

Motion #2

RECEIVED

MAR 01 2007

DEPARTMENT OF
WATER RESOURCES

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 A22-00628A
)
)

Case 39576

) STANDARD FORM 4
)
)

) MOTION TO FILE
)

) ☐ LATE NOTICE OF CLAIM
)

) ☒ AMENDED NOTICE OF CLAIM
)
_____)

☒ I have read *SRBA Administrative Order 1, Rules of Procedure* (amended Sept. 30, 1996).

My name is **GROVER BROWNING**, Co-Trustee of the **GROVER BROWNING MARITAL TRUST** and Co-Trustee of the **ORSENA C. BROWNING FAMILY TRUST**, (both coming into being on the death of Orsena C. Browning on March 16, 2003, under the **GROVER & ORSENA BROWNING LIVING TRUST**, dated March 26, 2001).

My address is: **7 N. 2700 E., Teton, Idaho 83451**

My phone number is: Home: **208-458-4327**

I am an attorney representing **Grover Browning**

My name is **Gordon S. Thatcher**

My address is **25 N. 2nd E., P. O. Box 250, Rexburg, Idaho 83440**

My phone number is **208-356-3633**

MOTION TO FILE AN AMENDED NOTICE OF CLAIM

A *Motion to File an Amended Notice of Claim* may require a hearing before the Presiding Judge or Special Master or may be granted by leave of the court or by written consent of the parties and the Idaho Department of Water Resources. Leave to amend a claim shall be freely given when justice so requires.

☒ I must amend my Notice of Claim to the use of the water in the SRBA because:

This is one of two separate Amended Notices of Claim. Both relate to A22-00628A filed on August 17, 1988. The backing of this claim is License #1505 issued on November 15, 1913. This needs to be amended to show August 14, 1905 as the priority date as per the License; and to include the 126 acres in Madison County actually irrigated rather than the erroneous 65 acres in Teton County, Idaho and only the 65 acres in the License in Madison County. As shown in this Amended Notice of Claim and in the companion Notice of Claim, Grover Browning was mistaken, due to the complexity of the whole matter as to what was claimed in A22-00628A. Claimant's attorney, Gordon S. Thatcher, has helped Claimant sort out the facts from many documents including some over 100 years old, so the correct claims are made in the two Amended Notices of Claim. The other Amended Notice of Claim has a correct priority date of June 25, 1917 and is for this land and other land in Madison County and in Teton County.

☒ I am providing legal and factual documentation to support my amended Notice of Claim. You must describe these documents and attach a readable copy.

With the Amended Notice of Claim are Exhibit "A", Application for Permit No. 2057; Exhibit "B", Water License No. 1505; Exhibit "C" which is SCS aerial photo showing the irrigated acres; Exhibit "G" which is a current Grant Deed to claimants; and Exhibit "H" which is a map of four Tracts at issue. Attached hereto are Exhibit "T", Receipt No. E001381 for \$140 for monies paid; Exhibit "J", original Notice of Claim # A22-00628A; Exhibit "K", Notice of Error; Exhibit "L", Letter from Trent Galbraith, Water Agent, Adjudication Bureau, IDWR; and Exhibit "N", "Order and Decree Confirming Ownership and Approving Final Distribution", dated February 20, 2007, concerning the Grover & Orsena Browning Living Trust, confirming corrections to property descriptions of property owned by the Trust, and confirming the property is owned by Claimant two Trusts as per Grant Deed, Exhibit "G".

I have attached:

☒ An Amended Notice of Claim (available from IDWR).

☒ Payment of the following additional fees required by IDWR:

CERTIFICATE OF MAILING

I certify that on February ²⁷~~26~~, 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, ID 83303-2707

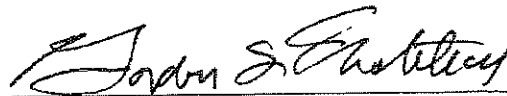
2. Copies to:

IDWR Document Depository
P. O. Box 83720
Boise, ID 83720-0098

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

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

3. If you are filing an amended Notice of Claim in a subcase being heard before the Presiding Judge or Special Master, you must serve a copy on all parties in that subcase.



Gordon S. Thatcher

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Gordon S. Thatcher

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DEPARTMENT OF
WATER RESOURCES

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 USE OF WATER FROM THE
SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER:

Ident. Number _____

Date Received _____

Receipt Number _____

AMENDED
NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

Please type or print clearly

1. **Name of Claimant(s):** GROVER BROWNING and KAREN MARIE BROWNING GARVIN, as Co-Trustees of the **GROVER BROWNING MARITAL TRUST**, and as Co-Trustees of the **ORSENA C. BROWNING FAMILY TRUST**, with each trust coming into being under the **GROVER & ORSENA BROWNING LIVING TRUST**, dated March 26, 2001, upon the death of Orsena C. Browning on March 16, 2003.

Phone: 208-458-4327

Mailing Address: 7 N. 2700 E., Teton, Idaho

Zip: 83451

2. **Date of Priority (Only one (1) per claim):** June 25, 1917
3. **Source of water supply (a):** Pony Creek
which is a tributary to (b): Canyon Creek, tributary to Teton River, tributary to Snake River
4. **a. Location of existing point of diversion is:** Twp. 6 N., Rge. 43 E., Sec. 33, SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$

Additional points of diversion if any: None

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:** Dam on Pony Creek, about 2 feet high and 30 feet in width at top and 20 feet in width at bottom, made of wood, stone and earth. Headgate about 8 feet wide and 2 feet high. Ditch about 3 feet wide at bottom and 4 feet wide at water line. Extends at approximate route of red line on Map of Project. Originally diverted from ditch at various points on property irrigated. More recently diverted from ditch at various points by pumping into sprinkler lines. In recent years has been in U.S. Conservation Reserve Contracts. Map of project shows in blue ink the acres in each 40, totaling 65 acres in what is now Teton County, as reflected on earlier filings; that listing was in error; shown in red ink are the 286 acres in what is now Madison County and Teton County that for more than sixty years have actually been irrigated. Decree of May 21, 1954 called for 6.0 cfs; the pleadings called for 200 acres but the actual 286 acres are as shown under ¶ 10 and on the Map of Project.

