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RECEIVED  
DEC 22 2006  
DEPARTMENT OF  
WATER RESOURCES

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William A. Hillhouse II  
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Attorneys for City of Pocatello

**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 Nos. 29-00271, et al. (see attached Exhibit A)  
Case No. 39576 )  
 ) **AFFIDAVIT OF CELESTE THAINE IN**  
 ) **SUPPORT OF CITY OF POCA TELLO'S REPLY**  
 ) **BRIEF IN SUPPORT OF THE CITY'S**  
 ) **NOVEMBER 30<sup>TH</sup> MOTION FOR SUMMARY**  
 ) **JUDGMENT ON MUNICIPAL PURPOSE OF**  
 ) **USE, INTERCONNECTION, AND INJURY**  
 ) **UNDER I.C. § 42-1425**

STATE OF IDAHO )  
 ) ss:  
COUNTY OF ADA )

I, Celeste Thaine, state that I am employed by the law office of Beeman & Associates,  
P.C., and I make the following statement on the basis of my personal knowledge.

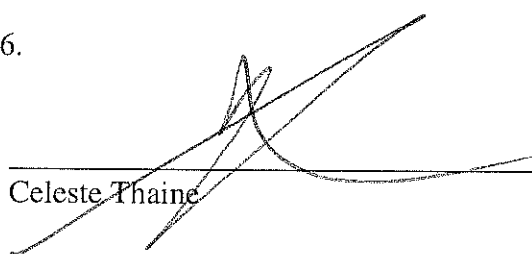
1. I attest that the following attached documents are true and correct copies of original documents, or where the documents are not the original copies, they are copies of documents I obtained from the electronic database developed and maintained by the Idaho Department of Water Resources (IDWR) for SRBA claim 25-7009 or from a CD provided by IDWR containing the Director's Report for Irrigation and Other Uses & Federal Reserved Right 25-13715 for IDWR Basin 25 issued on January 26, 2005:

Exhibit B: Spronk Water Engineers, Inc. Expert *Rebuttal* Report Dated December 1, 2006 Prepared for the City of Pocatello, Claimant

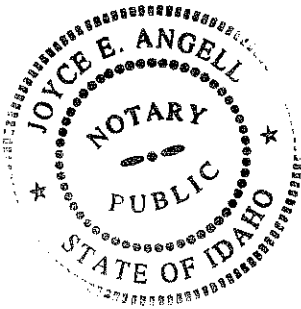
Exhibit C: Notice of Claim to a Water Right Acquired Under State Law A25-07009, Water Right License No. 25-7009, and IDWR's Recommended Water Right Acquired Under State Law for 25-7009.

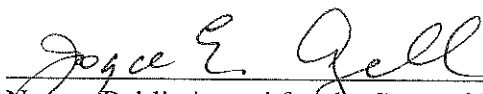
FURTHER YOUR AFFIANT SAYETH NAUGHT.

Dated this 21<sup>st</sup> day of December 2006.

  
Celeste Thaine

SUBSCRIBED AND SWORN to before me this 21<sup>st</sup> day of December 2006.



  
Notary Public in and for the State of Idaho  
Residing in: Boise, Idaho  
My Commission Expires: 7-29-08

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21<sup>st</sup> day of December 2006, I caused a true copy of the foregoing **AFFIDAVIT OF CELESTE THAINE IN SUPPORT OF CITY OF POCA TELLO'S REPLY BRIEF IN SUPPORT OF THE CITY'S MOTION FOR SUMMARY JUDGMENT ON MUNICIPAL PURPOSE OF USE, INTERCONNECTION, AND INJURY UNDER I.C. § 42-1425** to be served on the following by U.S. First Class Mail unless indicated as faxed, hand delivered, or emailed:

UNITED STATES OF AMERICA  
REPRESENTED BY:  
US DEPARTMENT OF JUSTICE  
ENVIRONMENT & NAT'L RESOURCES  
550 WEST FORT STREET, MSC 033  
BOISE, ID 83724

STATE OF IDAHO  
REPRESENTED BY:  
NATURAL RESOURCES DIV CHIEF  
STATE OF IDAHO  
ATTORNEY GENERAL'S OFFICE  
PO BOX 44449  
BOISE, ID 83711-4449

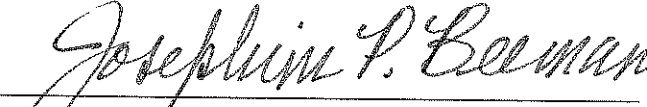
DIRECTOR OF IDWR  
PO BOX 83720  
BOISE, ID 83720-0098

