water right claim, a claim which should not be decreed as recommended.

Charter Mountain has shown good cause and excusable neglect or mistake for not filing an objection to the Director's Report for 65-08850 at an earlier date. The first prong of the test for a motion to file late objection has been met.

B. There Are Facts Which, If Proven, Would Allow Charter Mountain To Prevail On The Merits Of Its Objection.

The next requirement under AO1 and the Idaho Rules of Civil Procedure is that Charter Mountain must ***allege*** facts which show that there is a likelihood that they would prevail on the merits of their objection. However, it is critical to remember that Charter Mountain need not ***prove*** their case at this juncture:

> A party who seeks to set aside a default has the burden of supplying detailed facts of the proposed defense. *Smith Electric, Inc. v. Crandlemire*, 100 Idaho 172, 595 P.2d 321 (1979). At a hearing on the motion, a party need not produce documents to *prove* a defense. It is sufficient if the movant *pleads* with particularity facts which, if proven, would constitute a meritorious defense. *State v. One 1990 Geo Metro*, 126 Idaho 675, 889 P.2d 109 (App. 1995). The policy of requiring a showing of meritorious defense is founded on the doctrine that it would be an idle exercise for a court to set aside a default if, in fact, there is no real justiciable controversy. *Reeves v. Wisenor*, 102 Idaho 271, 629 P.2d 667 (1981).

(Order Granting Motion to File Late Objections, p. 4) (emphasis in Order).

Charter Mountain's dispute is with the validity of the priority date of 1900 that was recommended for Claim Number 65-08850. Based on Charter Mountain's knowledge of use of the right, the appropriate priority date is 1920, consistent with the records of the Department of Water Resources records. Historical use and application of this claim has always been with a priority date of 1920. Charter Mountain operated under the belief that this would continue to be the case as reflected in the Department of Water Resource's Water Rights Source Index records which supports Charter Mountain's contention of the priority date for Claim Number 65-08850 (see attached Exhibit C).

CONCLUSION

Charter Mountain has shown good cause for failing to object sooner to the Director's Report recommendation for this subcase, and there is a strong likelihood that it would prevail on the merits of its objection. Therefore, the requirements of AO1 and the Idaho Rules of Civil Procedure, as explained by an SRBA Special Master, have been met. Charter Mountain respectfully requests that its motion to file a late objection be granted.

Respectfully submitted this 9th day of August, 2000.

MOORE SMITH BUXTON & TURCKE, CHARTERED

BRUCE M. SMITH
Attorney for Charter Mountain Ranch, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9 day of August, 2000, I caused to be served a true and correct coy of the foregoing **MOTION TO FILE LATE OBJECTION** by the method indicated below, and addressed to the following:

Clerk of the Court Snake River Basin Adjudication P.O. Box 2707 Twin Falls, Idaho 83303-2707	____ via U.S. MAIL ____ via HAND DELIVERY ____ via OVERNIGHT MAIL \ via FACSIMILE
Lenora. B. Barnes Represented by Scott L. Campbell P.O. Box 1539 Boise, Idaho 83701	) via U.S. MAIL ____ via HAND DELIVERY ____ via OVERNIGHT MAIL ____ via FACSIMILE
Idaho Department of Water Resources Document Depository PO Box 83720 Boise, Idaho 83720-0098	____ via U.S. MAIL ____ via HAND DELIVERY ____ via OVERNIGHT MAIL ____ via FACSIMILE
Chief, Natural Resources Division Office of the Attorney General State of Idaho PO Box 44449 Boise, Idaho 83711-4449	) via U.S. MAIL ____ via HAND DELIVERY ____ via OVERNIGHT MAIL ____ via FACSIMILE
The US Dept. of Justice Environment & Natural Resources Division 550 West Fort Street, MSC 033 Boise, Idaho 83724	) via U.S. MAIL ____ via HAND DELIVERY ____ via OVERNIGHT MAIL ____ via FACSIMILE

BRUCE M. SMITH

SRBA
DIRECTORS REPORT 65-08850

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IWT072 IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

Right Number: 65-08850

Name and Address: LENORA B BARNES
5120 SORRENTO DR
BOISE, ID 83704

Source: ALDER CREEK Tributary: PAYETTE RIVER, SOUTH FORK

Quantity: 2.57 CFS
3.29 AFY

THIS RIGHT WHEN COMBINED WITH RIGHT NO. 65-11324 SHALL PROVIDE NO MORE THAN .02 CFS PER ACRE AT THE FIELD HEADGATE.