6. Water is claimed for the following purposes:

For Irrigation purposes from April 15 to October 15 amount 6.0 cfs or 300 acre feet

7. Total quantity claimed (a) 6.0 cfs and/or (b) 300 (acre feet)

8. Total consumptive use claimed is 300 acre feet per annum.

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

10. Description of place of use:

- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- 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 ¼				NW ¼				SW ¼				SE ¼				Tot.
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
6N	43E	33							35	3	10	17							65
Total number of acres in error																			65
6N	43E	29											29	21					50
6N	43E	32	7				40	37											84
6N	43E	33							25		25	25	15	18.4		15	30		153.4
Total Number of Acres Actually Irrigated																			286

11. In which county (ies) are lands listed above as place of use located? Secs. 29 & 32 Madison County, Idaho
Sec. 33, Teton County, Idaho

12. Do you own the property listed as a place of use? Yes X (Except SE¼NW¼ of Sec. 33) No _____

13. Describe any other water rights used at the same place and for the same purposes as described above.

Also in claim of same date with priority of August 14, 1905 including some of same land in Madison County.
or none ()

14. Remarks: We attach these Exhibits: "D": Decree of May 21, 1954. "E": SCS Map of Tract 90, which includes the following acreage from these Parcels which Grover Browning verifies have been irrigated for over 60 years: Parcel 1, 23.1 acres; Parcel 2, 14.9 acres; Parcel 3, 13.1 acres; Parcel 4, 6.5 acres; Parcel 8, 8.8 acres; Parcel 5, 35.9 acres; Parcel 6, 3.3 acres; Parcel 7, 54.8 acres (40 acres not irrigated); Parcel 9, none irrigated. TOTAL: 160 acres. "C": SCS Map of Tract 89 which includes Parcel 2, 79.5 acres and Parcel 3, 46.8 acres, which Grover Browning verifies are the 126 irrigated acres which when added to the 160 acres from "E" above, yield the total of 286 acres in this Notice of Claim, and have been irrigated for more than 60 years. 7 acres in NE¼NE¼ of Sec. 32 plus 153.4 acres in Sec. 33 equal 160.4 acres. Grover Browning was born May 20, 1925 and is 81 years of age. He has been involved in farming the property for more than 60 years and knows the statements in this Notice of Claim are true. Also the Decree (Exhibit "D") also involved Neeley and Slaymaker with water rights in Pony Creek. Neeley acquired Slaymaker's rights (see Stipulation Agreement of February 18, 1974, Exhibit "F" hereto). Grover Browning verifies that for over 25 years Neeley nor his successors have

present only Grover Browning and Orsena C. Browning (and their successor Trusts) have used waters of Pony Creek for irrigation. "G" Grant Deed to two Trusts. "H" Sketch of Tracts One, Two, and Three in Grant Deed. Tract Four and Tract Five are not involved in Notice of Claim. Tract Five is personal residence (not included in this Notice of Water Claim). It is domestic use water.

15. Basis of Claim (check one) Beneficial use _____ Posted Notice _____ License _____ Permit _____
Decree 9th District, Madison County, May 11, 1954

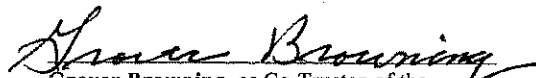
If applicable provide IDWR Water Right Number _____
Court _____ Case Number _____ Decree Date _____
Plaintiff vs. Defendant : Neeley v. Browning and Slaymaker

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 Basis 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 We do not add number of attachments

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

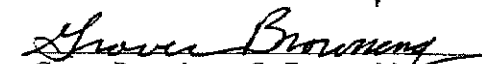
For Organizations: We do solemnly swear or affirm that we are the Co-Trustees of the GROVER BROWNING MARITAL TRUST, and Co-Trustees of the ORSENA C. BROWNING FAMILY TRUST, with each trust coming into being under the GROVER & ORSENA BROWNING LIVING TRUST, dated March 26, 2001, upon the death of Orsena C. Browning on March 16, 2003, that we have signed the foregoing document in the space below as Co-Trustees of the Trusts and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agents:


Grover Browning, as Co-Trustee of the
GROVER BROWNING MARITAL TRUST


Karen Marie Browning Garvin, as Co-Trustee of the

GROVER BROWNING MARITAL TRUST

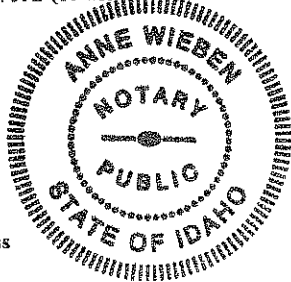

Grover Browning, as Co-Trustee of the
ORSENA C. BROWNING FAMILY TRUST


Karen Marie Browning Garvin, as Co-Trustee of the
ORSENA C. BROWNING FAMILY TRUST

Last Name _____ Ident No. _____

STATE OF IDAHO,)
)
County of Madison.)

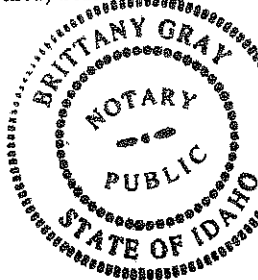
Subscribed and sworn (or affirmed) before me by Grover Browning, this 5 day of February, 2007.



Anne Wieben
Notary Public for Idaho
Residing at Rigby
My Commission Expires 7/27/2007

STATE OF IDAHO,)
)
County of Bannock.)

Subscribed and sworn (or affirmed) before me by Karen Marie Browning Garvin, this 1st day of February, 2007.



Brittany Gray
Notary Public for Idaho
Residing at Pocatello
My Commission Expires: 1-16-2013

17. Notice of Appearance:

Notice is hereby given that I, GORDON S. THATCHER, 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: Gordon S. Thatcher

Address: 25 N. 2nd E., P. O. Box 250, Rexburg, Idaho 83440

Date: Feb 5, 2007

Last Name _____ Ident No. _____

STATE OF IDAHO

22-2008
Water License No. 1505

WHEREAS, On the 14th day of August A. D. 1905,

James D. Browning

of Annis, County of Fremont, State of Idaho,
duly made application (No. 2057) to me for a permit to use 3.2 cubic feet per
second of the waters of PONY CREEK,

County of Fremont, State of Idaho, for irrigation and domestic
purposes, and

WHEREAS, On the 25th day of August A. D. 1905,
Permit No. 1505 was issued to said applicant for the diversion of said water, and providing for
the completion of the works of diversion therein described on or before the 25th day of
August A. D. 1908, and for the application to beneficial use of said
water on or before the 25th day of August A. D. 1910,
and,

WHEREAS, On the 22nd day of August A. D. 1908,

James D. Browning

the holder of said permit duly made proof of the completion of adequate works for the diversion of
3.2 cubic feet per second of said waters, as evidenced by my
Certificate No. 1505, dated October 5, 1908, confirming the completion of
works of sufficient capacity for diverting and conveying to the place of intended use 3.2
cubic feet per second of said water,

with date of priority of August 14, 1905, and,

WHEREAS, On the 2nd day of May, A. D. 1913, there was received and
filed for record in the office of the State Engineer an assignment
whereby James D. Browning transferred to Annie Kearney all his right,
title and interest in and to said permit, and,

WHEREAS, On the 2nd day of August A. D. 1913,

Annie Kearney

the holder of said permit duly made proof of the application to beneficial use of 1.3
cubic feet per second of said water;

