

Claim no. _____

Claimant Contact Log

Date

Remarks

Agent initials

4-5-06

Decreed right 22-2165E is for 200 ac. with 8 cfs until June 2016 of each year, when it is cut in half.

22-4195 is a beneficial use right. The claimed priority date of 19105 is not supported. The affidavit by Merle Jensen states that he continued to increase the farm to 400 acres until 1969, which suggests that the acres claimed were not all being irrigated in 19105. In 1980, the claimant enlarged the acreage by adding 105 acres claimed in 22-13479. Affidavits support claimed priority date.

Because 22-7165E has two diversion rates, all rights are limited to the maximum diversion rates of the combined rates = 11.85 cfs.

KM

- 2-22-06 Priority date changed to 1480 based on evidence submitted in Mr. Jeppens Affidavit. This makes it an enlargement

Ruberry, Allen

From: Carlsen, Ernie
Sent: Tuesday, January 03, 2006 8:37 AM
To: Ruberry, Allen; Moore, Kristin
Subject: FW: Moody Creek Diversions

Allen and Kristin

I am forwarding a letter prepared by Gary Spackman which addresses the entitlement of Merle Jeppesen to divert water from Moody Creek. Please make sure the recommendations for Merle Jeppesen are consistent with the findings expressed in Gary's letter.

Ernie

-----Original Message-----

From: Spackman, Gary
Sent: Monday, January 02, 2006 1:24 PM
To: Madsen, Ryan
Cc: Swank, Lyle; Carlsen, Ernie
Subject: Moody Creek Diversions

Ryan,

I am trying to complete a letter to some of the people concerned about diversions of water from Moody Creek, trib. to the Teton River. Attached is a draft that discusses some of the history of Jeppesen's diversion and the monitoring that has occurred.

You sent me a summary of 2005 diversion data for the Jeppesen Moody Creek diversion. The information you sent me shows daily flow rates (I assume 24 hour second feet) beginning on June 15, 2005. The flow rates vary, but sometimes are as high as 4.0 cfs, which is the maximum allowable under the Jeppesen transfers after June 20. How were these flow rates determined? The info in the files discussses a malfunctioning Grainland meter, and states that the right will be regulated by using a power consumption coefficient. If there is not a functioning, calibrated meter installed, how are the daily flow rates determined?

Perhaps you have some other suggestions about the text I have written. Please review it if you'd like.

Gary Spackman



Jeppsen.xls



Moody Creek
letter.doc

Jepps, Bevan and Dalan

Date	April	May	June	July	August	September	October
1				2.8	1.3	1.2	
2				2.8	1.9		
3				2.8	1.1	0.5	
4				2.8	1.9	0.5	
5				2.8	1.9	1.6	
6				2.8	0.7		
7				2.8	1.9		
8				2.8	1.6		
9				2.8	1.6		
10				2.8	0.8		
11				2.8	0.3		
12				2.8	1.3		
13				2.8	0.5		
14				2.8	0.9		
15			1.2	2.8	1.6		
16			2.6	2.8	1.0	0.8	
17			2.6	2.8		1.6	
18			3.3	2.8		1.6	
19			4.0	2.8		1.1	
20			4.0	2.8			
21			4.0	2.8			
22			3.5	2.8			
23			1.7	2.8	1.6		
24			4.0	2.8	1.6		
25			4.0	2.8	1.0		
26			2.6	1.5			
27			3.9	1.3	1.0		
28			4.0	2.0	1.6	1.6	
29			4.0	2.0	0.6	0.8	
30			4.0	2.0	0.8		
31				2.0	1.6		
Total			53.4	80.4	29.9	11.1	

Flow Rate
PCC
7/19/2005

2.72 cfs for single pump
1.65 KWH/ hr pumping

24 hr cfs AF
174.8 346.8

Dear Friends of Moody Creek:

On March 31, 2005, George Brown an owner of land along Moody Creek in Madison County, Idaho, wrote a letter to the Idaho Department of Water Resources (IDWR). The letter alleged excessive diversion by Merle Jeppesen from Moody Creek. On September 7, 2005, several persons, holding themselves out as "Friends of Moody Creek," sent a letter to Dave Tuthill, an administrator for IDWR. George Brown was one of the signatories of the letter. The September 7, 2005 letter also alleged excessive diversion of Moody Creek water by Merle Jeppesen. This letter is a response to both letters.

Private R/W and
Canal Shores (2005)
3/15/1981
22-594

Water right no. 22-265 was decreed in 1910 in the case of *Rexburg Irrigation Co. v. Teton Irrigation Co.* The right allowed diversion from Moody Creek of 9.6 cfs from April 1 to June 20, and 4.8 cfs from June 21 to November 1 for the irrigation of _____ acres. Two transfers have been approved allowing diversion of water from Moody Creek by Merle Jeppesen. The transfers and other filings will be discussed below: *SEE SPLIT HISTORY*

Transfer no. 2034

The records of the department show that a portion of water right no. 22-265 was transferred in 1977 to 85 acres of land owned by Merle & Janice Jeppesen. The following is background information related to the application for transfer. At the time the application for transfer was filed, Merle and Janice Jeppesen submitted a copy of an agreement between Merle & Keith Jeppesen and Dean Graham as authority to change the place of use of water right no. 22-265. In the agreement, Dean Graham, as owner of all or a part of water right no. 22-265, agreed to allow Merle & Keith Jeppesen to use 140 inches (2.8 cfs) of water right 22-265 in exchange for use of other water rights held by Merle & Keith Jeppesen. The application for transfer sought to transfer 4.0 cfs from 4/1 to 6/20 and 2.0 cfs from 6/21 to 11/1 to a new point of diversions and place of use.