C. TOM ARKOOSH  
ARKOOSH LAW OFFICES, CHTD.  
PO BOX 32  
GOODING, IDAHO 83330

W. KENT FLETCHER  
FLETCHER LAW OFFICE  
PO BOX 248  
BURLEY, IDAHO 83318

ROGER D. LING  
LING ROBINSON & WALKER  
PO BOX 396  
RUPERT, IDAHO 83350

JOHN A. ROSHOLT  
TRAVIS L. THOMPSON  
BARKER ROSHOLT & SIMPSON  
113 MAIN AVE. WEST, SUITE 303  
TWIN FALLS, IDAHO 83301-6167

  
\_\_\_\_\_  
Josephine P. Beeman

1776/100/Lit/Disc/SJ/7469

## EXHIBIT A

### Subcase Numbers

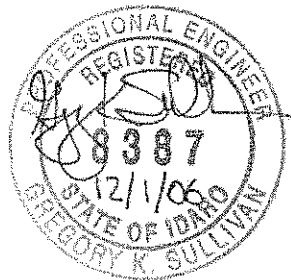
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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Case No. 39576

SPRONK WATER ENGINEERS, INC.  
EXPERT *REBUTTAL* REPORT  
DATED DECEMBER 1, 2006  
PREPARED FOR THE CITY OF  
POCATELLO, CLAIMANT



Spronk Water Engineers, Inc.  
1000 Logan Street  
Denver, Colorado 80203

*Exhibit B*

**Spronk Water Engineers, Inc.**  
**Expert Rebuttal Report**  
**Dated December 1, 2006**  
**Prepared For**  
**The City of Pocatello,**  
**Claimant**

**1.0 INTRODUCTION**

On behalf of the City of Pocatello, Spronk Water Engineers, Inc. (“SWE”) prepared an Expert Report dated September 29, 2006, that was filed with the SRBA Court in accordance with the Seventh Amended Trial Scheduling Order. The Expert Report addressed the following disputed issues with regards to recommendations by the Idaho Department of Water Resources (“Department”) for the City of Pocatello’s (“Pocatello”, the “City”) State-law claims for water rights in the Snake River Basin Adjudication (“SRBA”):

- A condition proposed by the Department to limit the City’s claims for alternate points of diversion for its interconnected municipal wells.
- The Department’s recommended denial of the City’s claim for alternate points of diversion for its surface water rights on Mink Creek and Gibson Jack Creek.
- Miscellaneous issues related to identification of the wells included in the City’s interconnected municipal well systems, and a subset of these wells that were the subject of prior formal administrative transfers approved by the Department.

On November 2, 2006, Brockway Engineering PLLC, on behalf of the Milner Irrigation District, Minidoka Irrigation District, American Falls Reservoir District #2, A & B Irrigation District, Burley Irrigation District, North Side Canal Company, and Twin Falls Canal Company (the “Surface Water Coalition”), filed a Rebuttal Expert Report to the SWE Expert Report dated September 29, 2006 with the SRBA Court (“SWC Rebuttal Report”). The SWC Rebuttal Report describes opinions of

the Surface Water Coalition expert regarding Pocatello's claimed water rights.

SWE has reviewed the SWC Rebuttal Report, and provides the following rebuttal opinions regarding opinions offered by the SWC expert.

## **2.0 SWC EXPERT REBUTTAL REPORT DATED NOVEMBER 2, 2006**

### **Alternate Points of Diversion for Surface Water**

#### **Opinion**

Page 2 and 3. *"The City of Pocatello claims that City wells should be considered as alternate points of diversion for the claimed water rights from Mink Creek and Gibson Jack Creek. There is no hydrologic evidence to support this contention or to argue that there is no change or impact to other water users if this were allowed. If, in fact, ground water is pumped in lieu of a surface water diversion six miles away from the ground water extraction with the same early priority as the surface right, there will be significant differences in timing and magnitude of both the Portneuf River flow and ground water underflow from the basin."*

#### **Response**

Page 2 of the SWC Rebuttal Report includes the statement, *"The hydrogeology of the lower Portneuf River and tributaries and the aquifer underlying the lower Portneuf area shows that these are interconnected sources and are tributary to the Snake River and/or the Eastern Snake Plain aquifer...."*. Based on this statement, there is no disagreement that the ground water and surface water sources of the Snake River and the Portneuf River and its tributaries are interconnected.

