

SUPPLEMENTAL DIRECTOR'S REPORT
REGARDING SUBCASE NO. 63-5284

In Re SRBA

Twin Falls County Civil Case No. 39576

Report to the SRBA District Court

Prepared by the Idaho Department of Water Resources
David R. Tuthill, Jr., Director
Donald V. Shaff, Adjudication Bureau Chief

June 1, 2007

I. INTRODUCTION

In accordance with Idaho Code §42-1412(4), Administrative Order 1, and Special Master Booth's March 28, 2007, *Order Granting Motion for 706 Report*, the Director of the Idaho Department of Water Resources ("IDWR" or "Department") submits this Supplemental Director's Report ("Report") regarding subcase number 63-5284, setting forth the basis for the Department's recommendation for this water right. The Report was prepared under the supervision of David R. Tuthill, Jr., Director, and Donald V. Shaff, Adjudication Bureau Chief.

The following employee has knowledge of the information contained in the Report: Vicky Music, Senior Water Resource Agent.

II. SUMMARY OF THE ISSUES

Claimant Charles L. Gibson filed verified claim number 63-5284 in the SRBA on behalf of himself and his father, Cecil Gibson, on August 8, 1989. (The Department has since been informed, and believes, that Cecil Gibson is now deceased.) The claim was for 0.60 cfs for stockwater and the irrigation of 30 acres. Its claimed priority date was April 1, 1947. (A copy of the SRBA Claim is attached hereto as Exhibit 1.) This claim in turn was based upon a "statutory claim" filed with the Department pursuant to the provisions of Idaho Code §42-243 by Charles L. Gibson on June 29, 1983. This statutory claim asserted a 1947 priority date. (A copy of the statutory claim is attached hereto as Exhibit 2.)

IDWR recommended SRBA claim number 63-5284 in *its Director's Report for Irrigation and Other Rights, Basin 63 Part II*, Reporting Area 13, on December 16, 2005, for 0.24 cfs for stockwater and the irrigation of 31 acres, with a priority date of April 1,

1947. On or about April 21, 2006, the Terteling Co., Inc., filed an objection in the SRBA to the Department's recommendation of the priority date for this right, asserting that the correct priority date should be April 1, 1962.¹ Since priority date is the only disputed element of this right, and since the Special Master in his March 28, 2007, order requested that this Report place "particular emphasis upon the disputed element of priority date..." only the basis for the Department's priority date recommendation will be addressed herein.

III. LEGAL AND POLICY BASIS FOR IDWR'S RECOMMENDATION

Idaho Code §42-1409 includes priority date as an element of the water right that must be included in a notice of claim for a water right in a general adjudication. It reads in part as follows:

(1) The director shall prepare and furnish on request a standard notice of claim form . The notice of claim form shall include the following:

...

(d) the date of priority claimed:

(i) the date of priority claimed for water rights acquired under state law shall be from any license, permit, or decree; or if the right is not based upon a license, permit, or decree, then the date when the water was first applied to beneficial use;

Idaho Code §42-1410 in turn requires the director to investigate the claims filed for water rights in a general adjudication. It reads in part as follows:

[T]he director shall commence an examination of the water system, the canals and ditches and other works, and the uses being made of water diverted from the water system for water rights acquired under state law. The examination shall continue in a manner and for such a period of time as the director determines is necessary to evaluate the extent and nature of each water right for which a notice of claim under state law has been filed.

¹ The Edwards Family LLC also filed an objection to IDWR's recommendation of this claim on or about April 24, 2006, but this objection has since been resolved.

Finally, Idaho Code §42-1411(2) provides that the priority date is included among the elements the director will recommend for each right in his director's report. It reads in part as follows:

- (2) The director shall determine the following elements, to the extent the director deems appropriate and proper, to define and administer the water rights acquired under state law:

...
(d) the date of priority

Chapter 3 of IDWR's *CLAIMS INVESTIGATION HANDBOOK* provides guidance to the water resource agents investigating the priority dates of beneficial use water right claims. (A copy of this chapter is attached as Exhibit 3.) Section IIB of that chapter states in part as follows:

The claim file must document the evidence upon which the agent recommended a beneficial use water right priority date. If that recommendation was based upon an oral conversation with an "old timer" or a claimant relaying their parents' stories, that should be documented in the file with notes or a recording. Obtaining affidavits from "old timers" is also helpful to preserve their testimony. A statutory claim filed under Idaho Code §42-243 is not evidence of priority. A public information brochure describing the types of information that a claimant may submit to IDWR to show a priority date has been prepared and distributed to the regions. The brochure with an appropriate cover letter should be mailed to all beneficial use claimants in a sub-basin at the beginning of the investigation stage for the sub-basin.

All claimants of irrigation and other rights based on beneficial use must submit information supporting the claimed priority date. It is up to the agent to use common sense to evaluate the credibility of the information, to weigh conflicting information, and to determine in light of any contradictory information, whether the claimant's information supports the priority date, and if not, to determine what date it does support.

