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Department of Water Resources

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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, IDAHO

FILED _____

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

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

Petitioner,

vs.

United States, State of Idaho, and all
unknown claimants to the use of water
from the Snake River Drainage Basin
Water System,

Respondents.

THERON J. SMITH and CARMA B. SMITH,
husband and wife,

Plaintiffs,

vs.

JAY SCOFFIELD and TARA SCOFFIELD,
husband and wife; GRACE PALMER, a single
person; BILLIE JEANNE CROXALL, a single
person; VIRGIL T. GERMER and LAURA GERMER,
husband and wife; KEITH HIGGINSON, Director
of the Idaho Department of Water Resources;
and JOHN DOES I, II, III and IV,

Defendants.

Descriptive Summary

This document is the Director's proposed final partial decree
of water rights determining the water rights of the Plaintiffs and
Defendants in the case of Smith v. Scoffield, et al., Civil Case
No. 40869-A, which case is consolidated with the Snake River Basin
Adjudication, Civil Case No. 39576.

FINAL PARTIAL DECREE - Page 1

Civil Case No.
39576 and
Civil Case No.
40869-A

FINAL PARTIAL
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LARRY W. COOPER
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The foregoing is a true and certified copy of
the document on file at the department of
Water Resources.

Signed this 18 day of December 1992

[Signature]

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INTRODUCTION

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The above-entitled cause was initiated by the Plaintiffs' filing of a complaint seeking a private adjudication of water rights pursuant to Idaho Code § 42-1404 in the district court for the Sixth Judicial District in and for Bannock County. The complaint sought an adjudication of rights to an unnamed spring and to Papoose Creek, a stream to which said spring is tributary. IDWR sought and was granted an order changing venue in this action from the District Court in and for Bannock County to the District Court in and for Twin Falls County. Further, IDWR sought and was granted an order to consolidate this action with the Snake River Basin Adjudication (SRBA).

The Director's Report in Smith v. Scoffield was filed on January 21, 1992. Objections to seven of the report's recommendations were received by March 23, 1992, and the Director filed his responses to these objections on July 21, 1992. Based upon new evidence provided by the objectors, the Director prepared a revised list of recommended water rights. A stipulation incorporating the revised listing of water rights, resolving all objections, and signed by all parties in Smith v. Scoffield, was filed on October 8, 1992. The stipulation was approved by the court on October 16, 1992.

Based on the above stipulation, the water rights of the claimants in the matter of Smith v. Scoffield are as follows:

GENERAL PROVISIONS

1. The sources of water for the parties' claims are Papoose Creek and an unnamed spring tributary to Papoose Creek in IDWR's

Administrative Basin (29). Papoose Creek originates in Section 2, T. 8 S., R. 35 E., B.M. at an elevation of approximately 5,500 feet. Papoose Creek flows in a northerly and then westerly direction until it flows into the Portneuf River. The unnamed spring originates in the NW 1/4 NE 1/4 Section 26, T. 7 S., R. 35 E., B.M. and is tributary to Papoose Creek, but there is no evidence of overland flow of water from the spring to the stream.

2. Domestic use, as used in this decree, is the use of water in a home, and for other purposes in connection therewith, including up to one-half acre total of irrigation.

3. Stockwater use, as used in this report, is the use of water for care and watering of livestock.

4. For rights or portions of rights for domestic or stockwater use, the annual volume of diversion is the volume actually diverted and beneficially used, subject to a maximum of 13,000 gallons per day.

5. The maximum annual volume of diversion for irrigation of lands in the Papoose Creek area is 4 acre feet per calendar year (AFY) per acre.

6. The maximum annual volume of consumptive use required for irrigation of lands in the Papoose Creek area is 3 AFY per acre.

7. For a right or portion of a right not used for irrigation purposes, the consumptive use is so small that it is deemed de minimus. The consumptive use shown is the consumptive use for irrigation purposes.

8. When stockwater is not specifically included for a water right that includes irrigation, a portion of the quantity described

for irrigation use may be used for purposes of maintaining a reasonable flow for stockwatering use during the irrigation season.

9. The surface flows of the unnamed spring tributary to Papoose Creek do not provide a significant amount of water to the surface flows of Papoose Creek, and rights to the spring have historically been used independent of the rights from Papoose Creek. Therefore, the rights to the spring will be administered separately from the rights to Papoose Creek. Diversion pursuant to junior rights from the spring is not subject to closure to provide water to senior water rights from Papoose Creek.

10. When water is not being beneficially used for domestic or stockwater purposes pursuant to Rights No. 29-10011A and 29-10011B, water must be allowed to remain in the cistern which collects water from the unnamed spring tributary to Papoose Creek, for use pursuant to Right No. 29-10103.