The Surface Water Coalition claims there is a change in *"timing and magnitude of both Portneuf River flow and ground water underflow from the basin."*, but provides no evidence or analysis to quantify the alleged changes or that the changes result in injury to the Surface Water Coalition water rights.

An analysis using the Department's "Enhanced-Ground Water Rights Transfer Spreadsheet (version 2.2)" ("Transfer Spreadsheet"), was performed to demonstrate that diversion of the City's surface water rights at the City's wells will not injure the Surface Water Coalition water rights. Diversion at the original points of diversion was assumed to result in an immediate depletion of surface water flow. Diversion at the ground water alternate points of diversion results in delayed surface water depletions. The delayed surface water depletions resulting from diversions at the ground water alternate points of diversion were calculated using the Department's Transfer Spreadsheet. Municipal return flows from exercise of the surface water rights were ignored because they would be the same in both scenarios.

Figure 1 compares the annual depletions resulting from diversion of the surface water rights at (1) the original points of diversion, and (2) at the alternate points of diversion at the City's wells. The annual depletions are expressed as a percent of the total annual diversion. The results of the analysis show that diversions of the City's surface water rights at the claimed ground water alternate points of diversion result in delayed impacts to surface water flows as compared with the immediate impacts that would result from diversion of the City's surface water rights at their original decreed locations. These delayed impacts cause transient reductions in depletions to the surface streams, resulting in a transient benefit to downstream surface water users. Once the depletions from ground water use reaches steady state, they are essentially the same as the depletions that would have resulted had the water rights continued to be diverted at the original points.

The City historically used its surface water supplies year-around at relatively constant rates. The surface water rights are similarly used when exercised at the ground water alternate points of diversion. Constant year-around pumping of the surface water rights at the alternate points of diversion will result in constant year around stream depletions. These depletions will increase and eventually reach a steady state that is equal to the rate of pumping. This constant year-around depletion rate will match the uniform rate of diversion (and stream depletion) that would occur if the City diverted the surface water rights at the original points of diversion. As a result, exercise of the City's surface water rights at the ground water alternate points of diversion will not result in

a material change in the seasonal timing of stream depletions to the detriment of downstream surface water users.

### **Multiple Alternate Points of Diversion**

#### **Opinion**

Page 3. *"If approved, priority administration would require determination of the instantaneous discharge from each well at all times to determine whether diversion rates were within the priority. If the City was diverting in excess of the rate allowed under the cumulative priority of all rights, then either the Department or the City would have to decide which well or wells would be shut off or curtailed. This would be extremely difficult to regulate or administer."*

#### **Response**

The City's cumulative diversion rate at its alternate points of diversion will not exceed the cumulative in-priority diversion rate for the water rights associated with its interconnected wells.