(Emphasis added.)

IV. INVESTIGATION OF THE PRIORITY DATE

The claim file for claim number 63-5284 was assigned to Vicky Music, Senior Water Resource Agent at IDWR's Western Region office, for review and recommendation. Ms.

Music conducted an initial claim file review, which included a review of well logs filed with IDWR and aerial photographs. A well log, by documenting the date the well was drilled, would provide evidence of the priority date of the right. Aerial photography, to the extent it might show water use as of the date the photograph was taken, also can serve as evidence of priority. Ms. Music had available to her aerial photography of the property from 2003, 2000, 1987, and 1964, as well as a black and white aerial photo from 1939 which showed both a house and apparently cultivated ground on the property.

Ms. Music determined that IDWR did not possess well logs for any wells located upon the claimed property, nor from the aerial photography was she able to clearly determine that the water use disclosed on the photos must of necessity have come from the point of diversion listed on the claim. Based upon this initial investigation Ms. Music determined that the evidence of priority was inadequate to prove the claimed priority date, and on September 1, 2004, she sent a letter request to the claimants asking for evidence to establish the claimed priority date. (A copy of this letter is attached hereto as Exhibit 4.) Included with the letter was a brochure entitled, *Evidence of Priority, A Guide to the Sources Which May Constitute Proof of the Priority Date of Your Water Right*, (A copy of this brochure is attached hereto as Exhibit 5.) In response to this letter, claimant Charles L. Gibson visited the IDWR Western Region office on September 14, 2004, and met with Ms. Music.

Mr. Gibson and Ms. Music discussed the historical use of the water and the basis of the claimed priority date. According to Mr. Gibson his parents, Cecil and Lottie Gibson, purchased the subject property in 1947. Mr. Gibson was born in 1951, and had lived his entire life on the property. His knowledge was therefore based not only upon his own

personal knowledge from the time he could first remember but also upon information related to him over the years by his parents. Mr. Gibson explained that two wells were in use on the property at the time his parents bought it. After purchasing the property, Mr. Gibson's parents used the water for stock water for turkeys and cattle, dust and disease control, and irrigation of approximately 30 acres for food for the turkeys and pasture for cattle. The Gibsons developed a sizeable turkey breeding operation and for many years raised between 3,000 and 4,000 turkeys.

Mr. Gibson further stated that most of the water use came from the northernmost of the two wells on the property ("the north well") which is the point of diversion recommended for water right number 63-5284. However, there was a second well ("the south well") that was used for stockwater, domestic uses, and irrigation. Mr. Gibson stated that in 1960 his father ceased raising turkeys, installed a larger pump in the north well and began using the north well exclusively for irrigating 30 acres of alfalfa.²

According to Mr. Gibson, although both wells were in use when the Gibson family purchased the property, his father did not know when they were drilled. Therefore, when Mr. Gibson filed his SRBA Notice of Claim he claimed as the right's priority date what he understood was the generally accepted start of the irrigation season for 1947, the year his parents purchased the property.

During the discussion with Ms. Music on September 14, 2004, Mr. Gibson prepared a handwritten statement regarding the water use on the property for inclusion in

² There are circumstances where increasing the quantity pumped out of a well would constitute a new appropriation with a priority date as of the date the additional quantity was first diverted out of the well. However, in the present case Ms. Music understood Mr. Gibson as relating that at the time the number of acres irrigated out of the north well increased, irrigation out of the south well ceased, resulting in no net increase of the quantity diverted. She therefore treated this situation as an accomplished transfer of part of the diversion rate out of the south well to the north well, which would not change the priority date of the right.

the claim file. (A copy of that statement is attached hereto as Exhibit 6.) One should note that the statement contains a sentence, that, when read in isolation, could be interpreted as stating that Mr. Gibson's father first started irrigating in 1960. However, based upon her contemporaneous conversation with Mr. Gibson, Ms. Music understood that sentence to mean that in 1960 Mr. Gibson's father ceased the turkey operation and the irrigation and other water uses associated with it, and commenced raising alfalfa exclusively on the entire place of use.

Subsequent to making her recommendation, during a Court-moderated settlement conference held on January 17, 2007, on the objection to the recommendation of the priority date for this water right, Ms. Music was provided additional information by Mr. Gibson.³ Mr. Gibson showed her eleven black and white photographs, ten of which contained handwritten notations and dates ranging from 1949 to 1952. Mr. Gibson believed the notations and dates were in his deceased mother's handwriting. The photographs contain various views of what Mr. Gibson explained were the place of use of the right at that time. In showing the pictures to Ms. Music, Mr. Gibson was able to orient the pictures to existing locations and landmarks. The pictures show different aspects of the farming operation, including the turkey raising operation. Mr. Gibson subsequently provided Ms. Music with copies of these photos for the claim file. (A CD containing electronic copies of the photographs is included herewith as Exhibit 7.)