11. This decree includes all rights of the named parties in this action to water from Papoose Creek and the unnamed spring tributary to Papoose Creek.

LIST OF WATER RIGHTS

The claims of the named parties to this action are decreed as described in the List of Water Rights, attached hereto and incorporated by reference herein.

ACCESS, MAINTENANCE, AND NOTICE

Pursuant to the October 16, 1992, stipulation, Virgil T. Germer, Laura Germer, Joseph Matthews, Tahna Matthews, Tracy R. Thompson, Thomas R. Thompson, Ronald J. Scoffield, Tara L. Scoffield, Theron J. Smith and Carma B. Smith are further bound as follows:

That all conveyance systems shall be maintained in good operating condition by the party or parties served by such system and that reasonable access be provided for the inspection and maintenance thereof by the owner of the land on which the conveyance system is located.

That reasonable notice be provided to the owner of the land on which the conveyance system is located prior to its inspection and maintenance by the party or parties served by such system.

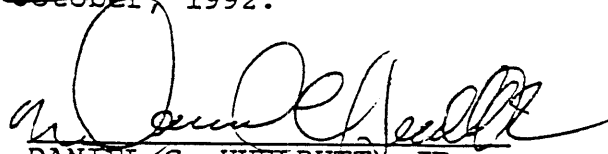
INCLUSION IN THE SNAKE RIVER BASIN ADJUDICATION

The rights decreed in the instant matter will be included in the Director's report for Basin 29 [Reporting Area 9], and will be listed with a basis of decree. At the time the Director's Report for Basin 29 is filed, other parties to the SRBA will have an opportunity to file objections to the instant parties' rights pursuant to Idaho Code § 42-1412.

The parties in the instant matter will be subject to the Director's Report for Basin 29, and, at the time the Director's report for Basin 29 is filed, will have an opportunity to object to those matters in the Director's Report for Basin 29 that were not determined in this action.

THEREFORE, it is hereby adjudged and decreed that all rights of the parties in Smith v. Scoffield to the waters of Papoose Creek and the spring tributary to Papoose Creek are as set forth in the above provisions and in the attached list of water rights.

DATED this 4 day of November ~~October~~, 1992.


DANIEL C. HURLBUTTY JR.
District Judge

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM
SOURCE: PAPOOSE CREEK						
TRIBUTARY: PORTNEUF RIVER						
29-04064D	THOMAS R THOMPSON TRACY R THOMPSON 5208 W PORTNEUF RD INKOM ID 83245	05/01/1927	IRRIGATION	04-01 10-31	.03	CFS BENEFICIAL USE
	POINT OF DIVERSION: T07S R35E S26				.03	CFS
	PLACE OF USE: IRRIGATION				4.5	AFY
	T07S R35E S23 1.5 ACRES TOTAL		SESE 1.5			
	REMARKS: THE FOLLOWING RIGHTS ARE ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE: 29-04064A, 29-04064B, 29-04064C, 29-10010					
29-04064A	THERON SMITH 5137 W PORTNEUF RD INKOM ID 83245	05/02/1927	IRRIGATION	04-01 10-31	.018	CFS BENEFICIAL USE
	POINT OF DIVERSION: T07S R35E S26				.018	CFS
	PLACE OF USE: IRRIGATION				2.7	AFY
	T07S R35E S23 0.9 ACRES TOTAL		SESE 0.9			
	REMARKS: THE FOLLOWING RIGHTS ARE ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE: 29-04064B, 29-04064C, 29-04064D, 29-10010					

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IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

DATE: OCT-19-1992
PAGE: A-2

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM
	SOURCE: PAPOOSE CREEK					
						TRIBUTARY: PORTNEUF RIVER
29-10010	TERON SMITH 5137 W PORTNEUF RD INKOM ID 83245	01/02/1969	IRRIGATION	04-01 10-31	.006	CFS BENEFICIAL USE
	POINT OF DIVERSION: T07S R35E S26				.006	CFS
	PLACE OF USE: IRRIGATION				.9	AFY
	T07S R35E S23 0.3 ACRES TOTAL					
	REMARKS: THE FOLLOWING RIGHTS ARE ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE: 29-04064A, 29-04064B, 29-04064C, 29-04064D					
29-04064B	RONALD J SCOFFIELD JR TARA L SCOFFIELD 5195 W PORTNEUF RD INKOM ID 83245	05/01/1970	IRRIGATION	04-01 10-31	.02	CFS BENEFICIAL USE
	POINT OF DIVERSION: T07S R35E S26				.02	CFS
	PLACE OF USE: IRRIGATION				6.0	AFY
	T07S R35E S23 2.0 ACRES TOTAL					
	REMARKS: THE FOLLOWING RIGHTS ARE ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE: 29-04064A, 29-04064C, 29-04064D, 29-10010					