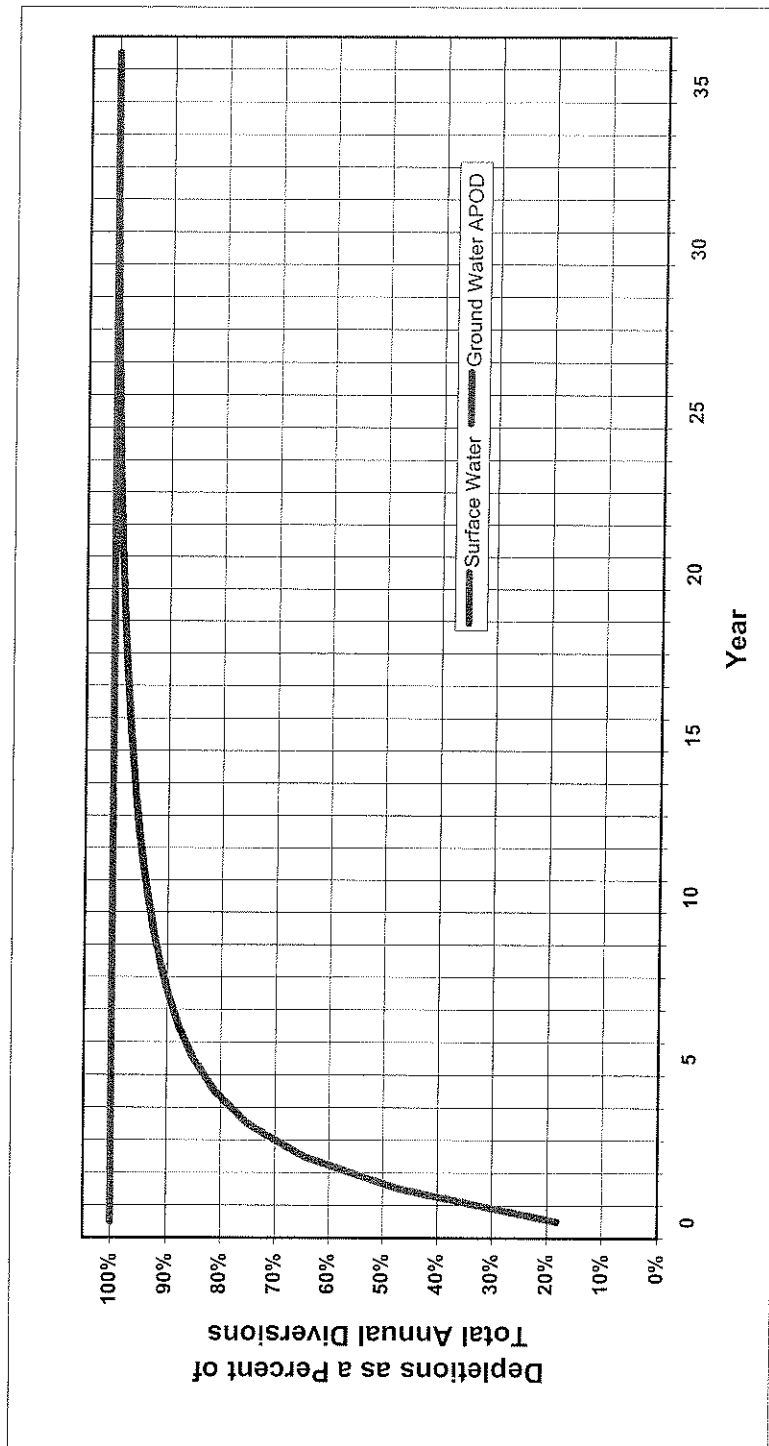
#### **Opinion**

Page 3. *"The Department's decision to require a condition on each water right showing the date of first appropriation and the well number and location is justified. Any decision by the City to pump at significantly greater rates than historical practice from later priority wells could result in injury to local ground water users, especially those with earlier priority wells."*

#### **Response**

The City will not pump its wells as alternate points of diversion at diversion rates that are greater than the rates claimed for the original water right(s) associated with each well.

**Figure 1**  
**Annual Depletions Resulting from Surface Water Diversions and**  
**Ground Water Pumping at Alternate Points of Diversion**  
**City of Pocatello**



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

IN RE THE GENERAL ADJUDICATION  
OF RIGHTS TO THE USE OF WATER FROM  
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A25-07009  
Date Received: 9/22/1989  
Receipt No: E010755  
Received By: \_\_\_\_\_

NOTICE OF CLAIM TO A WATER RIGHT  
ACQUIRED UNDER STATE LAW

1. Name: CITY OF IDAHO FALLS  
Address: C/O HOLDEN, KIDWELL,  
HAHN & CRAPO  
P.O. BOX 50130  
IDAHO FALLS, ID

208-523-0620

83405

2. Date of Priority: AUG 7, 1970

3. Source: GROUNDWATER

Trib. to:

4. Point of Diversion:

| Township | Range | Section | 1/4 of | 1/4 of | 1/4 | Lot | County     |
|----------|-------|---------|--------|--------|-----|-----|------------|
| 01N      | 38E   | 9       | NE     | NW     |     |     | BONNEVILLE |

5. Description of diverting works:  
WELL & PUMP

6. Water is used for the following purposes:

| Purpose   | From  | To    | C.F.S. | (or) | A.F.A. |
|-----------|-------|-------|--------|------|--------|
| MUNICIPAL | 01/01 | 12/31 | 0.230  |      |        |

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

A.F.A.

8. Total consumptive use is

Acre Feet Per Annum.

9. Non-irrigation uses:

M/SANDY DOWNS RODEO ARENA, RESTROOMS, DRINKING FOUNTAINS, ETC.

10. Place of Use:

| Township | Range | Section | 1/4 of | 1/4 | Lot | Use  | Acres |
|----------|-------|---------|--------|-----|-----|------|-------|
| 01N      | 38E   | 9       | NE     | NW  |     | MUNI |       |

A25-07009

Page 1

Date: 02/05/1992

MICROFILMED  
NOV 14 1992

Exhibit C

11. Place of use in counties: BONNEVILLE

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

13. Other Water Rights Used:  
NONE

14. Remarks:

15. Basis of Claim: LICENSE

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: \_\_\_\_\_

**For Organizations:**

I do solemnly swear or affirm that I am \_\_\_\_\_ of  
\_\_\_\_\_, that I have signed the foregoing  
document in the space below as \_\_\_\_\_ of  
\_\_\_\_\_ and that the statements contained in the  
foregoing document are true and correct.