V. RECOMMENDATION OF THE PRIORITY DATE

Initially Ms. Music's review of the 1939 aerial photograph confirmed that there was apparently cultivated ground and a house on the property at that time. From that it was

³ It is not uncommon for claimants to provide IDWR with additional information during the objection resolution process, and IDWR will evaluate the information it receives for the purpose of facilitating objection resolution.

logical for her to conclude that the property must have had a source of water, even though the photograph did not reveal what that water source was.

Mr. Gibson's explanation that the two wells were on the property when his parents purchased it in 1947 was consistent with the inference from the 1939 photograph that there was a water source on the property by 1939. Because of his personal knowledge gleaned from his having resided on the property since his birth in 1951, as well as the information he received from his parents regarding the history of the property from the time they bought it, Ms. Music viewed Mr. Gibson as having a better knowledge base about the property than anyone else. Since she was able to meet with Mr. Gibson personally she was able to judge his credibility for herself. She found the information provided by him to be believable and consistent with the information she had from aerial photography and the results of a field examination done by another water resource agent to confirm other elements of the right. Since Mr. Gibson's information about other elements of the right was consistent with the other information she had in her possession, Ms. Music had no reason to doubt the accuracy of the information he provided about priority date.

Even though the 1939 photograph could have served as the basis for an argument in support of a priority date earlier than 1947, Ms. Music was aware that the claimant had based his assertion of a 1947 priority date upon the firsthand knowledge of his father, and, accordingly concluded that the claimed priority date was credible and reasonable under the circumstances. She therefore recommended the claimed priority date of April 1, 1947.

In reviewing the photographs subsequently provided to her by Mr. Gibson, Ms. Music has concluded they lend further support to the claimed 1947 priority date insofar as they evidence the use of the water between 1949 and 1951 consistent with the information previously provided her by Mr. Gibson.

VI. CONCLUSION

Ms. Music concluded that the priority date claimed for water right number 63-5284, April 1, 1947, was reasonable and supported by the information available to her. She therefore recommended the priority date as claimed. The additional information subsequently provided to her by the claimant reinforces that conclusion.

RESPECTFULLY SUBMITTED this 1st day of June, 2007.


DONALD V. SHAFF
Adjudication Bureau Chief

CERTIFICATE OF MAILING

I certify that on June 1, 2007, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and 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, Idaho 83303-2707

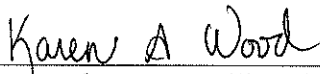
2. Copies to:

Charles L. Honsinger
Ringert Clark Chartered
455 S Third Street
PO Box 455
Boise, ID 83701-2773

Dana L. Hofstetter
608 West Franklin Street
Boise, ID 83702

Charlie L. Gibson
5125 Bogus Basin Rd
Boise, ID 83702

IDWR Repository
P.O. Box 83720
Boise, ID 83720



Signature of person mailing the form

EXHIBIT 1

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: A63-05284
Date Received: 8/08/1989
Receipt No: C009073
Received By: JP

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: CHARLIE L. GIBSON 208-343-6525
Address: 5125 BOGUS BASIN RD.
BOISE, ID 83702

AND/OR

Name: CECIL GIBSON 208-343-6525
Address: 5125 BOGUS BASIN RD.
BOISE, ID 83702

2. Date of Priority: APR 01, 1947

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
04N	02E	22	SE	SE	NE		ADA

5. Description of diverting works:
WELL, PUMP & SPRINKLERS

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	03/15	11/15	0.600		
STOCKWATER	01/01	12/31	0.090		

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

8. Total consumptive use is 105.0 Acre Feet Per Annum.

9. Non-irrigation uses:
STOCK/400 HEAD CATTLE

A63-05284

Page 1

Date: 08/08/89

SCANNED
OCT 06 2006

MICROFILMED
AUG 21 1992

10. Place of Use:

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
04N	02E	22	SE		NE		IRR	10.0
			NE		SE		IRR	10.0
							Section Acres	20.0
		23	SW		NW		IRR	8.0
			SW		NW		STOCK	
			NW		SW		IRR	2.0
			NW		SW		STOCK	
							Section Acres	10.0
							Total Acres	30.0

11. Place of use in counties: ADA

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

13. Other Water Rights Used:
DOMESTIC WELL ALSO USED FOR STOCK

14. Remarks:

15. Basis of Claim: STATUTORY CLAIM

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: 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): Charles L. Shu Date: Aug 9 89

Date: _____

State of Idaho)
County of ADA) SS.