Priority Date: 04-01-1900

Diversion Point: T08N R04E S02 SWNE Within Boise County

Purpose and Period of Use:

Purpose of Use	Period of Use	Quantity
Irrigation	04-01 TO 11-01	2.51 CFS
Stockwater	01-01 TO 12-31	.06 CFS
		3.29 AFY

Place of Use: Irrigation Within Boise County
T09N R04E S35 LOT 6 (NESW)27 LOT 5 (NWSW)51
SWSW 10 SESW 8
LOT 7 (SWSE) 7
103 Acres Total

Stockwater
Same as Other Use

USE OF THIS RIGHT WITH RIGHT NO. 65-11324 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 110 ACRES IN A SINGLE IRRIGATION SEASON.

Other Provisions Necessary for Definition / Administration of this Water Right:

Explanatory Material: Basis of Claim - Decreed

THE FOLLOWING RIGHTS ARE ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE: 65-05696 & 65-05633.
STOCKWATER, 150 RANGE CATTLE.

Return to SRBA Home Page

EXHIBIT A

SRBA
DIRECTORS REPORT 65-02949B

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IWT072 IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

Right Number: 65-02949B

Name and Address: CHARTERS MOUNTAIN RANCH INC
RT 1 BOX 451
GLENNS FERRY, ID 83623

Source: STOVER CREEK Tributary: BOULDER CREEK

Quantity: 115.50 AFY

Priority Date: 03-15-1954

Diversion Point: T17N R04E S30 NESW Within Valley County

2 POINTS OF DIVERSION LOCATED IN T17N, R04E, S30, NESW.

Purpose and Period of Use:

Purpose of Use	Period of Use	Quantity
Irrigation from Storage	04-15 TO 10-15	115.50 AFY
Irrigation Storage	01-01 TO 12-31	115.50 AFY

Place of Use: Irrigation from Storage Within Valley County

T17N R03E S25	NESE 27	NWSE 39	
	SWSE 39	SESE 15	
S36	NWNE 29	SWNE 19	
	NENW 10		

178 Acres Total

Irrigation Storage
Same as Other Use

Other Provisions Necessary for Definition / Administration of this Water Right:

Explanatory Material: Basis of Claim - Decreed

RIGHT NO. 65-02949A IS ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE.

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EXHIBIT B

SRBA
DIRECTORS REPORT 65-05633

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IWT072 IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

Right Number: 65-05633

Name and Address: CHARTERS MOUNTAIN RANCH INC
RT 1 BOX 451
GLENNS FERRY, ID 83623

Source:		Tributary:
	ALDER CREEK	PAYETTE RIVER, SOUTH FORK
	CHARTERS CREEK	PAYETTE RIVER, SOUTH FORK
	COSKI CREEK	PAYETTE RIVER, SOUTH FORK

Quantity: 5.27 CFS

Priority Date: 04-01-1900

Diversion Point:			
	T08N R04E S02	SWNE	Within Boise County
	T09N R04E S34	SENW	
		NESE	

Purpose and Period of Use:	Purpose of Use	Period of Use	Quantity
	Irrigation	04-01 TO 11-01	5.27 CFS

Place of Use: Irrigation Within Boise County

T09N R04E S27	LOT 7	(SESW)	17		
S34	LOT 2	(NWNE)	36	SWNE	40
	LOT 3	(SENE)	50	NENW	40
		SENW	6	NESE	19
		NWSE	8		

216 Acres Total

Other Provisions Necessary for Definition / Administration of this Water Right:

