

**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 37-00460

)
) STANDARD FORM 2
) **RESPONSE TO OBJECTION**
)
)

RECEIVED

APR 3 2006

DEPARTMENT OF
WATER RESOURCES

Please print or type the following information:

B. NAME AND ADDRESS OF PERSON RESPONDING

Name: Montie S. Day and Elizabeth J. Burnett (Husband and Wife)

Address: P. O. Box 1045, Shoshone, Idaho 83352

Daytime Phone: (208) 280-3766

Name & Address of Attorney, if any:
None

**C. NAME AND ADDRESS OF PERSON WHO FILED THE OBJECTION TO WHICH
YOU ARE RESPONDING**

Name: United States of America acting through the Department of Interior, Bureau of
Land Management, Idaho State Office

Address: 1387 South Vinnell Way
Boise, Idaho 83709-1657

Attorney for Objecting Party: Mr. Larry A. Brown, United States Department of Justice,
1387 South Vinnell Way, Boise, Idaho 83709-1657

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 (See Attached)

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)
County of Lincoln) ss.

MONTIE S. DAY, duly sworn, upon oath, deposes and says:

That I am the party/claimant filing this response as defined by I.C. §§ 42-1401A(I) 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.

Montie S. Day

(Signature of person filing response)

Subscribed and sworn to before me on: 3-31-06

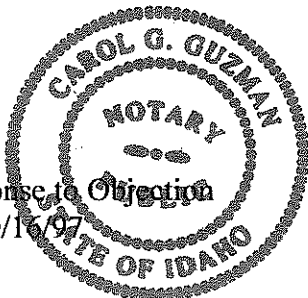
Carol G. Guzman

Notary Public for State of Idaho, County of Lincoln

Residing at Shoshone, ID

My Commission Expires: 11/12/2011

SF.2 - Response to Objection
Amended 10/16/07



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 April 1, 2006, 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: Montie S. Day and Elizabeth J. Burnett
Address: P. O. Box 1045, Shoshone, Idaho 83352

3. One copy to the party who filed the objection at the following address:

Name: United States of America Department of Interior, Bureau of Land Management, Idaho State Office
Address: Mr. Larry A. Brown, United States Department of Justice,
Environment and Natural Resource Division
General Litigation Section
550 West Fort Street, MSC 033
Boise, Idaho 83724

4. Copies to:

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

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

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


Your signature or signature of attorney mailing on
your behalf

SF.2 - Response to Objection Amended 10/16/97

INDEX OF ATTACHMENTS

ATTACHMENT 1-EXPLANATION OF RESPONSE AND
CLAIMS

ATTACHMENT 2-MAPS OF DISPUTED LOCATIONS
AND CLAIMS

EXHIBIT A-LEGAL DESCRIPTION

EXHIBIT B- DWR MAP 09/23/23

ATTACHMENT 3-DECLARATION OF KENNETH
OHLINGER

**ATTACHMENT 1-EXPLANATION OF RESPONSE AND
CLAIMS**

Part A. Summary of Response and Resulting Counter Claim

An objection has been filed by the United States BLM with respect to a portion of the report. In reviewing the report, it is noted that while the BLM's objection appears valid (See Part B supra.), the reduction in acreage should also be reflected and additional acreage added in other locations (two locations) as the report appears to be in error. First, the property line to the north in Section 24 adjacent to the disputed BLM claim property is misplaced, and should be, in fact, further north to include more acreage. (See Part C, Supra). Second, it appears that, by oversight, approximately 2-4 acres which were regularly farmed in Section 25 were erroneously excluded, and should be added. (See Part D, Supra.) The acreage requested to be included clearly was farmed and irrigated for years, and continues to be a part of the contiguous farming operation. (See Declaration of Kenneth Olhinger, Attachment 3 hereto)

Part B. Response to the BLM Claim

The property owned by the claimants Montie S. Day and Elizabeth J. Burnett which falls within Section 24 includes:

- A. The East one-half of the Southwest Quarter
- B. The West one-half of the Southeast Quarter
- C. **The South one-half of the Southeast Quarter of the Southwest Quarter of the Southwest Quarter**