Subscribed and sworn (or affirmed) before me this 8TH day
of AUGUST 19 89

Jeff Peppersack
Notary Public

Seal

Residing at _____

My Commission Expires _____

Jeff Peppersack, Notary Public
Residing at Boise, Idaho
My Commission Expires Nov. 8, 1994

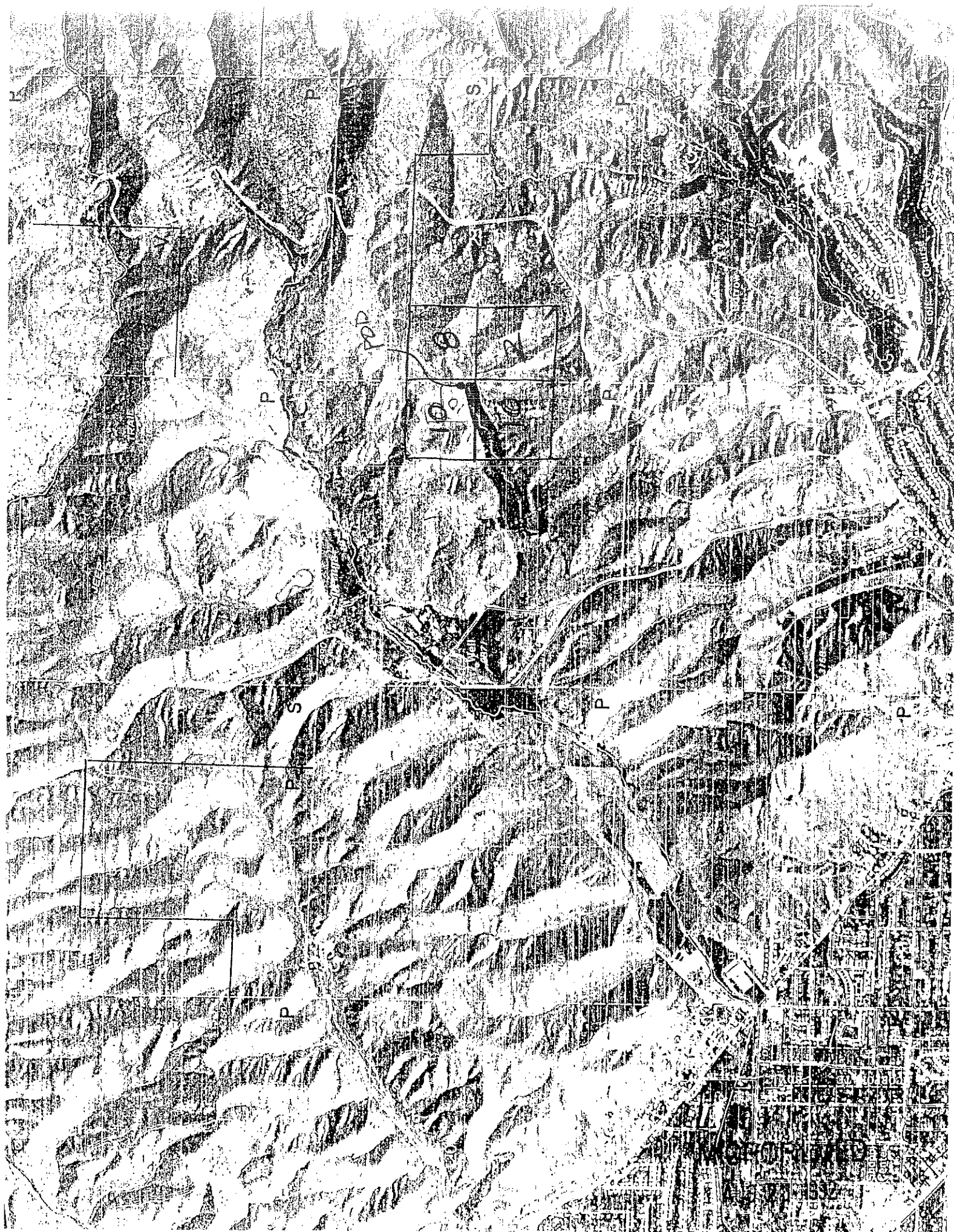
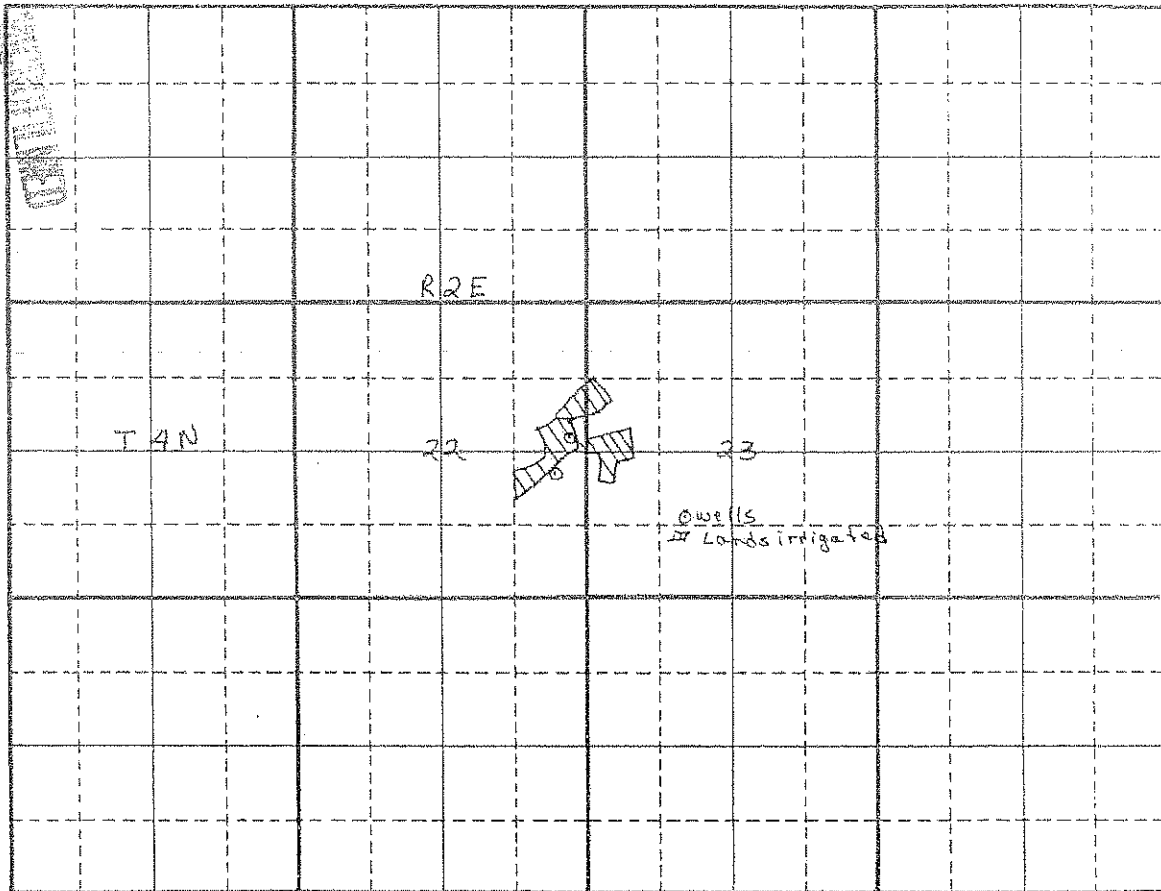