\_\_\_\_\_  
Signature of Authorized Agent

\_\_\_\_\_  
Title and Organization

\_\_\_\_\_  
Date

State of Idaho )  
County of ) SS.  
\_\_\_\_\_ )

Subscribed and sworn (or affirmed) before me this \_\_\_\_\_ day  
of \_\_\_\_\_ 19 \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Seal

Residing at \_\_\_\_\_

My Commission Expires \_\_\_\_\_

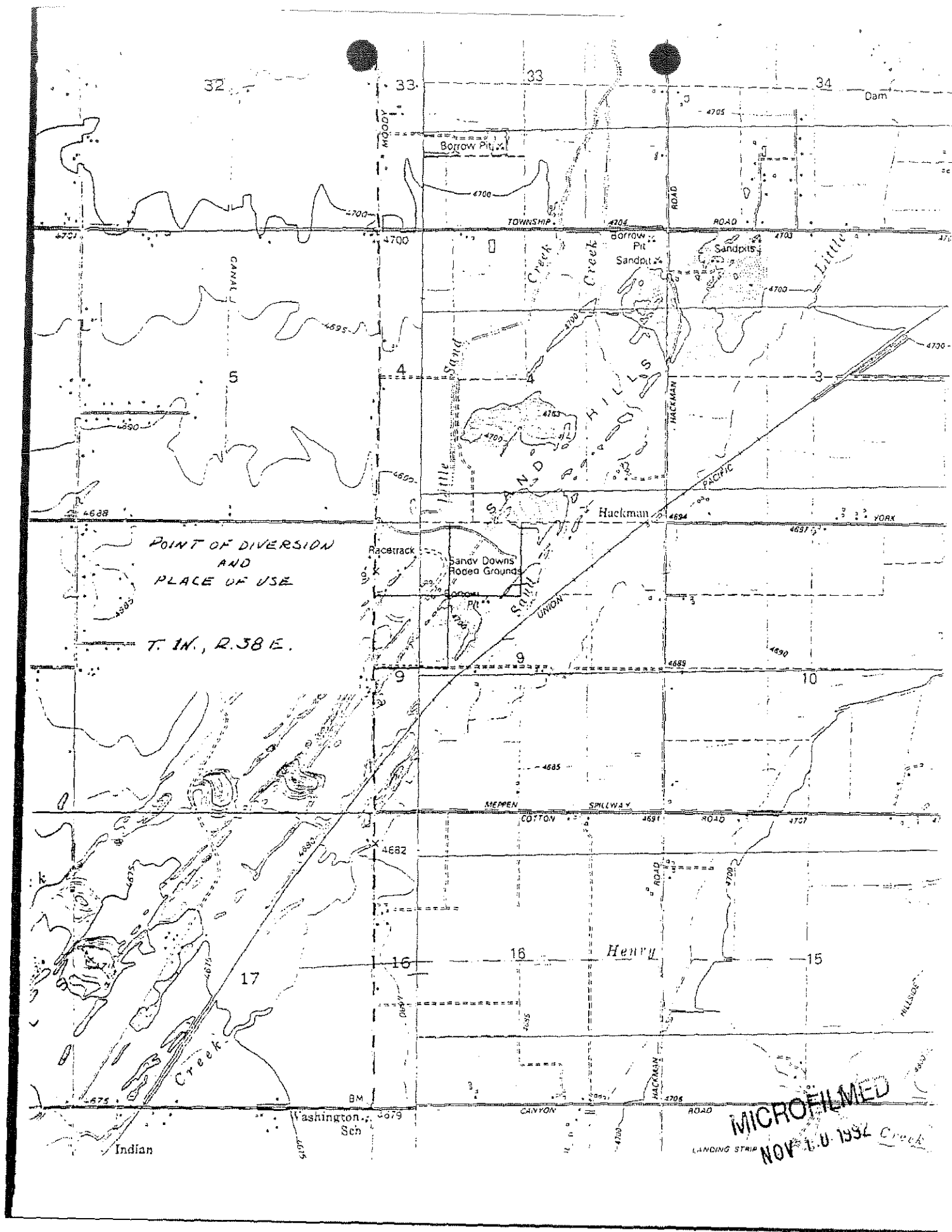
17. Notice of Appearance:

Notice is hereby given that I, \_\_\_\_\_ will be  
\_\_\_\_\_ Print Name  
acting as attorney at law on behalf of the claimant signing above, and that  
all notices required by law to be mailed by the director to the claimant  
signing above should be mailed to me at the address listed below.