EXHIBIT

B

NOW, THEREFORE, By virtue of authority vested in me by the laws of the State of Idaho, I hereby grant and confirm to Annie Kearney of Canyon Creek County of Framont State of Idaho the holder and owner of said Permit No. 105, a perpetual right, dating from July 21, 1908, to the use of 1.3 cubic feet per second of the waters of Pony Creek

in the County of Fremont and State of Idaho, or so much thereof as may be necessary for the purposes hereinbelow mentioned, to be diverted at a point in the SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 33, T. 6 N., R. 43 E., S. 3 N.

and conducted to and upon 65 acres divided as follows: 3 acres in SW $\frac{1}{4}$ of SW $\frac{1}{4}$, 20 acres in SE $\frac{1}{4}$ of SW $\frac{1}{4}$; Section 29: 30 acres in NW $\frac{1}{4}$ of NW $\frac{1}{4}$ and 12 acres in NE $\frac{1}{4}$ of NW $\frac{1}{4}$; Section 32, all in T. 6 N., R. 43 E. B. 3.

for the purpose..... of irrigation and domestic use

subject, however, to the laws of the State of Idaho applicable to a license for the use of the waters of the State, and subject, also, to the local or community customs, rules and regulations which have been or may be adopted from time to time by a majority of the users from a common source of supply, canal or lateral from which such water may be taken, when such rules and regulations have for their object the economical use of such water.

WITNESS, My hand and the seal of my office at Boise, Idaho, this
15th day of November A. D. Nineteen
hundred and thirteen.

W. P. King
State Engineer.

STATE OF IDAHO

Water License No. 1505

To Annie Kearney

Ernyon Creek

Report

Source of Supply

Pony Creek.

7083.15

Copy

13

2. **Test**

Point of Diversion - SEE 583

Sec. 33, U. S. P. 43 RMA

Place of Use SP1-SW1, SP2-SW2, SP3-SW3 29

THE UNIVERSITY OF CHICAGO

U. S. R. 43. U.S.

Purpose Investigation.

Date of Priority July 21, 1908

Recorded November 15, 1913

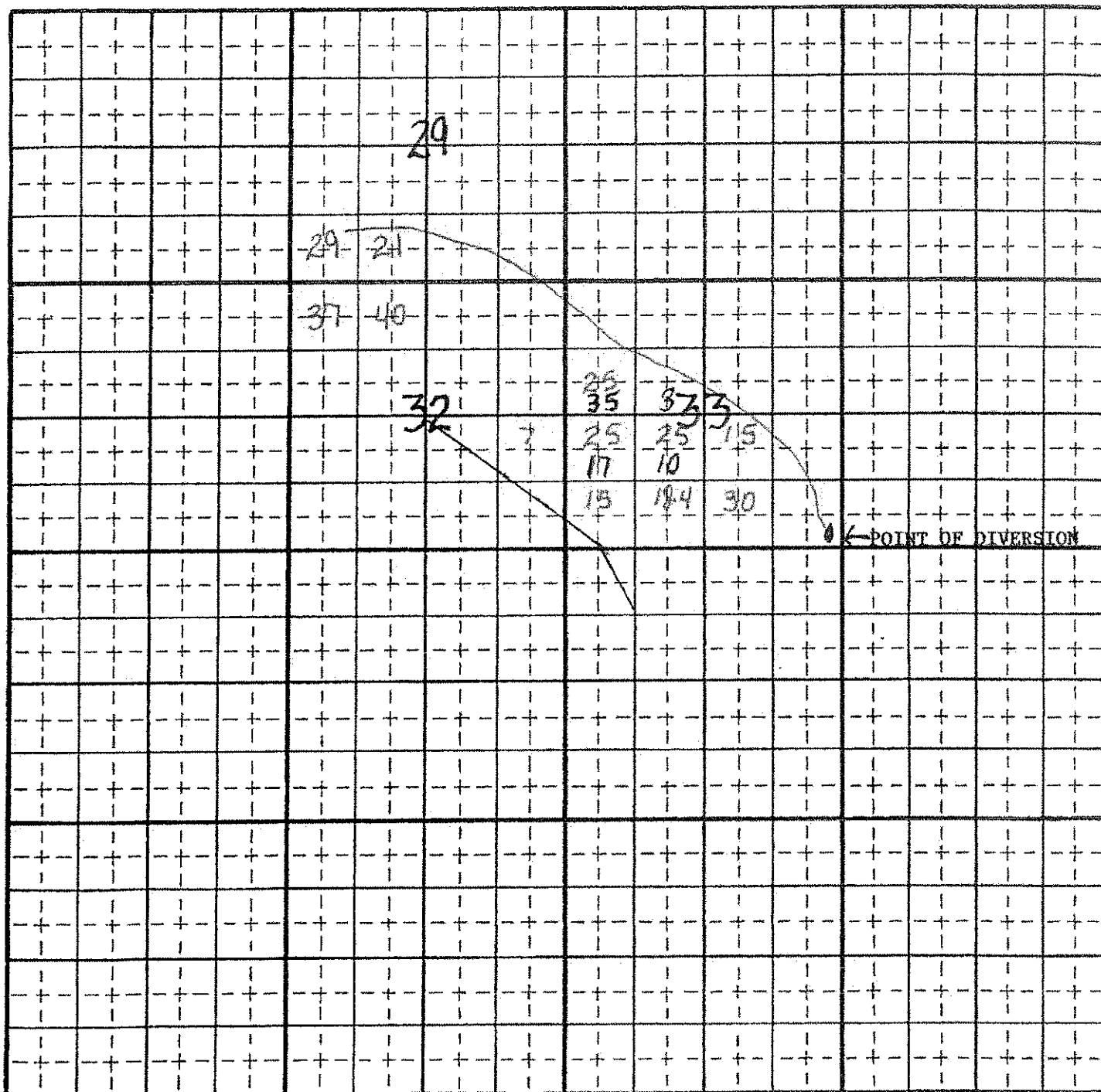
Licenses

in Book 3, of Page 13

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

Scale: 2 inches equals 1 mile

TWP. 6 N., RGE 43 E., BOISE MER.



Last Name _____ Ident No. _____

IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR MADISON COUNTY

O. J. NEELEY and MYRTLE NEELEY,
his wife,

Plaintiffs,

VS:

DECREE

GEORGE BROWNING and PHEBE BROWNING,
his wife, and MORRIS SLAYMAKER and
THELMA SLAYMAKER, his wife,

Defendants.