The approved transfer authorized an upstream change in the point of diversion on Moody Creek and implicitly recognized the 4.0/2.0 cfs flow rates sought. The relationship between the 2.8 cfs in the agreement and the quantities sought to be transferred was not addressed. The original transfer approval should have limited the diversion to not exceed 2.8 cfs.

The transfer approval required installation of a measuring device approved by IDWR and limited the irrigation to 85 acres. The transfer did not impose a volume limitation. Nonetheless, the transfer as proposed stated that the 85 acres would be rotated within a 320 acre place of use.

Unnumbered Application for Transfer

In 1980, Merle and/or Janice Jeppesen filed another application for transfer, attempting to enlarge the place of use for portions of water right no. 22-265. The application was denied in 1983.

Application for Transfer no. 3002

In 1984, Jeppesens filed another application for transfer, numbered 3002. The application proposed diversion of an additional portion of water right 22-265. The application sought approval of the diversion of 4.0/2.0 cfs for the irrigation of an additional 115 acres. A deed from the Dean Graham Estate was submitted as proof of authority to file the application for transfer. The deed and the application for transfer cross-referenced the earlier agreement allowing use under the first transfer.

The application for transfer was approved. Irrigation with the portion of water right no. 22-265 transferred was limited to 115 acres. Annual volume diverted was limited to 288 acre-feet. The water right holder was required to install a totalizing meter and lockable controlling works. The file contains computations about the historical beneficial use of water that determined 2.5 acre-feet per acre as the annual diversion volume that should be allowed by the transfer.

Interpretation of the Transfers

In reviewing the file, there is some uncertainty about whether the second transfer was intended to include an additional 4.0/2.0 cfs, or whether the transfer sought to irrigate more lands with the previous flow rate transferred. In the past, IDWR has interpreted each transfer as having moved fully independent portions of water right no. 22-265. Based on IDWR's past interpretations, Jeppesens have the authority to divert up to 8.0 from April 1 to June 20 and 4.0 from June 20 to November 1 under the two transferred portions of water right no. 22-265. — *Jeppesen: Part 1 (Combined Parts B and D).*

Claim No. 22-4195

Claim no. 22-4195, filed by K. Merle Jeppesen, asserts the perfection of a water right by beneficial use of water diverted from Moody Creek. The claim asserts the right to divert 4.0 cfs of water from Moody Creek for the irrigation of 530 acres. Merle Jeppesen asserts that the water was beneficially used as claimed on July 15, 1965.

Jeppesen has asserted the perfection of a water right by filing Snake River Basin Adjudication (SRBA) Claim no. 22-4195. SRBA Claim no. 22-4195 has not been decreed by the SRBA Court.

As long as Claim no. 22-4195 is a claimed beneficial use, it will be one of the first water rights shut off by the watermaster during regulation.

Subsequent Activities

Following the approval of the above discussed transfers and filing of a claim for an additional water right, controversy about Jeppesen's diversion has stirred for almost two decades. A Notice of Violation was issued to Jeppesens for illegal use of water. In the settlement of the violation, the requirement for installation of adequate measuring devices was reiterated. In addition, adjudication claims for the Woodmansee – Johnson Canal Company were discussed. A comparison of the Woodmansee – Johnson claims and their located points of diversion revealed

that, although the Jeppesen property may receive additional waters from Woodmansee – Johnson, Jeppesen continues to maintain his own point of diversion from Moody Creek.

An August 18, 2003 memo written by a Ron Carlson, Watermaster for Water District 01, states that Jeppesens' installed a Grainland meter and a data logger, but it was unreliable. The memo states that the flow meter would not read accurately, and that the Jeppesens attempted to recalibrate the meter multiple times. The memo also states that Water District 01 staff derived a power consumption coefficient for the pump. In the last paragraph of the memo, Ron Carlson states:

Because the transfer conditions are so confusing regulating more than the rate of diversion is difficult, even though (sic) there appears to be both a volume limit and an acreage limit on the transfer. Since the right Jeppesen has is the oldest water right in Water District 1, the right will never be cut, based strictly on priority. It appears that the authorized rate of diversion will never be exceeded by the Jeppesen pumps.

Both transfers approved for Jeppesen's diversion require strictly limit flow rate and acreage irrigated. Transfer no. 3002 strictly limits the annual volume. The strict limitations must be enforced for two reasons. First, the two approved transfers allow irrigation of 200 acres within a larger 320 acre parcel. Second, water diverted from Moody Creek is commingled with water delivered from the Woodmansee -Johnson Ditch to irrigate more than 200 acres. As a result of the commingling, the use of water by Jeppesens cannot be solely regulated by counting the acres irrigated every year. As a result, the 2.5 acre-feet per acre annual volume restriction limits Jeppesens diversion from Moody Creek to no more than the historical use of water..