Signature \_\_\_\_\_

Address \_\_\_\_\_

Date \_\_\_\_\_



State of Idaho  
Department of Water Resources

WATER RIGHT LICENSE

License of Water Right No. 25-7009 Priority August 7, 1970 Amount 0.23 cfs

THIS IS TO CERTIFY, that CITY OF IDAHO FALLS  
of Idaho Falls, Idaho, has complied with the terms and conditions of Permit  
No. 25-7009 issued pursuant to Application for Permit dated August 7, 1970,  
and has submitted proof to the Department of Water Resources on December 1, 1975,  
that he has applied water to a beneficial use; an examination by the Department indicates that the works have a  
capacity for the diversion of 0.23 cfs of water from a groundwater source,  
tributary to \_\_\_\_\_, and that the permit holder has applied to a beneficial use and  
established a right to use water as follows:

| Beneficial Use | Period of Use                               | Rate of Diversion      | Annual Volume |
|----------------|---------------------------------------------|------------------------|---------------|
| Municipal      | from <u>January 1</u> to <u>December 31</u> | at <u>0.23</u> cfs and | <u>N/A</u>    |
|                | from _____ to _____                         | at _____ cfs and       |               |
|                | from _____ to _____                         | at _____ cfs and       |               |

(both dates inclusive)

Subject, however, to the condition that no more than 0.23 cfs of water be diverted at any one time, and  
that the amount of water so diverted and to which such right is entitled and confirmed is for the purpose  
aforementioned and is limited to the amount which can actually be beneficially used and shall not exceed  
N/A acre feet per year, said waters to be diverted within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 9, Twp. 1N,  
Rge. 38E, B.M. in the County of Bonneville

Description and location of place of use:

| Twp. | Range | Sec. | NEW |                  |                  |                  | NW $\frac{1}{4}$ |                  |                  |                  | SW $\frac{1}{4}$ |                  |                  |                  | SE $\frac{1}{4}$ |                  |                  |                  | Totals |
|------|-------|------|-----|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|--------|
|      |       |      | NEW | NW $\frac{1}{4}$ | SW $\frac{1}{4}$ | SE $\frac{1}{4}$ | NEW              | NW $\frac{1}{4}$ | SW $\frac{1}{4}$ | SE $\frac{1}{4}$ | NEW              | NW $\frac{1}{4}$ | SW $\frac{1}{4}$ | SE $\frac{1}{4}$ | NEW              | NW $\frac{1}{4}$ | SW $\frac{1}{4}$ | SE $\frac{1}{4}$ |        |
| 1N   | 38E   | 9    |     |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |
|      |       |      |     |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |
|      |       |      |     |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |
|      |       |      |     |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |
|      |       |      |     |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |
|      |       |      |     |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |
|      |       |      |     |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |
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|      |       |      |     |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |
|      |       |      |     |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |

Total number of acres irrigated \_\_\_\_\_

NOTE: Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho  
Code, or the applicable Idaho Law. This right may be forfeited by five years of non-use.

The right to the use of the water hereby confirmed is restricted and appurtenant to the lands of place of use  
herein described, as provided by the laws of Idaho.

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 28 day of

May, 19 80.

Director

01/17/2005

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

RIGHT NUMBER: 25-7009

NAME AND ADDRESS: CITY OF IDAHO FALLS  
C/O HOLDEN KIDWELL HAHN CRAPO  
PO BOX 50130  
IDAHO FALLS ID 83405

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.230 CFS

PRIORITY DATE: 08/07/1970

POINT OF  
DIVERSION: T01N R38E S9 SENWNW Within BONNEVILLE County

PURPOSE AND  
PERIOD OF USE:

| <u>PURPOSE OF USE</u> | <u>PERIOD OF USE</u> | <u>QUANTITY</u> |
|-----------------------|----------------------|-----------------|
| MUNICIPAL             | 1/01 12/31           | 0.230 CFS       |

PLACE OF USE: MUNICIPAL Within BONNEVILLE County

|               |      |               |      |
|---------------|------|---------------|------|
| T01N R38E S09 | NENW | T01N R38E S09 | NWNW |
|---------------|------|---------------|------|

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

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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.

PROPERTY IS ALSO KNOWN AS SANDY DOWNS.