(Copy of Legal Description Attached as Exhibit A hereto provided by First American Title)

Accordingly, it is clear that the east boundary of the **South one-half of the Southeast Quarter of the Southwest Quarter of the Southwest Quarter** would result in a straight north-south line, and not an angled line as depicted on the map produced by the Department of Water Resources ("DWR"), a copy of which is attached hereto as Exhibit B for reference. To the extent that the DWR boundary line extends into the South one-half of the Southwest Quarter of the Southwest Quarter of the Southwest Quarter claimants concede that the objection of the BLM is valid. (See Attachment 2 hereto, Maps, Bottom Map)

Part C. The Additional Acreage in the South one-half of the Southeast Quarter of the Southwest Quarter of the Southwest Quarter of Section 24

Although the maps prepared by the Department of Water Resources does not include the measurements in terms of feet (see attachment to Objections by BLM), it is clear by definition that the northern boundary of the property owned by the claimants in the **South one-half of the Southeast Quarter of the Southwest Quarter of the Southwest Quarter** would extend to a distance of 330 feet north of the Section 24 and 25 section line (which appears to be indicated by a white line on the DWR map, Exhibit B hereto). Yet, the yellow line which appears to be the included acres on such map does not cover irrigated alfalfa field up to the 330 foot line (northern property line).

Thus claimants, while conceding the BLM's claim, does claim that the additional acreage must be included and added to the claim of the claimants, which may be from 2-5 acres.

See Attachment 2, Maps, Bottom Map. Note: The acreage included within the "yellow" area is claim, but should be extended to the northern line of the property to cover all the areas shown to be farmed and irrigated up to the property lines. Claims are unsure as to the exact location of such line, but may extent to the top of the field at that area.

Part D. The Additional Acreage in the Northeast Quarter of the Northwest Quarter of Section 25

This parcel of farmed land sits just north of the Little Wood River across from the house, and was, and is, part of the general contentiously farmed property within Section 25. Although it appears difficult to see on the September 23, 2003 map by the DWR, it is better depicted in the more recent map which is attached hereto as Attachment 2, Top Map. Claimants claim water rights with respect to this property, as shown on the Map (Attachment 2, Top Map) This area consists of approximately 2-3 acres. **The land has been farmed and irrigated for years. See Declaration of Kenneth Ohlinger, Attachment 3 hereto.**

CONCLUSION

Claimants respectfully request that this claim and the objection be submitted for adjudication.

Respectfully submitted


Montie S. Day
(208) 280-3766

EXHIBIT "A"