EXHIBIT 2

If you are claiming water as a member of an organization, list name of organization:

5) Remarks



Scale: 2 inches equal 1 mile.

Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

State of Idaho)
County of Ada) ss.

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the foregoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiant's knowledge.

Sworn to before me this 29 day of June, 19 81.

[Signature]
(Claimant)
Nancy M. Northway
Notary Public
Residing at Bosse

My commission expires Life

FOR DEPARTMENT USE ONLY

Received by ED Date 6/29/83 Exception filed by: _____ Forwarded to _____ Date _____
Prelim. check by JG Date 10/23/83 claimant by: _____
\$30.00 fee received by ED Date 6/29/83 # 26865
Published in Idaho State
Dates 2/23 & 3/1/84

EXHIBIT 3

CHAPTER 3

PRIORITY DATE

I. INTRODUCTION

A water right's priority date is dependent upon the legal method by which the water right was established. When examining a water right's priority date agents must keep in the front of their mind the significant dates in Idaho water law. Click [here](#) for a link to a memorandum setting forth those dates. There are five different methods of obtaining a water right, each with a different method of determining the priority date:

- ▶ Beneficial Use Method.
- ▶ Posted Notice Method.
- ▶ Permit Method.
- ▶ 42-1426 Enlargement Method.
- ▶ 42-1416B Expansion Method.

II. BENEFICIAL USE WATER RIGHTS.

A. Priority date.

The priority date for a beneficial use water right is the date when water is first appropriated by application to beneficial use. This doctrine can cause problems when a water user has gradually developed the water use over time. There could be multiple water rights for one overall water use. When a water user is claiming gradual development of the water use the agent should likely consult legal counsel to discuss the appropriate priority date(s) to recommend.

B. Evidence of priority

The claim file must document the evidence upon which the agent recommended a beneficial use water right priority date. If that recommendation was based upon an oral conversation with an "old timer" or a claimant relaying their parents' stories, that should be documented in the file with notes or a recording. Obtaining affidavits from "old timers" is also helpful to preserve their testimony. A statutory claim filed under Idaho Code § 42-243 is not evidence of priority. A public information brochure describing the types of information that a claimant may submit to IDWR to show a priority date has been prepared and distributed to the regions. The brochure with an appropriate cover letter should be mailed to all beneficial use claimants in a sub-basin at the beginning of the investigation stage for the sub-basin.

All claimants of irrigation and other rights based on beneficial use must submit information supporting the claimed priority date. It is up to the agent to use common sense to evaluate the credibility of the information, to weigh conflicting information, and to

determine, in light of any contradictory information, whether the claimant's information supports the priority date, and if not, to determine what date it does support. If there is insufficient information to support a priority date that is not in violation of the mandatory permit statute, then the claim should be recommended for disallowal, and should include the following GENERAL remark: "NO LAWFUL APPROPRIATION SHOWN." (P01 and condition P01)

A beneficial use priority should not be recommended that is outside the season of use for the purposes of use to be recommended. For example, a priority date of December 31 should not be recommended for a right recommended solely for irrigation purposes. If a claimant provides information that only supports the year in which water was put to beneficial use for irrigation but not a date, the agent should recommend (the last day of the year)(the last day of the irrigation season)(the first day of the irrigation season for the next year)(?)