The above entitled cause came on regularly to be heard and tri by the Court on the 21st day of May, 1954, the plaintiffs appear in person and by their attorney, Ray W. Rigby, of Rexburg, Idaho, and the defendants appearing in person and by their attorney, Leonard O. Kingsford, of Rexburg, Idaho, and it appearing to the Court that the parties hereto have stipulated and agreed as to t respective rights and interests in the water rights which are the subject matter of this litigation; and evidence, oral and documen ary, having been offered and introduced and proof being made to t satisfaction of the Court, the Court finds:

1. That said Stipulation is fair, reasonable, proper and acce able;
2. That the plaintiffs are the owners of that certain propert; described in Paragraph IV of their Amended Complaint;
3. That the defendants, George Browning and Phebe Browning, h wife, are the owners of that certain property set forth in Paragr IV of the Answer to Amended Complaint;
4. That the defendants, Morris Slaymaker and Thelma Slaymaker, his wife, are the owners of that certain property set forth in Par graph VI of the Answer to Amended Complaint;
5. That for over five years last past, the various parties her to, amongst them, have diverted and used the full flow of the wate of Pony Creek for domestic and agricultural purposes;

EXHIBIT

D

6. That the maximum flow so diverted is approximately 960 miners inches of water, and that such flow decreases during the summer months of the years;

22-06-30
22-06-08
22-06-28
7. That said parties are entitled to an interest therein based on ^{3.7}435 miners inches to plaintiffs out of such maximum flow of ^{10.2}960 inches, such interest to be decreased proportionately to any decrease in the total flow of water at any given time; and on ^{6.0}300 miners inches to defendants, George Browning and Phebe Browning, his wife, out of such maximum flow of 960 inches, such interest to be decreased proportionately to any decrease in the total flow of water at any given time; and on ^{4.5}225 miners inches to defendants, ²²⁻⁰⁶⁻⁰⁹⁻¹⁰Morris Slaymaker and Thelma Slaymaker, his wife, out of such maximum flow of 960 inches, such interest to be decreased proportionately to any decrease in the total flow of water at any given time;

8. That domestic use of water should have priority over any other use during seasons when the total supply of water is inadequate to cover all needs of the parties hereto;

9. That each of the parties hereto should be liable for expenses of maintenance of the irrigation system used in common by such parties, on the basis of the share of water owned by such party;

10. That each party should bear his own costs herein incurred;

11. That the parties are entitled to the relief prayed for in their Amended Complaint and Answer and Cross Complaint, all filed herein.

NOW, THEREFORE, BY REASON AND VIRTUE OF THE LAW AND THE PREMISES ON MOTION OF COUNSEL FOR THE PARTIES, IT IS HEREBY ORDERED, ADJUDGE AND DECREED:

1. That the Stipulation on file herein is hereby allowed and approved;

2. That for over five years last past, the various parties hereto, amongst them, have diverted and used the full flow of the water of Pony Creek for domestic and agricultural purposes;

3. That the maximum flow so diverted is approximately 960 miner inches of water, and that such flow decreases during the summer months of the year;

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4. That the plaintiffs, O. J. Neeley and Myrtle Neeley be and they are hereby vested with title to ^{8.7}435 miners inches of the waters of Pony Creek, based on a maximum flow of 960 inches, such interest to be decreased proportionately to any decrease in the total flow of water at any given time;

5. That the defendants, George Browning and Phebe Browning be and they are hereby vested with title to 300 miners inches of the waters of Pony Creek, based on a maximum flow of 960 inches, such interest to be decreased proportionately to any decrease in the total flow of water at any given time;

6. That the defendants, Morris Slaymaker and Thelma Slaymaker be and they are hereby vested with title to 225 miners inches of the waters of Pony Creek, based on a maximum flow of 960 inches, such interest to be decreased proportionately to any decrease in the total flow of water at any given time;

7. That domestic use of water shall have priority over any other use during the seasons when the total supply of water is inadequate to cover all needs of the parties hereto;

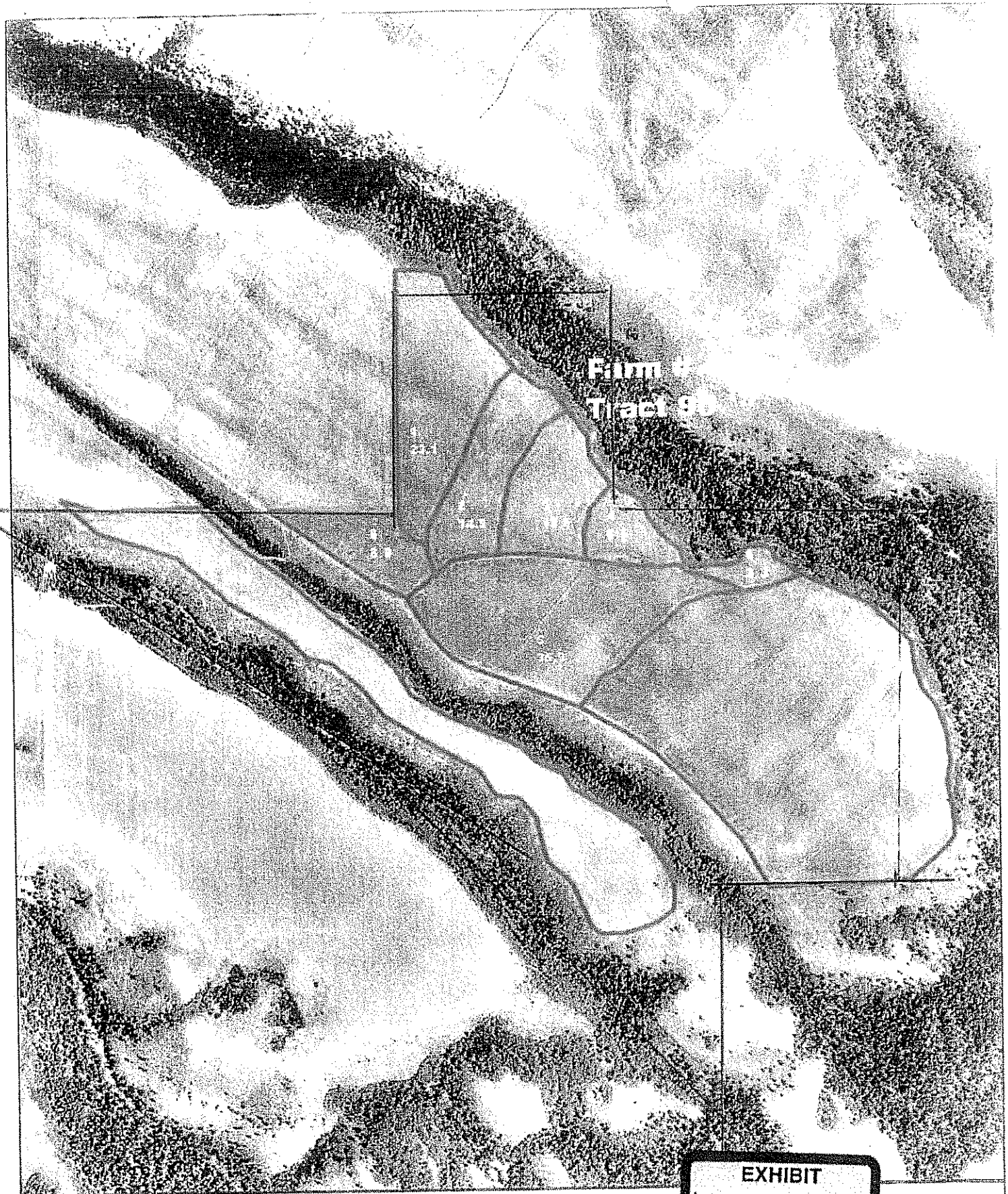
8. That each of the parties hereto shall be liable for expenses of maintenance of the irrigation system used in common by such parties on the basis of the share of water owned by such party;

9. That each party shall bear his own costs herein incurred.

Dated this 21st day of May, 1954.