Explanatory Material: Basis of Claim - Decreed

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EXHIBIT B

SRBA
DIRECTORS REPORT 65-03587

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IWT072 IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

Right Number: 65-03587

Name and Address: CHARTERS MOUNTAIN RANCH INC
RT 1 BOX 451
GLENNS FERRY, ID 83623

Source: UNNAMED STREAM Tributary: STOVER CREEK

Quantity: .20 CFS

Priority Date: 07-01-1947

Diversion Point: T17N R03E S36 NENE Within Valley County

Purpose and Period of Use:

Purpose of Use	Period of Use	Quantity
Irrigation	04-15 TO 10-15	.20 CFS

Place of Use: Irrigation Within Valley County
T17N R03E S36 SWNE 10
10 Acres Total

Other Provisions Necessary for Definition / Administration of this Water Right:

Explanatory Material: Basis of Claim - Decreed

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EXHIBIT B

WR0726WP
(00-55)

DEPARTMENT OF WATER RESOURCES
WATER RIGHTS SOURCE INDEX

DATE: 06/18/91
PAGE: 1

SOURCE OF WATER	TRIBUTARY TO	PRIORITY DATE	NAME	O C	WATER RIGHT NUMBER	SIG STA	(CFS)
ALDER CREEK	PAYETTE RIVER, SOUTH FORK	07/17/1951	RUSSELL , L. A.	C	65-02555A	D/	.040
			RUSSELL , HAZEL	C			
ALDER CREEK	PAYETTE RIVER, SOUTH FORK	07/17/1951	LOONEY , WILLIAM O.	C	65-02555X	D/	.020
			LOONEY , WILMA S.	C			
ALDER CREEK	PAYETTE RIVER, SOUTH FORK	04/01/1900	MURRAY , DORA	C	65-05633	J/	5.270
CHARTERS CREEK	PAYETTE RIVER, SOUTH FORK		CAMADAY , GUY	C			
COSKI CREEK	PAYETTE RIVER, SOUTH FORK						
ALDER CREEK	PAYETTE RIVER, SOUTH FORK	06/01/1920	MC KIE , EARL	C	65-05682	J/	2.920
			MC KIE , GENEVA C.	C			
ALDER CREEK	PAYETTE RIVER, SOUTH FORK	04/01/1966	HUTCHISON , ORIS J.	C	65-05696	D/	.040
COSKI CREEK	PAYETTE RIVER, SOUTH FORK		HUTCHISON , WILMA M.	C			
ALDER CREEK	PAYETTE RIVER, SOUTH FORK	04/09/1973	KARPACK , JOE	C	65-07357	/S	1.000
ALDER CREEK	PAYETTE RIVER, SOUTH FORK	06/01/1969	BARNES , LARRY B.	C	65-08650	D/	
			CHENEY , CHARLES	C			
ALDER CREEK	PAYETTE RIVER, SOUTH FORK	06/01/1920	BARNES , LARRY B.	C	65-08850	J/	2.570
			CHENEY , CHARLES	C			
ALDER CREEK	PAYETTE RIVER, SOUTH FORK	05/01/1911	DONLEY , DOUGLAS	C	65-10539	D/	.030
			DONLEY , JANICE	C			
ALDER CREEK	PAYETTE RIVER, SOUTH FORK	07/01/1957	HEIBURR , WENDELL O.	C	65-10673	D/	
			HEIBURR , BARELL M.	C			
ALDER CREEK	PAYETTE RIVER, SOUTH FORK	05/01/1970	BROWN , G. RICHARD	C	65-10864	D/	
			BROWN , BARBARA J.	C			
ALDER CREEK	PAYETTE RIVER, SOUTH FORK	09/15/1910	YENSEN , ELZIE	C	65-10925	D/	.100
			LINDSTROM , SHIRLEY	C			
ALDER CREEK	PAYETTE RIVER, SOUTH FORK	04/01/1935	VOGEL , MARJORIE	C	65-11001	D/	

EXHIBIT C