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IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

DATE: OCT-19-1992
PAGE: A-3

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM
SOURCE: PAPOOSE CREEK						
29-04064C	JOSEPH MATTHEWS TAMNA MATTHEWS 5230 W PORTNEUF RD INKOM ID 83245	05/02/1970	IRRIGATION	04-01 10-31	.02	CFS BENEFICIAL USE
POINT OF DIVERSION: T07S R35E S26						
PLACE OF USE: IRRIGATION						
T07S R35E S33 SESE 1.0						
1.0 ACRES TOTAL						
REMARKS: THE FOLLOWING RIGHTS ARE ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE: 29-04064A, 29-04064B, 29-04064D, 29-10010						
29-04067	VIRGIL T GERMER 5268 W PORTNEUF RD INKOM ID 83245	04/01/1971	IRRIGATION	04-01 10-31	.22	CFS BENEFICIAL USE
POINT OF DIVERSION: T07S R35E S23						
PLACE OF USE: IRRIGATION						
T07S R35E S23 NESE 11.1						
11.1 ACRES TOTAL						
REMARKS: RIGHTS HAVE ALSO BEEN CLAIMED TO WATER FROM OTHER SOURCES FOR THE SAME PURPOSE OF USE AT THE SAME PLACE OF USE DESCRIBED ABOVE, WHICH WILL BE INCLUDED IN A DIRECTOR'S REPORT TO BE FILED AT A LATER DATE. ANY WATER RIGHTS RECOMMENDED IN THE BASIN 29 REPORT FOR THE SAME PURPOSE OF USE AT THE SAME PLACE OF USE DESCRIBED ABOVE WILL CONTAIN REMARKS LIMITING THE COMBINED USE OF THIS RIGHT AND THE RIGHTS FROM THE OTHER SOURCES.						
THE CONSUMPTIVE USE VOLUME OF THIS RIGHT SHALL NOT EXCEED 33.3 AF IN A SINGLE IRRIGATION SEASON.						
TOTAL QUANTITY: .02 CFS						
TOTAL QUANTITY: .22 CFS						

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IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

DATE: OCT-19-1992
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RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM
SOURCE: SPRING						
29-10011A	THERON SMITH 5137 W PORTNEUF RD INKOM ID 83245	04/01/1945	STOCKWATER	01-01 12-31	.01	CPS BENEFICIAL USE
NON-IRRIGATION-USES: STOCKWATER, 100 CATTLE POINT OF DIVERSION: T07S R35E S26 PLACE OF USE: STOCKWATER NENWNE SESE T07S R35E S23 REMARKS: RIGHT NOS. 29-10011B AND 29-10103 ARE ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE AND THROUGH A COMMON CISTERN. THE TOTAL COMBINED RATE OF DIVERSION FOR ALL THREE RIGHTS IS 0.01 CFS.						
TOTAL QUANTITY: .01 CFS						
29-10011B	THERON SMITH 5137 W PORTNEUF RD INKOM ID 83245	01/02/1969	DOMESTIC	01-01 12-31	.01	CPS BENEFICIAL USE
NON-IRRIGATION-USES: DOMESTIC, 1 HOME POINT OF DIVERSION: T07S R35E S26 PLACE OF USE: DOMESTIC NENWNE SESE T07S R35E S23 REMARKS: RIGHT NOS. 29-10011A AND 29-10103 ARE ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE AND THROUGH A COMMON CISTERN. THE TOTAL COMBINED RATE OF DIVERSION FOR ALL THREE RIGHTS IS 0.01 CFS.						
TOTAL QUANTITY: .01 CFS						

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IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAWDATE: OCT-19-1992
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RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM
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SOURCE: SPRING

TRIBUTARY: PAPOOSE CREEK

29-10103

TARA L SCHOFFIELD
RONALD J SCHOFFIELD JR
5195 W PORTNEUP RD
INKOM ID 83245

09/01/1970 DOMESTIC

01-01 12-31

.01 CPS BENEFICIAL USE

NON-IRRIGATION-USES:
DOMESTIC, 1 HOME
POINT OF DIVERSION:
T07S R35E S26
PLACE OF USE: DOMESTIC

NENWNE

T07S R35E S23

SESE

REMARKS: PARCEL NO. R4013039900

TOTAL QUANTITY:

.01 CPS

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the document on file at the department of
Water Resources.

Signed this 18 day of December, 1992

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