Again, because of the commingling of water, Jeppesen's diversion or water should be regulated both by flow rate and total volume diverted. Jeppesens are entitled to divert the full flow rate of 8.0 cfs from April 1 to June 20, and 4.0 cfs from June 21 to November 1. The total diversion from Jeppesens' point of diversion should be limited to 500 acre-feet annually (applying the volumetric limitation of 2.5 acre-feet per acre). The 500 acre-feet should be measured accurately. The annual volume pumped should be measured with either a reliable meter or by a power consumption coefficient that can be applied to Jeppesens' diversion.

In 2005, Ryan Madsen, deputy watermaster for Water District 01, regulated the Jeppesen diversion. Attached are notes about Madsen's regulation. Both flow rate and total volume were monitored. The highest flow rate diverted by Jeppsens was 4.0 cfs. The total volume of water diverted during the 2005 irrigation season was 346.9 acre-feet.

Ruberry, Allen

From: Ruberry, Allen
Sent: Tuesday, December 13, 2005 2:19 PM
To: Rigby, Jerry (IWRB Member)
Subject: 22-4195

Jerry, I have in the files a letter from you dated June 7, 2004, and a note from Harold Jones dated 9-28-05, both indicating you have or are working on evidence of priority for the above referenced claim. The claim is for K.M. Jeppesen and is associated with 22-265E, claiming a 1965 priority date from Moody Creek.

I am recommending the 22-265E today and disallowing the 22-4195 for lack of evidence.

for your information.....al

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 22-265C

WATER RIGHT NUMBER: 22-265C

Owner Type Name and Address

Current Owner MARTIN GARN

, ID

DEAN W. GRAHAM
 4397 E 2000N
 SUGAR CITY ID
 834418

Priority Date: 03/15/1879

Basis: Decreed

Status: Active

Source

MOODY CREEK

Tributary

TETON RIVER

Beneficial UseFrom ToDiversion RateAnnual Volume

IRRIGATION

4/01 to 6/20

1.600 CFS

IRRIGATION

6/21 to 11/01

0.800 CFS

Total Diversion: 1.600 CFSLocation of Point(s) of Diversion

MOODY CREEK

SE1/4NW1/4

Sec. 13, Twp 06N, Rge 40E, B.M.

MADISON County

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
06N	40E	13								40.0									40.0

Total Acres: 40

Conditions of Approval:

- SEE TRANS. #3002.
50% REDUCTION IN RT. AFTER JUNE 20TH.

Remarks:Comments:

E-MAILED Danni

Ruberry, Allen

From: Jerry Rigby [jrigby@rigby-thatcher.com]
Sent: Saturday, December 31, 2005 12:08 PM
To: Al Ruberry
Subject: Emailing: DOC011.PDF



DOC011.PDF

Al,
Attached please find a draft of an enlargement claim for the Jeppesens. The affidavits are intended to be the proof for 22-4195 as well as the enlargement of 155 acres back in 1980.
In other words, the claim 4195 actually was originally developed from 65-69 in the amount of 400 acres. Then in 1980 the right, together with the other existing rights were enlarged up to the 555 acres.
Please review and let me know what changes or additions I will need to make to get this filed correctly.

Thanks

Jerry

The message is ready to be sent with the following file or link attachments:

DOC011.PDF

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

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 _____

Date Received _____

Receipt Number _____

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

*ENLARGEMENT
CLAIM*

Please type or print clearly

1. Name of Claimant (s) K MERLE JENSEN Phone (208) 356-3638

Mailing Address 434 MORGAN DR. REXBURG ID Zip 83440

2. Date of Priority (Only one (1) per claim) 5-1-1980

3. Source of water supply (a) MOODY CREEK
which is tributary to (b) TETON RIVER

4. a. Location of existing point of diversion is: Township 5N Range 41E Section 21,
SE 1/4 of NW 1/4 of _____ 1/4, Govt. Lot, _____ B.M., County of MADISON

Additional points of diversion if any: _____

b. If instream flow, beginning point of claimed instream flow is:

Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4,

Govt. Lot _____ B.M., County of _____

ending point is: Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____

_____ 1/4, Govt. Lot _____ B.M., County of _____

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as
constructed and as enlarged and the depth of each well. _____

6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For IRRIGATION purposes from 7/1 to 11/1 amount 40 cfs or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 40 cfs (cfs) and/or (b) _____ (acre feet)

8. Total consumptive use claimed is _____ acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) _____

10. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
05N	41E	20							75	40	40	40							155

Total number of acres irrigated 155

11. In which county (ies) are lands listed above as place of use located? MADISON

12. Do you own the property listed above as place of use? Yes ☒ No ☐
If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above. _____ or None ()