Henry S. Martin

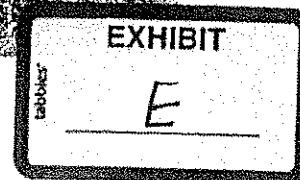
Judge of the Ninth Judicial District
of the State of Idaho



Map of Tract 90

upper place

from ground level



N



Map Printed: Feb 5, 2004

101512

State of _____ ss
County of _____
Filed _____
at _____
O. L. _____
do _____ June 1983
aff. _____ 66
off. _____ 209
K. _____
of _____
B. J. McKinley
Coral Gables
Deputy
Fee _____

CERTIFICATE
I HEREBY CERTIFY THE FOLLOWING
INSTRUMENT IS A
CORRECT COPY OF THE
ON FILE IN THE
DATED 21 Feb 22, 1974

FILED IN THE
Madison County
And known to be
District Court
BY _____
Deputy

W. Brent Eames
JOLLEY & EAMES
Attorneys at Law
P. O. Box 306
Rexburg, Idaho 83440

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION FOR

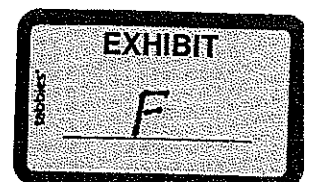
THE STATE OF IDAHO

IN THE MATTER OF PROTEST AGAINST)
APPROVAL OF APPLICATION FOR) STIPULATION AGREEMENT
TRANSFER CLAIM TO WATER RIGHT)
#22-4003 IN THE NAME OF O. J.
NEELEY RANCH, INC.)

The applicant, O. J. NEELEY RANCH, INC., having filed with this department an application to change the point of diversion and place of use of the above claim to a water right, and George H. Browning having filed a protest against approval of said application for the purpose of clarifying the ownership of the waters in Pony Creek;

The parties involved, O. J. Neeley Ranch, Inc., and George Browning and Phebe Browning stipulate and agree to the following:

1. The parties acknowledge and hereby refer to a decree dated May 21, 1954, wherein it was decreed that the maximum flow of Pony Creek was approximately 960 miner's inches of water; that O. J. Neeley and Myrtle Neeley were vested with title to 435 miner's inches of the waters of Pony Creek based on a maximum flow of 960 inches, such interest to be decreased proportionately to any decrease in the total flow of water at any given time. And that George Browning and Phebe Browning, husband and wife, were vested with title to 300 miner's inches of water, such interest to be decreased proportionately with a decrease in the total flow.



And that Morris Slaymaker and Thelma Slaymaker were vested with 225 miner's inches of the waters of Pony Creek, such interest to be decreased proportionately to any decrease in the total flow.

2. That the applicant, O. J. NEELEY RANCH, INC., has purchased all title and interest to the waters of Pony Creek which were vested in O. J. Neeley and Myrtle Neeley, husband and wife, and in Morris Slaymaker and Thelma Slaymaker, husband and wife.

3. That George Browning and Phebe Browning continue to have all right, title and interest in and to 300 miner's inches out of the maximum flow of 960 inches, such interest to be decreased proportionately to any decrease in the total flow of water at any given time.

4. That George Browning and O. J. Neeley Ranch, Inc., have for over five years last past diverted and used the full flow of the waters of Pony Creek for domestic and agricultural purposes.

5. That as between the parties, except as provided in paragraph 6, O. J. Neeley Ranch, Inc., is vested with title to 660 miner's inches of the waters of Pony Creek based on a maximum flow of 960 inches, or 11/16ths of the flow at any given time, such interest to be decreased proportionately to any decrease in the total flow of water at any given time, and that George Browning and Phebe Browning are vested with title to 300 miner's inches of the waters of Pony Creek based on a maximum flow of 960 inches, or 5/16ths of the flow at any given time, such interest to be decreased proportionately to any decrease in the total flow of water at any given time.

6. That George Browning and Phebe Browning agree to allow O. J. Neeley Ranch, Inc., the use of all the waters of Pony Creek during the spring of each year up until the time that the Brownings begin to irrigate. When the Brownings begin to irrigate then each

of the parties shall have the right to use their respective shares as provided in paragraph 5. At that point in time when the waters of Pony Creek no longer reach Canyon Creek, then the Brownings shall have full use of said waters except for what O. J. Neeley Ranch, Inc., needs to water its stock. It is further agreed that O. J. Neeley Ranch, Inc., shall open a roadway to the point of diversion of said waters for the use by both parties and shall install a dividing gate at the point of diversion in order that the waters may be divided as agreed herein.

7. That George Browning and Phebe Browning withdraw the protest filed against the application of O. J. Neeley Ranch, Inc. for the transfer of water right, No. 22-4003²²⁻⁰⁶¹⁰ and waiver further protest on the condition that their water rights are not lost or injured in any way by said transfer.

8. That the parties agree to be bound according to the above referenced decree regardless of whether any rights under the decree are transferred.

Dated this 18th day of February, 1974.

O. J. NEELEY RANCH, INC.

By Owen J. Neeley
Its President

George Browning

Phebe Browning

STATE OF IDAHO,)
) SS.
County of Madison.)

On this 18th day of February, 1974, before me, the undersigned, Notary Public in and for said State, personally appeared

OWEN J. NEELEY, known to me to be the President of the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Notary Public for Idaho
Residing at Rexburg, Idaho
My Commission Expires: 10/8/74

STATE OF IDAHO,)
) SS.
County of Madison.)

On this _____ day of February, 1974, before me, the undersigned, a Notary Public in and for said State, personally appeared GEORGE BROWNING and PHEBE BROWNING, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year in this certificate first above written.