C. Effect of Mandatory Permit Statute.

Where the year of the priority claimed is 1963 and later for ground water or 1971 and later for surface water, there must be some evidence that would tend to show that the appropriation was completed prior to the effective date of the mandatory permit statute, or was commenced prior to the effective date of the mandatory permit statute and completed within a reasonable time thereafter. (The effective dates of the mandatory permit statute were March 25, 1963 for ground water, and May 20, 1971 for surface water) A beneficial use right with a priority after the effective date of the mandatory permit statute may still be valid if the claimant can show that the appropriation was commenced prior to the effective date of the statute and completed with reasonable diligence. See Adjudication Memo #23 for more information as to the effect of the mandatory permit statutes.

Historically, it was not uncommon for a person with a beneficial use right to seek documentation of the right by filing an application for permit. Under the statute, the only priority date that could be licensed was the date of filing the application, even though the right was in fact established earlier.

Where an earlier priority date is claimed for a right for which a license has been issued, then the claim should be reviewed as a claim based on beneficial use, and if recommended with a beneficial use priority, then the basis of the claim should be changed to beneficial use. A new number should be assigned to the beneficial use water right to avoid confusion with the license. However, the evidence submitted by the claimant in support of a claim based on beneficial use should be weighed in light of any evidence in the water right record.

If the claimant's evidence is sufficient to recommend only a portion of the licensed amount with an earlier priority date, then the claim may be recommended as two water rights, one with the earlier priority for the portion of the claim for which the required evidence was submitted, and one with the licensed priority for the remainder.

III. POSTED NOTICE WATER RIGHTS

A. Priority Date.

From February 10, 1881 thru March 11, 1903, Idaho had a "posted notice" statute, which described one means to perfect a water right. As a first step an appropriator was required to post a notice describing the intended appropriation at the proposed point of diversion. The notice then had to be recorded and diversion works were required to be completed and water applied to a beneficial use with due diligence. If the requirements of the statute were satisfied, then the priority date of the water right "related back" to the date of posting. The agent should consult with their legal counsel to determine the exact requirements in effect at the time in question.

B. Evidence of Priority Date.

A posted notice is evidence of the intent to appropriate water, but it is not evidence of application of water to beneficial use nor due diligence in completing the appropriation. Some evidence of completion of the appropriation within a reasonable time after the date of posting must be found by the agent before a claim may be recommended based on a posted notice. Completion within five years is reasonable; the reasonableness of longer periods will depend on the circumstances.

The claimant should be notified that the claimant should submit evidence of the date of first use in the same fashion as beneficial use right claimants. If the claimant submits evidence of completion of the appropriation within a reasonable time following the date of posting, then the date of posting should be recommended as the priority date.

If the date of first use is not within a reasonable amount of time from the date of posting the right might be recommended as a beneficial use right.

1. Sufficiency of posted notice.

The agent should review the posted notice with legal counsel to be sure it met the statutory requirements. The posted notice must contain the following:

- a. Name of appropriator
- b. Source
- c. Amount of water
- d. Location of point of diversion
- e. Purposes of use
- f. Location of place of use
- g. Description of means of diversion
- h. For notices posted or recorded between March 7, 1895 and February 24, 1899, the length of time necessary to complete the appropriation, which may not be more than five years.

- i. Date of recording between February 10, 1881 and March 10, 1903, and within the following time limits from the date of posting:
 - Prior to June 1, 1887 - 15 days
 - June 1, 1887 to February 19, 1895 - 10 days
 - February 20, 1895 to March 10, 1903 - 15 days

The date of recording is the date the notice was recorded with the office of the county recorder for the county in which the land was located at the time the notice was recorded (there have been some changes in county boundaries since the posted notice statutes). A copy of the posted notice from the county recorder's office will have an endorsement by the county recorder that shows the date of recording.

If the posted notice does not meet these minimum requirements, then the basis of the claim should be changed to beneficial use and the claim should be reviewed the same as a claim based on beneficial use.

2. Does the posted notice include the right claimed?

The water right claim based upon the posted notice statute should accurately reflect the information shown on the notice. If not, the agent must examine the right carefully to determine if it is, in fact, the use intended under the posted notice statute. Keep in mind that the original right might have been transferred. If the claimed use cannot be reconciled with the posted notice, examine the claim to determine if it is for a beneficial use right.

If the claimed right is partially included in the posted notice, or may partially be considered a change in use of the appropriation described in the posted notice, then the claim may need to be separated into two claims, one based on posted notice and a second based on beneficial use.

IV. LICENSED WATER RIGHTS

A. Priority Date.

The priority date for a water right based upon the permit/license method is generally the date the application for permit was filed with IDWR. Idaho Code § 42-219.