14. Remarks:

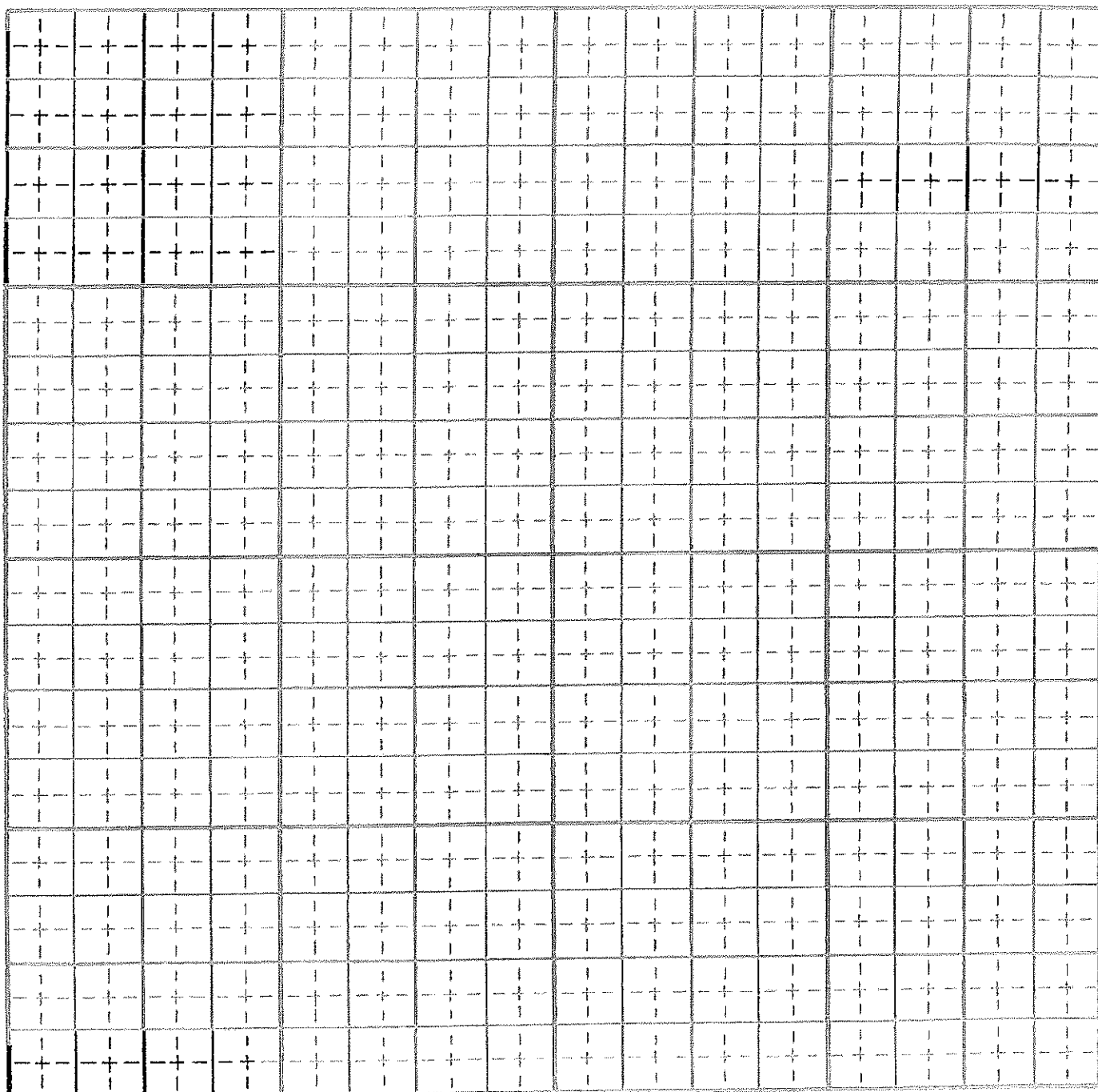
THIS IS AN ENLARGEMENT RIGHT OF RIGHT NO. 22-04195
& NO. 22-0265E

Last Name _____ Ident No. _____

Map of Project: show clearly the point of diversion, place of use, section number, township, and range number.

Scale: 2 inches equals 1 mile

SEE MAP



Last Name _____ Ident No. _____

15. Basis of Claim (check one) Beneficial Use ☒ Posted Notice _____ License _____ Permit _____
Decree _____
If applicable provide IDWR Water Right Number _____
Court _____ Case Number _____ Decree Date _____
Plaintiff vs Defendant _____

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

Signature of Claimant (s) *[Signature]* Date _____

_____ Date _____

For Organizations: I do solemnly swear or affirm that I am _____ Title _____

of _____, that I have signed the foregoing

Organization

document in the space below as _____ of _____

Title

Organization

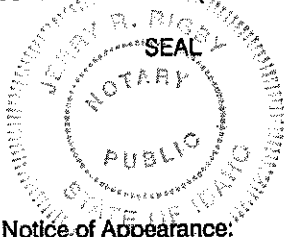
and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent _____

Title and Organization _____ Date _____

State of Idaho/or _____)
County of MADISON) SS.