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

GRANT DEED

FOR VALUE RECEIVED, **GROVER BROWNING** and **KAREN MARIE BROWNING GARVIN**, as Co-Trustees of the **GROVER & ORSENA BROWNING LIVING TRUST**, dated March 26, 2001, c/o Grover Browning, 7 N. 2700 E. Teton, Idaho 83451, ("Grantors"), do hereby grant, bargain, confirm and convey unto **GROVER BROWNING** and **KAREN MARIE BROWNING GARVIN**, as Co-Trustees of the **GROVER BROWNING MARITAL TRUST** and as Co-Trustees of the **ORSENA C. BROWNING FAMILY TRUST**, (both coming into being on the death of Orsena C. Browning on March 16, 2003, under the **GROVER & ORSENA BROWNING LIVING TRUST**, dated March 26, 2001), c/o Grover Browning, 7 N. 2700 E. Teton, Idaho 83451, ("Grantees"), each of the two Grantees to receive an undivided one-half ($\frac{1}{2}$) interest in and to the following described real property in Madison County, Teton County and Fremont County, Idaho, to-wit:

TRACT ONE: (*Madison County*)

W $\frac{1}{2}$ of Sec. 29 and N $\frac{1}{2}$ NW $\frac{1}{4}$ of Sec. 32, Twp. 6 N., Rge. 43 E., Boise Mer., Madison County, Idaho.

TRACT TWO: (*Madison County and Teton County*)

Part of SE $\frac{1}{4}$ of Sec. 32, Twp. 6 N., Rge. 43 E., Boise Mer., in Madison County, Idaho, and part of W $\frac{1}{2}$ SW $\frac{1}{4}$ of Sec. 33, Twp. 6 N., Rge. 43 E., Boise Mer., in Teton County, Idaho, described as follows:

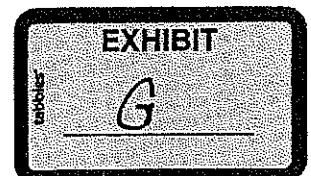
Commencing at a point (which is at a fence at the bottom of Dry Gulch Canyon) 858 feet East of the Southwest corner of Sec. 33 (which is the Southeast Corner of Sec. 32) and running thence Northwesterly in a straight line (generally along the fence line in Dry Gulch Canyon), to a point 165 feet South of the Northwest Corner of the SE $\frac{1}{4}$ of Sec. 32; thence North 165 feet; thence East 2640 feet to the Northeast corner of the SE $\frac{1}{4}$ of Sec. 32 (which is the Northwest Corner of the SW $\frac{1}{4}$ of Sec. 33); thence East 1320 feet; thence South 2640 feet; thence West 462 feet to the point of beginning.

TRACT THREE: (*Teton County*)

SW $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ of Sec. 33, Twp. 6 N., Rge. 43 E., Boise Mer., Teton County, Idaho.

TRACT FOUR: (*Teton County*)

Part of Lot 4, Sec. 4, Twp. 5 N., Rge. 43 E., Boise Mer., Teton County, Idaho, described as follows:



Commencing at a point (which is a fence at the bottom of Dry Gulch Canyon) 858 feet East of the Southwest corner of Sec. 33, Twp. 6 N., Rge. 43 E., Boise Mer., Teton County, Idaho (Twp. 5 N., R. 43 E., Boise Mer. is offset to the East from Twp. 6 N., R. 43 E., Boise Mer.), and running thence East 462 feet to the point which is the Southeast corner of SW $\frac{1}{4}$ of Sec. 33, Twp. 6 N., Rge. 43 E., Boise Mer.; thence South 825 feet, more or less, to a fence at the bottom of Dry Gulch Canyon; thence Northwesterly in a straight line (which is along the fence line) to the point of beginning.

TRACT FIVE: (Fremont County)

Commencing at a point 206.25 feet North of the Southeast Corner of the SE $\frac{1}{4}$ of Sec. 33, Twp. 7 N., Rge. 41 E., Boise Mer., Fremont County, Idaho, and running thence North 206.25 feet; thence West 211.5 feet; thence South 206.25 feet; thence East 211.5 feet, to the point of beginning.

TOGETHER WITH all water and water rights, ditch and ditch rights, and improvements and appurtenances thereto.

SUBJECT TO all valid easements of record or in existence for roads, utilities, and ditches; applicable zoning and building laws, ordinances, rules and regulations; reservations in United States Patents of record; reservations of record as to oil and gas and other hydrocarbons and minerals; and boundary discrepancies, depending on whether or not the apparent boundary fence along Dry Gulch Canyon is or is not a legally binding boundary fence.

THIS GRANT DEED Corrects the legal descriptions in the following identified Grant Deeds: [a] recorded on May 21, 2001 as Instrument #142670 records of Teton County, Idaho; [b] recorded on May 21, 2001 as Instrument #289297 records of Madison County, Idaho; [c] recorded on June 12, 2002 as Instrument #148565 records of Teton County, Idaho; and [d] recorded on June 7, 2002 as Instrument #296274 records of Madison County, Idaho.

DATED This 27th day of January, 2007.


Grover Browning


Karen Marie Browning Garvin

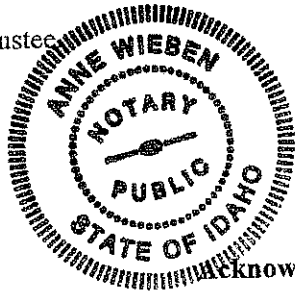
Acknowledgment by Co-Trustee

STATE OF IDAHO,)

ss.

County of Madison,)

On this 5th day of ~~January~~ ^{February}, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared **GROVER BROWNING**, known to me to be the person whose name is subscribed to the within instrument as a Co-Trustee of the **GROVER & ORSENA BROWNING LIVING TRUST**, and acknowledged to me that he executed the same as such Co-Trustee.



Anne Wieben

Notary Public for Idaho

Residing at Rigby

My Commission expires: 7/27/2007

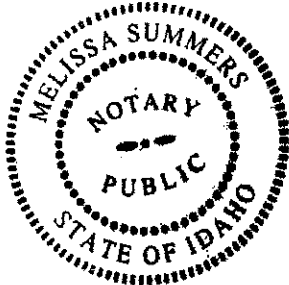
Acknowledgment by Co-Trustee

STATE OF IDAHO,)

ss.

County of Bannock.)

On this 27th day of January, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared **KAREN MARIE BROWNING GARVIN**, known to me to be persons whose names are subscribed to the within instrument as a Co-Trustee of the **GROVER & ORSENA BROWNING LIVING TRUST**, and acknowledged to me that she executed the same as such Co-Trustee.