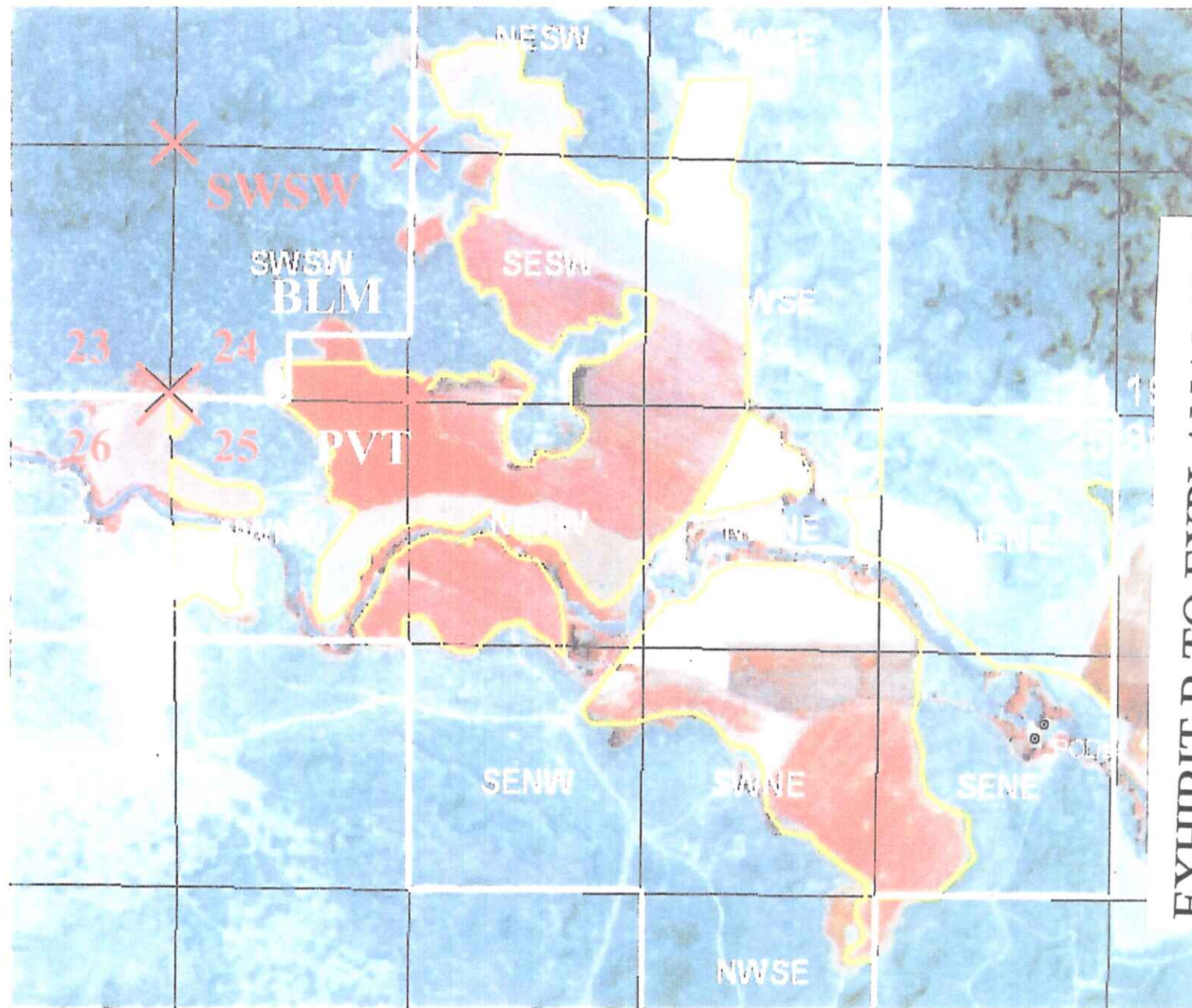
Township 5 South, Range 16 East of the Boise Meridian, Lincoln County, Idaho.

Section 24: The East one-half of the Southwest Quarter.
The West one-half of the Southeast Quarter.
The South one-half of the Southeast Quarter of the
Southwest Quarter of the Southwest Quarter.

Section 25: The Northeast Quarter.
The East one-half of the Northwest Quarter.
The Northwest Quarter of the Northwest Quarter.
The Northwest Quarter of the Southeast Quarter.

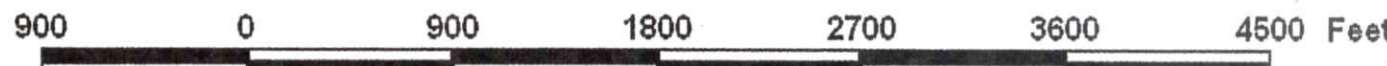
EXHIBIT A PROPERTY DISCRIPTION

37-460 37-461 & 37-10343



**T05S R16E
S24 & S25**

**EXHIBIT B TO EXPLANATION
MAP BY DWR 9/23/03**



Map prepared by: Carter Fritschle
Date prepared: 09/23/03
1987-1988 NAPP photography
Idaho Department of Water Resources
Revised 12/16/03