Subscribed and sworn (or affirmed) before me this 30th day of DECEMBER 192005



Notary Public *[Signature]*

Residing at REXBURG

My Commission Expires 11-09-11

Please Print Name

17. Notice of Appearance:
Notice is hereby given that I, JERRY R. RIGBY will be 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 *[Signature]*

Address PO BOX 250, REXBURG, ID 83440

Date 12-30-05

Last Name _____ Ident. Number _____

Claimant: K. Merle Jeppesen
Attorney: Jerry R. Rigby
of RIGBY, THATCHER, ANDRUS
RIGBY & MOELLER, Chartered
Attorneys at Law
25 North Second East
Rexburg, ID 83440
Telephone: (208) 356-3633
Facsimile: (208) 356-0768

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS
SNAKE RIVER BASIN ADJUDICATION DIVISION

In RE: SRBA	)	Subcase: 22-04195
	)	
Case No. 39576	)	AFFIDAVIT OF K. MERLE JEPPESEN
	)	
_____	)	

STATE OF IDAHO)
 ss.
County of Madison)

K. Merle Jeppesen, having been duly sworn, states under oath as follows:

1. I am a resident of Madison County, Idaho and reside at 434 Morgan Dr.,
Rexburg, ID 83440.
2. I was a farmer by profession and until recently was the principal owner in the
555 acres of lands described in water right claim No. 22-4195 (hereinafter "Lands"). I have
personally worked on the Lands since before 1965, the original priority date claimed by me, as
the Claimant.

3. Because I personally developed the additional water on the Lands, I am keenly and personally aware that beginning in 1965 my father began plans to develop the Lands described in the water right claim No. 22-4195 (hereinafter "Claim").

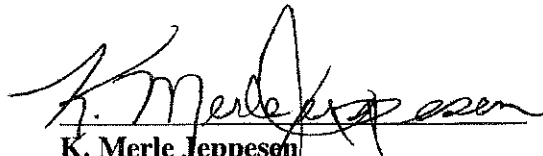
4. Beginning in 1966, I installed new mainline and new pumps and began to pump the waters required to irrigate approximately 150 acres of the Lands. I then continued to develop the Lands up to 1969, installing additional portable mainline to irrigate approximately 400 acres of the Lands (see attached map evidencing irrigation in 1969). I pumped the additional 4 cfs described in the Claim during the entire irrigation season as opposed to only a partial season as allowed by my other rights. I also irrigated the entire 400 acres each season, as opposed to only a portion thereof as allowed by my other rights.

5. I continued to applied the additional 4 cfs to the 400 acres of the Lands up to the year 1980, when I extended my mainline and began irrigating the entire 555 acres of the Lands as opposed to only limited acres rotated within the 555 acres. The only limitation to my use of the claimed 4 cfs is the flows of Moody Creek itself in times of drought. I know for a fact that the enlargement took place in 1980 as I have copies of my ledgers and calendars for that year (see attached copies of my ledgers). I have continued to water the entire 555 acres using all licenses, decrees and the Claim's 4 cfs since 1980.

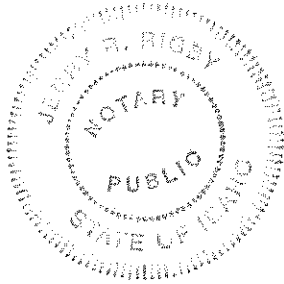
6. The 4 cfs of water from the Claim has since 1966 been beneficially applied to the Lands within the Claim.

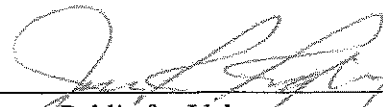
7. All present uses described in the Claim were instituted prior to 1987.

Dated this 30th day of December, 2005.


K. Merle Jeppesen

SUBSCRIBED AND SWORN to before me this 30th day of December, 2005.




Notary Public for Idaho
Residing at Rexburg, Idaho
My Commission Expires: 11-09-11

[illegible]

DATE	KIND OF PROPERTY	DATE ACQUIRED	COST	DEPRECIATION IN ALL PRIOR YEARS	REMAINING COST TO BE RECOVERED	ESTIMATED TOTAL LIFE	ESTIMATED REMAINING LIFE
1 Feb 24	1976 GMC PICK UP.	FEB 24	2678				
2 "	TRUCK 1968 TERRACE		5000				
3	CAR MANUFACTURING		804				
4	VALVE STEERING						
5	DAVIS COMMUNICATIONS 438		2538				
6	DAVIS COMMUNICATIONS 438		1135				
7	DAVIS COMMUNICATIONS 438		800				
8	DAVIS COMMUNICATIONS 438		3949				
9	DAVIS COMMUNICATIONS 438		2270				
10	DAVIS COMMUNICATIONS 438		985				
11	DAVIS COMMUNICATIONS 438		542				
12	DAVIS COMMUNICATIONS 438		612				
13	DAVIS COMMUNICATIONS 438		4250				
14	DAVIS COMMUNICATIONS 438		5500				
15	DAVIS COMMUNICATIONS 438						
16	DAVIS COMMUNICATIONS 438						
17	DAVIS COMMUNICATIONS 438		2546				
18	DAVIS COMMUNICATIONS 438		8920				
19	DAVIS COMMUNICATIONS 438						
20	DAVIS COMMUNICATIONS 438		2875				
21	DAVIS COMMUNICATIONS 438		1133				
22	DAVIS COMMUNICATIONS 438		3260				
23	DAVIS COMMUNICATIONS 438		2170				
24	DAVIS COMMUNICATIONS 438		1600				
25	DAVIS COMMUNICATIONS 438		3050				
26	DAVIS COMMUNICATIONS 438		3400				
27	DAVIS COMMUNICATIONS 438		778				
28	DAVIS COMMUNICATIONS 438		4980				
29	DAVIS COMMUNICATIONS 438		1403				
30	DAVIS COMMUNICATIONS 438		820				