Melissa Summers

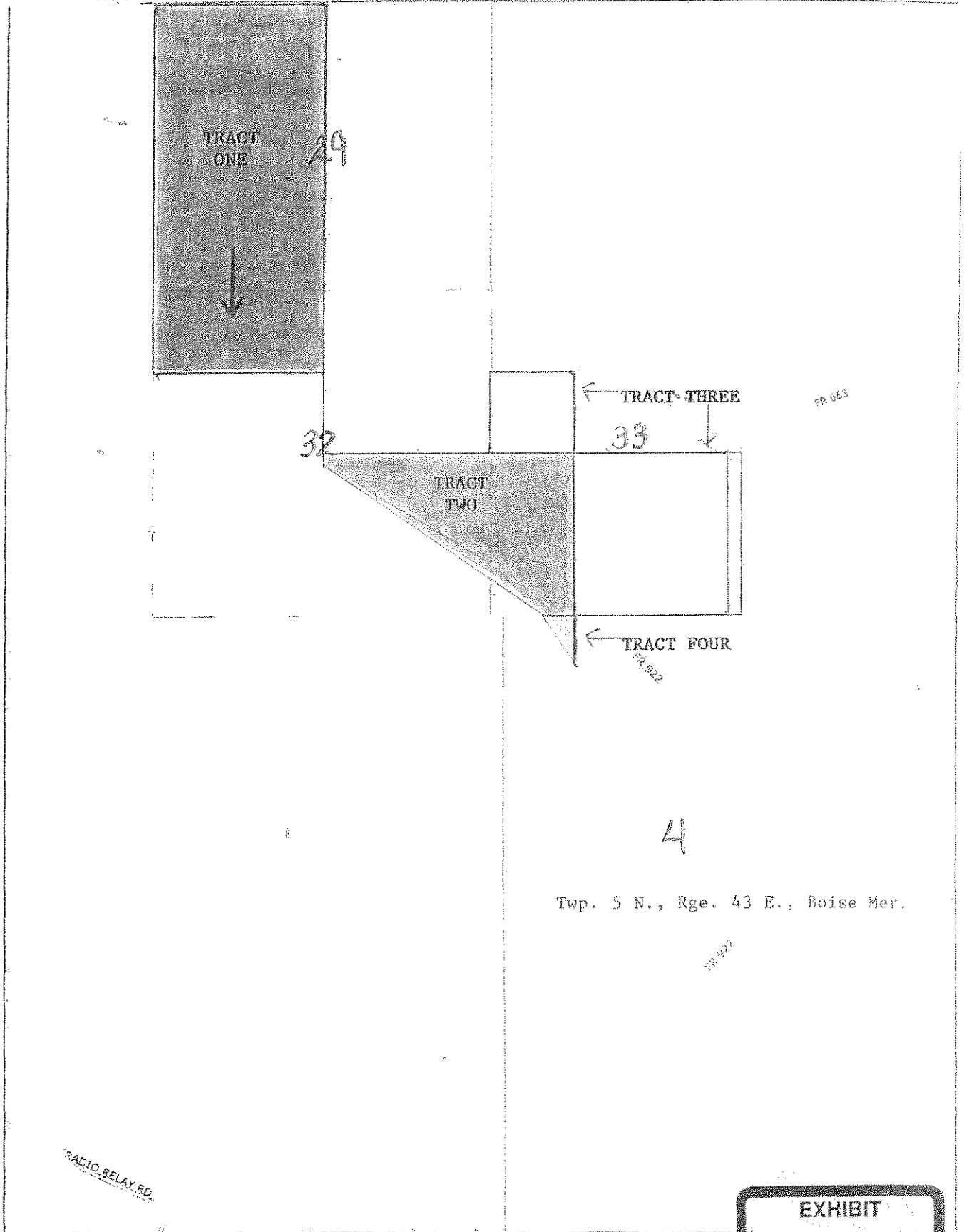
Notary Public for Idaho

Residing at *Pocatello, Idaho*

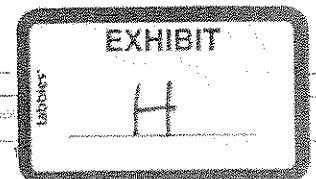
My Commission expires: *2-7-2011*

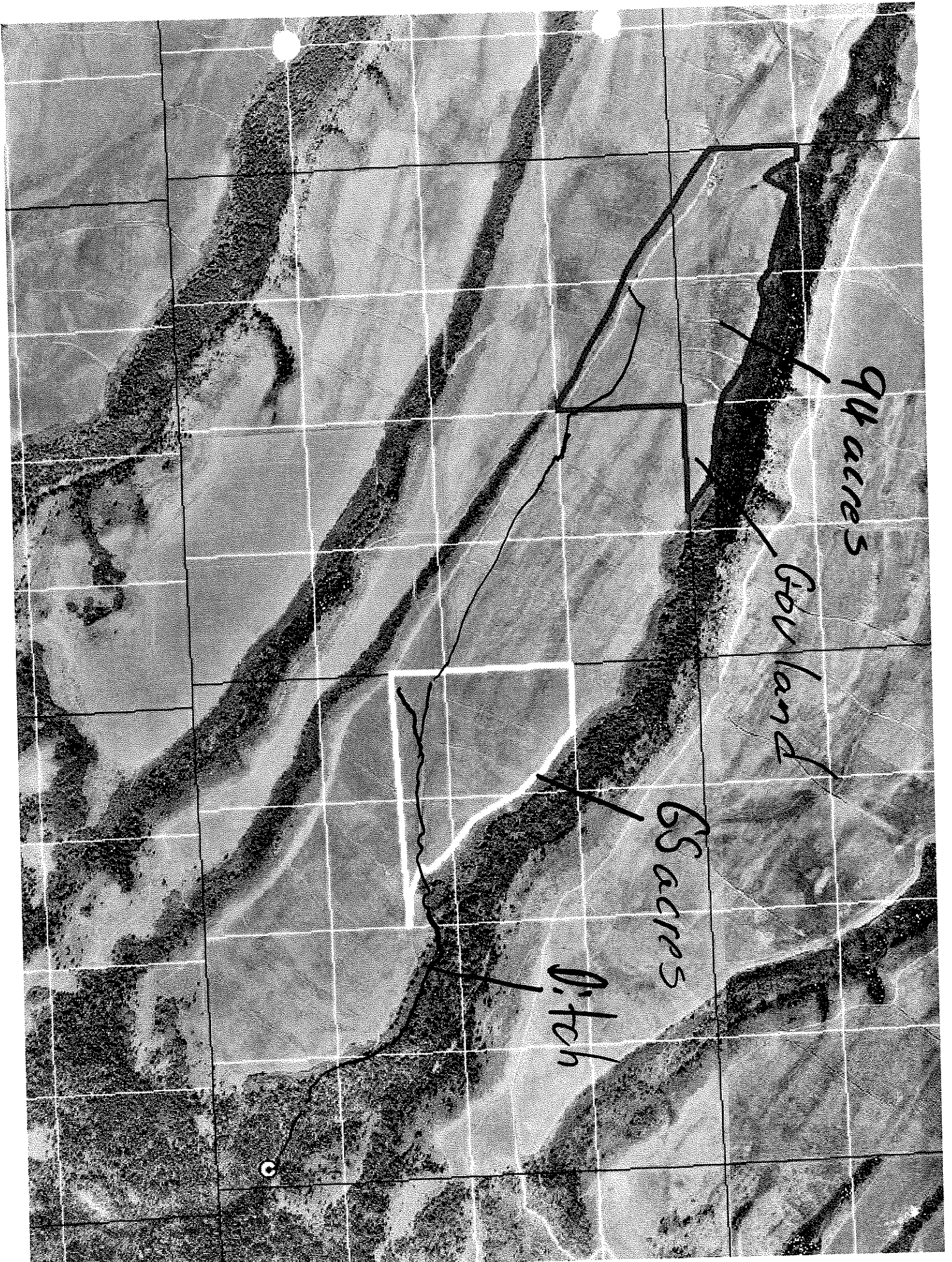
Twp. 6 N., Rge. 43 E., Boise Mer.