B. Evidence of Priority.

The priority date of a licensed water right should appear on the face of the license or permit.

V. 42-1416 ENLARGEMENT WATER RIGHTS

A. Priority Date.

The priority date of a water right claimed as an enlargement under Idaho Code § 42-1416 is the date of the completion of that enlargement. The date of completion must be on or before November 19, 1987. In order to prevent injury to junior water users IDWR has also determined that all 42-1416 enlargements should also be recommended with the following subordination remark:

This water right is subordinate to all water rights with a priority date earlier than April 12, 1994, that are not decreed as enlargements pursuant to Section 42-1416, Idaho Code. As between water rights decreed as enlargements pursuant to 42-1416, Idaho Code, the earlier priority right is the superior right.

B. Evidence of Priority.

A person claiming an enlargement right should be requested to provide evidence of the date of the completion of the enlargement in the same fashion as for beneficial use rights.

VI. 42-1416B EXPANSION WATER RIGHTS

A. Priority Date.

The priority date for a water right recommended under Idaho Code § 42-1416B is June 30, 1985.

B. Evidence of Priority.

No evidence of priority date is necessary for a water right claimed under Idaho Code § 42-1416B. So long as the water right can be recommended under this statute, the statutory priority date should be used.

VII. ACTIONS AFFECTING AVAILABLE PRIORITY

A. Decrees

The available priority dates for water rights claimed in an area that has been adjudicated may be limited. If a water right was required to be claimed in an adjudication, and was not, the claimant may be barred from claiming a water right with a priority date preceding the date of the adjudication decree. The issue of whether, or not, a water right was required to be claimed in an adjudication is complex, and agents should consult with their legal counsel when faced with this question. See Adjudication Memo #14 for the decree dates of some recent adjudications.

Generally, IDWR will place the burden on the claimant to show the claimant is not "bound" by an adjudication, either by showing that the owner at the time of the more recent adjudication was not a party to the more recent adjudication (some water right adjudications

are binding only on named parties, not on all claimants from the source), by showing that particular water right claims were not required to be filed, or by showing that the source claimed was not included in the water system adjudicated. If the claimant does not meet this burden of proof, then IDWR will recommend either that the claim is barred or that the priority date must be advanced to after the adjudication.

Some water rights have been adjudicated more than once. Claims for these rights should be referred for further review by legal staff.

B. Claimed priority date later than available priority date.

Some claimants claim a priority date later than the date which appears to be available to them under a decree, license or other evidence. In this situation the claimant should be contacted to allow the claimant the opportunity to file an amended claim asserting the earlier priority date, otherwise the earlier priority is waived. A priority earlier than the claimed priority may not be recommended.

C. Subordination.

The priority date of a water right may be "subordinated" to water rights that would, in the normal course, have a later priority date. A water right is subordinated when those water rights with a later priority date are moved ahead of the subordinated water right in priority. Subordination can result from voluntary agreement by the water right owner, by operation of legal principles such as laches and estoppel, and through conditions placed on a water right license by IDWR. Water rights that have been should be recommended with a subordination remark placed under the ostensible priority date. Agents should not impose a subordination remark in the absence of clear evidence of subordination.

EXHIBIT 4



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

FAX (208) 334-2348

September 1, 2004

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

CHARLIE L AND CECIL GIBSON
5125 BOGUS BASIN RD.
BOISE, ID 83702

RE: EVIDENCE OF PRIORITY
Snake River Basin Claim No(s): A63-5284

Dear Claimant(s),

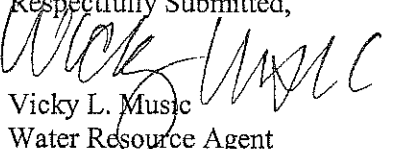
In the past, you submitted the above referenced claim(s) during the Snake River Basin Adjudication (SRBA) claims taking. Enclosed is a computer generated print-out of the claim(s) for your reference only, it is not necessary to return this print-out or re-file it. You indicated, when this claim was filed, that the water right(s) was based on either a "Statutory Claim" or "Beneficial Use" of the water. Water rights of this type are established by historical use of the water for a beneficial use purpose, dating back to the time the water was first used; this date being the "Priority Date" as shown on the enclosed print-out. Your claim(s) has not been confirmed by a previous filing with the Department of Water Resources since there is no decree, license, or permit on file to verify the use of this water. For this reason, the Department is required to gather evidence from claimants supporting the date of priority for claims based on historical beneficial use of water.

Enclosed is a pamphlet entitled "**Evidence of Priority**" which describes why evidence of the priority date is necessary, along with examples of types of evidence that can be submitted to 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.**"

If no evidence of your priority date is submitted, or we do not hear from you within the time limit below, your priority date, as claimed, may not be recommended to the SRBA court for decree. This could jeopardize your water use under this right(s) if water availability problems arise in the future.

The required evidence supporting the priority date(s) requested needs to be submitted by September 20, 2004. Additionally, please verify or correct the place of use and point of diversion of this right on the enclosed map and return it to me with your evidence of priority. Please let me know if you may not be able to submit proof of priority or have any questions not covered by this letter and the enclosed pamphlet, by the date indicated above.