APRIL 1980

21 Patriot's Day (Ma., Me.)

MONDAY

Spread wheat 1 1/2 42 units

2 45 units

Austin 7 hrs

plowing

Drill Early #17 on drill

22

TUESDAY

Austin 7 1/2

23

WEDNESDAY

Austin 8 1/2

Mel 11

2 Lick Ram

APRIL 1980

THURSDAY

24

cover track

Bury Wire Don Blumek

rain

FRIDAY

25

rain

SATURDAY

26

Mel 6 1/2

planter

weeder

Mr Richards 624 7189 water Reservoir

SUNDAY

27

Come to see me

MAY 1980

MAY-JUNE 1980

CUT HERE

26 Memorial Day

MONDAY

THURSDAY

29

Bury over on circle
Gave 1/2
Bury 1/2

27

Gave 1 day
Bury 1 day

TUESDAY

FRIDAY

30

TAKE BOWLES INTO
Bob Lee

.25" rain

RAIN 4.45" RAIN
MONTH OF MAY
24 DAYS

4.45" RAIN
MONTH OF MAY
24 DAYS

28

WEDNESDAY

SATURDAY

.55" RAIN 31

TAKE WIRE -
for circle

RAY Seed Later
3700

.1" ELEAN 1 day
Bury 1/2

SUNDAY

1

Claimant: K. Merle Jeppesen
Attorney: Jerry R. Rigby
of RIGBY, THATCHER, ANDRUS
RIGBY & MOELLER, Chartered
Attorneys at Law
25 North Second East
Rexburg, ID 83440
Telephone: (208) 356-3633
Facsimile: (208) 356-0768

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS
SNAKE RIVER BASIN ADJUDICATION DIVISION

In RE: SRBA)

Subcase: 22-04195

Case No. 39576)

AFFIDAVIT OF BYRON WEBSTER

STATE OF IDAHO)

ss.

County of Madison)

Byron Webster, having been duly sworn, states under oath as follows:

1. I am a resident of Madison County, Idaho and reside at 5390 S 3600 East,
Rexburg, ID 83440.

2. I am a farmer by profession and am the principal owner of Byron Webster,
Inc., which together with my wife and I, owns and operates irrigated agriculture lands on the
Rexburg Bench. I have personally worked on my property since before 1965, the priority date
claimed by the Merle Jeppesen, the Claimant in the above described water right.

Affidavit of Byron Webster - Page 1

F:\WP6\SB\JEPPSE3.AFF

3. Because of my personal relationship with Claimant's brother, Dale Jeppesen, back in the 1960s, I am keenly and personally aware that in the mid 1960's, K. Merle Jeppesen installed mainline and new pumps to pump the water described in the above entitled claim during the entire irrigation season. I would be with and help Dale Jeppesen refuel the Diesel engines which powered the pumps to lift the water from Moody Creek up onto Claimant's lands. Although I am not personally aware of the exact acres watered, I have no reason to dispute the amount of acreage claimed by Claimant in his claim.

Dated this ____ day of December, 2005.

Byron Webster

SUBSCRIBED AND SWORN to before me this _____ day of December, 2005.

Notary Public for Idaho
Residing at Rexburg, Idaho
My Commission Expires:

Law Offices

**RIGBY, THATCHER, ANDRUS
RIGBY, & MOELLER, Chartered**

RECEIVED

JUN 09 2004

Department of Water Resources
Eastern Region

Ray W. Rigby
Gordon S. Thatcher
G. Rich Andrus
Jerry R. Rigby
Michael S. Kam (1954-2001)
Gregory W. Moeller
Reed E. Andrus

P.O. Box 250
25 North Second East
Rexburg, ID 83440

Telephone: (208) 356-3633
Fax: (208) 356-0768
E-Mail: jrigby@rigby-thatcher.com

June 7, 2004

Department of Water Resources
Attn: Al Ruberry
900 North Skyline Drive, Suite A
Idaho Falls, Idaho 83402-1718

**Re: Water Right Claims 22-265 & 4195
K. Merle Jeppesen**

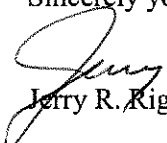
Dear Al:

This firm represents K. Merle Jeppesen and Janice Jeppesen who own water right nos. 22-265 and 22-4195 in the Moody Creek drainage area. They recently received a letter from you, dated May 20, 2004 and June 2, 2004, respectively, asking for a priority date verification of their claim.

I don't quite understand why there is an issue on 22-265 as the right comes from the Rexburg Decree, as originally decreed to Martin Garn on December 16, 1910, and your own records evidence the decreed rights under both my client's names. Perhaps it is because the right has been separated into three different suffix rights: B for K. Merle and D for K. Merle. As to 22-4195, we do have the information you required.