**ATTACHMENT 2-MAPS OF DISPUTED LOCATIONS
AND CLAIMS**

37-460; 37-461; 37-10343

05S 16E Sec 25 NWNE

Ground that should be included

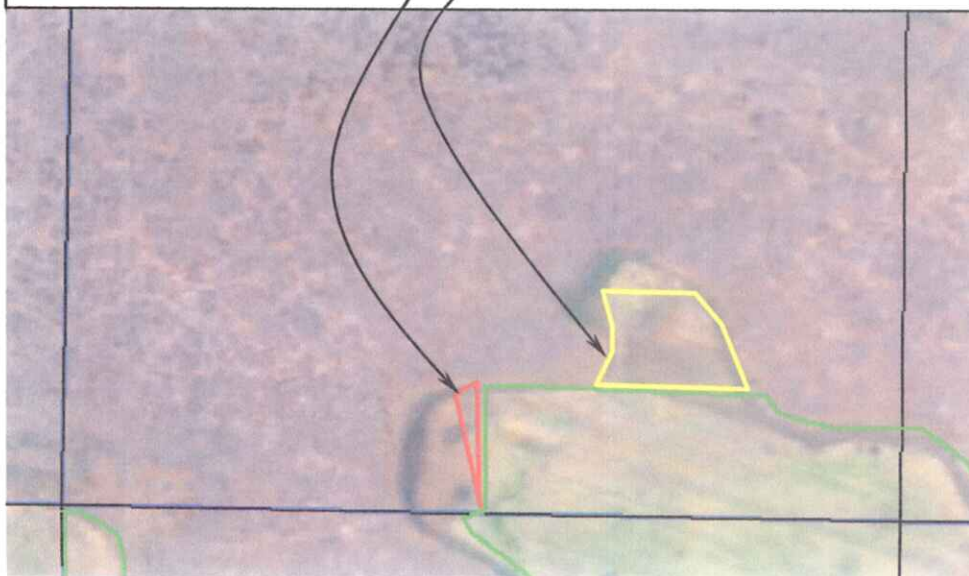


37-460; 37-461; 37-10343

05S 16E Sec 24 SWSW

Agree that this ground should be excluded

This ground should be included



ATTACHMENT 3-DECLARATION OF KENNETH
OHLINGER

DECLARATION OF KENNETH OHLINGER

I, Kenneth Ohlinger, declare:

1. I am an individual residing in the City of Gooding, State of Idaho, over the age of 18, and, if called as a witness, I am competent to testify as to the matters stated based upon my personal knowledge.

2. I was the owner of the property located at 490 Ohlinger Road, Shoshone, Idaho, until approximately September of 2001 when I sold the property to Montie S. Day and Elizabeth Burnett-Day, the current owners. The property is located in Section 24 and 25, Township 5 South, Range 16 East of the Boise Meridian, County of Lincoln, State of Idaho.

3. The property was acquired by my family members in approximately the early 1930s of so, when it was acquired by my grandfather, W.J. Ohlinger. When my grandfather owned the property, I along with him was jointly involved in the farming of the property. After his death, I purchased the property (which was approximately in 1956). I continued to personally farm the property until September of 2001 when I sold the property to Mr. and Mrs. Day.

4. Attached to this declaration is a photograph of portions of the property. The top photograph reflects the location of the residence on the south side of the Little Wood River, as well as the north side of the river. On the north side of the river across from the residence is a section designed within yellow marks. (Top Photograph). The portion within the yellow marks (along with other property) was farmed by me and was irrigated over the periods of time which I personally farmed the property. In particular, I had planted the portion designated within the yellow boundary with corn and such property had routinely been irrigated when planted to such crops.

6. On the portions depicted by the bottom photograph, the property boundary in Section 24 extends further north to include the portions depicted by the yellow marked area, which is and has been consistently farmed in alfalfa and other crops (Bottom Photograph).

I declare under the penalties of perjury that the foregoing is true and correct, and that I executed this declaration on March 31, 2006 at Gooding, Idaho.

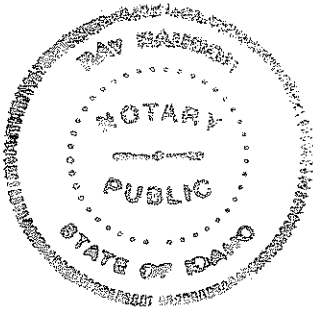

Kenny Ohlinger

Subscribed and sworn to before me on: August 11, 2006

[Signature]
Notary Public for Washington County, State of Idaho

Address: Marshall, Idaho

My Commission Expires: 5/15/11



37-460; 37-461; 37-10343

05S 16E Sec 25 NWNE

Ground that should be included



37-460; 37-461; 37-10343

05S 16E Sec 24 SWSW

Agree that this ground should be excluded

This ground should be included