Respectfully Submitted,


Vicky L. Music
Water Resource Agent
Adjudication Bureau

Enclosure: "Evidence of Priority" pamphlet
Notice of Claim Report A63-5284
Arcview 1987 NAPP photo

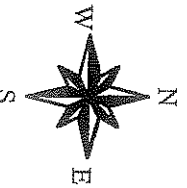
NOTE: If you no longer own the property upon which this claim was filed, please contact this office immediately. Idaho State law requires that the Department be notified of a change of owner or address on a water right.

Idaho Department of Water Resources

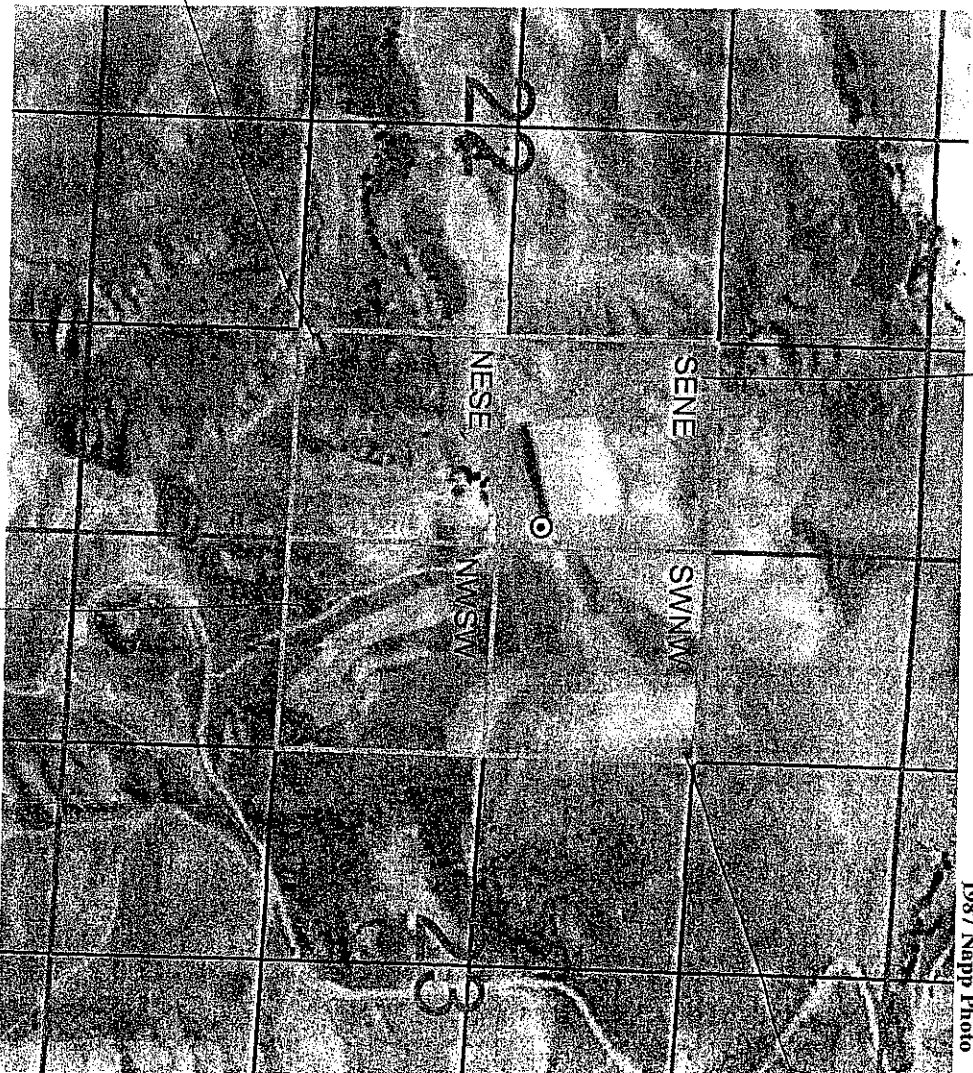
Claim Number: 63-05284
 Legal: T04N, R02E, S22 & 23
 Reviewed By:

- ☒ Point of Diversion
- ☐ Place of Use
- ☐ Section Lines
- ☐ Quarter Quarter Lines

*where is the
 8 acres irrigated?*



where is 10 acres irrigated?



where is the 2 acres irrigated?

*where
 the 8
 acres
 irrigated?*

EXHIBIT 5

EXHIBIT 6

63-5284 - evidence of priority submitted by Charles Gibson

I have lived on property since 1951. My Parents purchased it in 1947. The Wells were first used to water 4000 turkeys plus the cattle and the ground around the turkeys. In 1960 my father put a bigger pump in the north well and started irrigating and raising alfalfa.

Charles Gibson
Sept 14 04

We lived in a little house about the size of a garage on the property in 1951.

EXHIBIT 7