At any rate, I would be happy to discuss this with you further if you would please give me a call. Furthermore, because of the vast history of the Moody Creek water rights and the past transfers, I would appreciate it if I could come to your office and discuss this whole matter, including water rights held by my client in Woodmansee Johnson Canal Company. I would also bring any evidence you might require to show proof of the decreed water right ownership by K. Merle and Janice Jeppesen. Please contact me at your earliest convenience.

Sincerely yours,


Jerry R. Rigby

JRR:jt

cc: K. Merle Jeppesen
F:\WP6\SB\JEPPSESEM.LTR

Handwritten: Jerry working
on return
of priority

Handwritten: 9-28-05

June 2, 2004

**MERLE K JEPPESEN
434 MORGAN DRIVE
REXBURG ID 83440**

RE: EVIDENCE OF PRIORITY FOR SRBA WATER RIGHT CLAIM 22-4195

Dear Claimant (s):

The Idaho Department of Water Resources is nearing the end of water rights review in Basin 22, the Teton River drainage. The Notice(s) of Claim identified with the number shown above has been filed in the Snake River Basin Adjudication (SRBA). The Notice of Claim indicates water usage is based on "Beneficial Use". Water rights of this type are established by the historical use of water, dating back to when water was first used for the purpose claimed, at or on the place of use identified on the Claim. The date the water was first put to beneficial use, known as the priority date, has not been confirmed by License, Decree, or Permit. For this reason, proof must be provided supporting the priority date. **As the claimant, you are responsible for submitting the necessary proof to support the priority date.**

Your claim, as referenced above, claims a Priority Date of JUL 15 1965, from MOODY CREEK.

It is important that each element of the Notice of Claim be verified. For instance, regarding claims for irrigation, the evidence should tend to show that diversion works were in place, that they were capable of diverting the claimed diversion rate, and that the diverted water was beneficially used on the entire claimed place of use on or before the claimed priority date.

For your reference, I have provided a printout of your Notice of Claim and the pamphlet entitled "**Evidence of Priority**". The pamphlet describes the types of evidence which are acceptable and suggests which documents will fulfill this requirement. While I encourage you to read the entire pamphlet, I direct your attention to the two sections entitled "**What Kind of Evidence is Required**" and "**Some Examples of Documents Which May Be Evidence of the Priority Date**". **PLEASE READ THE ENCLOSED PAMPHLET.**

It is our goal to recommend historical water rights within the Snake River Basin as accurately as possible. Field exams to verify other elements of the Notice of Claim have been or soon will be conducted by Department personnel.

.....
**The Department will not recommend the Notice of Claim be decreed by the court if
evidence of a priority date is not submitted. The Notice of Claim will be disallowed.**
.....

Please submit documentation supporting the priority date within 30 days of the date of
this letter, referencing all documents with the corresponding claim number. If you
have any questions not covered by this letter or the enclosed pamphlet, please feel free to
contact this office.

Respectfully submitted,



Allen B. Ruberry
Sr. Water Resource Agent
Adjudication Bureau

cc: File

Enclosure: Brochure on "Evidence of Priority"



State of Idaho

DEPARTMENT OF WATER RESOURCES

150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83402 - (208) 525-7161

EASTERN REGION

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

July 19, 1989

K. Merle Jeppesen
434 Morgan Dr.
Rexburg, ID 83440

RE: Water Right Claim A22-04195

Dear Mr. Jeppesen:

After submitting the amendment for Water Right Claim A22-04195, the total acreage irrigated is 555 acres (see enclosed copy). 540 acres of the irrigation have been previously paid on claims A22-04195 and A22-00265E (Receipt Numbers E000357 and E002058). \$15.00 is due for the additional 15 acres.

Please send a \$15.00 payment for the additional acreage to my attention at the Department of Water Resources, 150 Shoup, Suite 15, Idaho Falls, ID 83401, so we may accurately update the records. If you have any questions, please give me a call at 1-525-7161.

Sincerely,

Tony Olenichak
Senior Water Right Agent

Enclosure

MICROFILMED

OCT 29 1992

MICROFILMED
OCT 29 1992

220736

J. Elao Jeppesen
Rt. 2, Rexburg, Idaho.

Application For Permit To Appropriate the Public Waters of the State of Idaho

APPLICATION No. 37004
PERMIT No. 29036
DISTRICT No.

Name of Applicant J. Elao and Keith Jeppesen
Postoffice address: Rexburg
County: Madison State: Idaho

1. If applicant is a corporation, give:
(a) Date and place of incorporation;
(b) Amount of capital stock;
(c) Amount paid in;
(d) Names and addresses of directors.

2. The financial resources of the applicant are:
(a) Cash on hand;
(b) Treasury stock;
(c) Bond to be issued;
(d) Other resources;
cubic feet per second.

3. Quantity of water claimed: 8.0

4. Source of water supply: Moody Creek

which is a tributary of Teton River

5. Location of point of diversion:

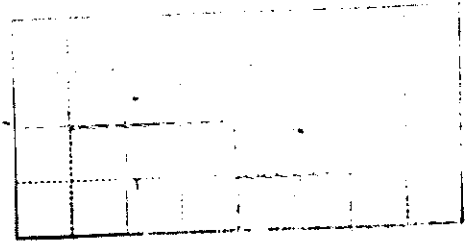
corner of Section T. 5 N. R. 41 E. B. M. County of Madison
feet distant from the NE 1/4 Sec. 16
T. 5 N. R. 41 E. B. M. and is in the SE 1/4 Sec. 21

6. Water is to be used for Irrigation

7. If for mining, milling, power or manufacturing purposes, give:

- (a) Point of use of water: T. 5 N. R. 41 E. B. M. in the corner of Section T. 5 N. R. 41 E. B. M. feet distant from T. 5 N. R. 41 E. B. M. feet head.
(b) Amount of power generated: H.P. under
(c) Water is to be returned to at a point: T. 5 N. R. 41 E. B. M. in the corner of Section T. 5 N. R. 41 E. B. M. feet distant from the corner of Section T. 5 N. R. 41 E. B. M.

Estimated cost of works: \$ 50,000



T. R. R.M., in the
 of Section of F. R. R.M.
 H.P., under
 feet head,
 at a point
 of Section F. R. R.M.
 10. Amount of power generated:
 11. Water is to be returned to
 distant from the corner of Section F. R. R.M.
 Estimated cost of work, \$ 50,000
 8. Kind of work: **Pumps, pipe and sprinkler system**
 9. Height of dam **none** feet, length of dam at top feet, length of dam at bottom
 feet, material used in dam
 10. Size of headgate: Width feet, height
 11. Ditch: Width at bottom feet, width at water line feet, depth of water
 dimensions of flume inches, length of conduit 5
 Diameter of pipe 4 to 12
 Average grade per mile feet
 12. The time required for the completion of such work is 5 years
 13. The time required for the complete application of the water to the proposed use is 6 additional years
 14. The land to be irrigated is described in the following tabulation See remarks
 15. Existing water rights and/or valid permits appurtenant to the lands to be irrigated are: **None**

16. (a) Is reservoir to be used? **Not known** If so, fill in (b) and (c) below:
(b) Name of Reservoir and number of Storage Permit:
(c) Date of filing of Application for Storage Permit and Name of Applicant:

BE IT KNOWN THAT The undersigned hereby makes application for permit to appropriate the public water of the State of Idaho as herein set forth.

J. Elao and Keith Jeppesen *Applicant*
By *s/ J. Elao Jeppesen* *Agent*

Date of first receipt at Department of Reclamation 11:00 A.M. September 13, 1960

Returned to applicant for correction

Corrected application received.

Approval of State Reclamation Engineer

The number of this permit is **29036** Filed **29036** Approved **September 21, 1960**
Recorded in Book **102** Page **29036**
This is to certify that I have examined the within application for a permit to appropriate the public water of the State of Idaho, and hereby approve the same, subject to the following limitations and conditions:
Work to begin on or before **November 21, 1960** and to continue diligently and uninterruptedly to completion, unless temporarily interrupted by circumstances over which permit holder has no control.
One-fifth of the work above specified to be completed on or before **March 21, 1963**
The whole of said work to be completed on or before **September 21, 1965**
Beneficial use of water appropriated in accordance herewith, to be made on or before **September 21, 1971**

WITNESS My hand this **21st** day of **September, 1960**

s/ GED. M. CARTER
State Reclamation Engineer

IN TESTIMONY WHEREOF, WE **ROBERT E. SKYLIS** Governor of the State of Idaho
and **ARNOLD WILLIAMS** Secretary of State of the State of Idaho have caused this instrument to be executed in the name of the State of Idaho, and caused the Great Seal of the State of Idaho to be hereunto affixed. **21st**

day of **September** 19 **60** STATE OF IDAHO

Countersigned **ARNOLD WILLIAMS** By *s/ ROBERT E. SKYLIS*

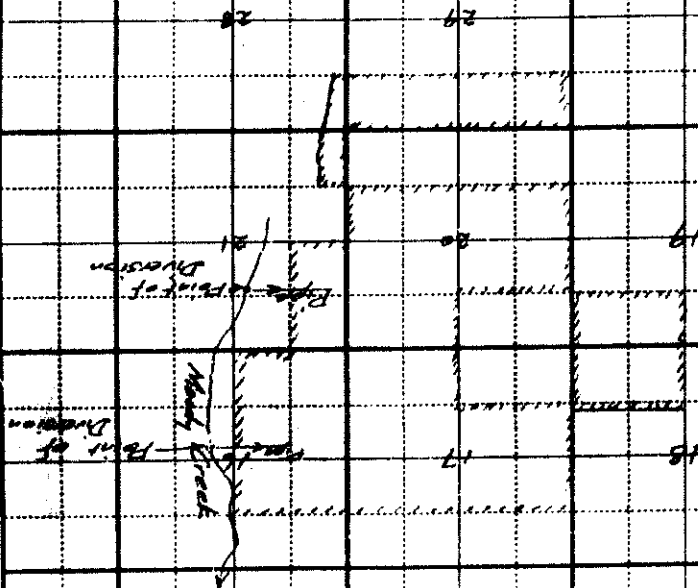
SEAL OF THE STATE OF IDAHO

Reservoir application will be submitted if survey shows it is feasible

RE MARKS:

[illegible]

RALE



Term Map No. 29036
As Approved SEP 21 1960
GEO. N. CARTER
Washington, D. C.