Tract 1 - 6.0



Twp. 5 N., Rge. 43 E., Boise Mer.





94 acres

600 land

65 acres

Ditch





Green Canyon Road

Bridge

S-21-07

Diversson found by following ditch
water still being marked
but sinks in ditch.

Wpt. 004

005 Pond

006 end ditch

RECEIPT
For Monies Paid
to the
Idaho Department of Water Resource

Receipt No: E001381

Date: 08/17/88
Time: 16:06:21

Received
From: BROWNING, GROVER

Type of Payment	Program A cct	Amount
ADJUDICATION FEE	0410162 9337 6490	\$140.00
Total		\$140.00

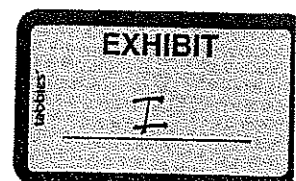
CHECK 939

WR/ND: A22-10988 A22-00628A

Idaho Department of Water Resources

Region: Eastern

Signature: Keith C. Wilson



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: A22-00628A
Date Received: 8/17/1988
Receipt No: E001381
Received By: KCW

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: GROVER BROWNING 208-458-4327
Address: HC 60 BOX 1167
TETON, ID 83451
OR
Name: ORSENA C. BROWNING 208-458-4327
Address: HC 60 BOX 1167
TETON, ID 83451



2. Date of Priority: SEP 07, 1906
3. Source: PONY CREEK Trib. to: CANYON CREEK
4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
06N	43E	33	SE	SE	SE		TETON

5. Description of diverting works:
DIVERSION DAM TO DITCH FOR IRRIGATION

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	04/15	10/15	6.000		

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

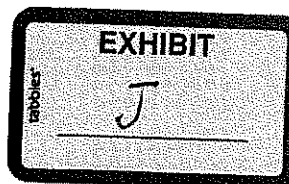
8. Total consumptive use is 130.0 Acre Feet Per Annum.

9. Non-irrigation uses:
NONE

A22-00628A

Page 1

Date: 08/17/88



10. Place of Use:

Township	Range	Section	1/4	of 1/4	Lot	Use	Acres
06N	43E	33	SW	NW		IRR	35.0
			SE	NW		IRR	3.0
			NE	SW		IRR	10.0
			NW	SW		IRR	17.0
						Section Acres	65.0
						Total Acres	65.0

11. Place of use in counties: TETON

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: DECREED
Case Number:
Court :
Decree date: 5/21/1954

O.J. NEELEY

Decree Plaintiff

vs

GEORGE BROWNING

Decree Defendant

RECEIVED

OCT 20 1988

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/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): *Sharon Browning* Date: 8-17-88
_____ Date: _____

State of Idaho)
County of Bonneville) ss.

Subscribed and sworn (or affirmed) before me this 17th day
of Aug 19 88

Colleen May
Notary Public



Residing at Idaho Falls
My Commission Expires 5/29/99

FILED
OCT 28 1988

29

32

R43E

PLACE OF USE

32

33

11

10

DITCH

POINT OF DIVERSION

T6N
TSN

A-22-1000

OCT 28 1964

Log for claim 22-00628A

Spatial Dynamics LTD

7/26/01

TR	SEC	QQ	Acres Claimed	Acres Found	COMMENT
06n43e	33	SWNW	35	35	
06n43e	33	SEnw	3	3	
06n43e	33	NESW	10	9.4	
06n43e	33	NWSW	17	16	
Totals:			65	63.4	

09/25/2006

NOTICE OF ERROR

REPLY

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR know that you agree with its recommendation.

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS:

Water right number: 22-628A

GEORGE L WYANT
PO BOX 629
SHOSHONE ID 83352
Telephone Number: (208)886-2142

ORSENA C BROWNING
7 N 2700 E
TETON ID 83451
Telephone Number: (208)458-4327

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):

2. Describe the changes you wish to make in the proposed recommendation:

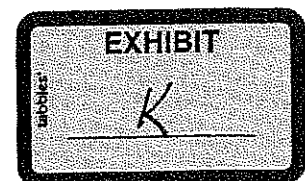
3. Give a brief explanation as to why you disagree with these portions:

____ I AGREE with this proposed recommendation: no changes need to be made.

DATE: _____ SIGNATURE: _____

Please print your name: _____

IDWR Regional Office, 900 N Skyline Dr Ste A, Idaho Falls, ID 83402, 2085257161



09/25/2006

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 22-626A
NAME AND ADDRESS: GEORGE L WYANT
PO BOX 629
SHOSHONE ID 83352
ORSENA C BROWNING
7 N 2700 E
TETON ID 83451

SOURCE: PONY CREEK TRIBUTARY: CANYON CREEK
QUANTITY: 1.950 CFS
PRIORITY DATE: 06/25/1917
POINT OF DIVERSION: T06N R43E S33 SESESE Within TETON County
PURPOSE AND PERIOD OF USE:

	<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
	IRRIGATION	04/15 10/31	1.950 CFS
PLACE OF USE:	<u>IRRIGATION Within TETON County</u>		
	T06N R43E S33 SWNW 36.00	T06N R43E S33 SENW	3.00
	T06N R43E S33 NESW 9.00	T06N R43E S33 NWSW	17.00

65 ACRES TOTAL

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 - Decreed



Idaho Department of Water Resources

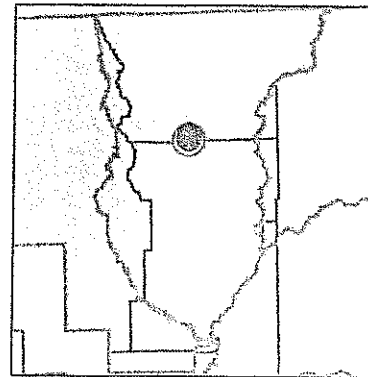
SRBA Recommendation:

22-028A

(Irrigation)

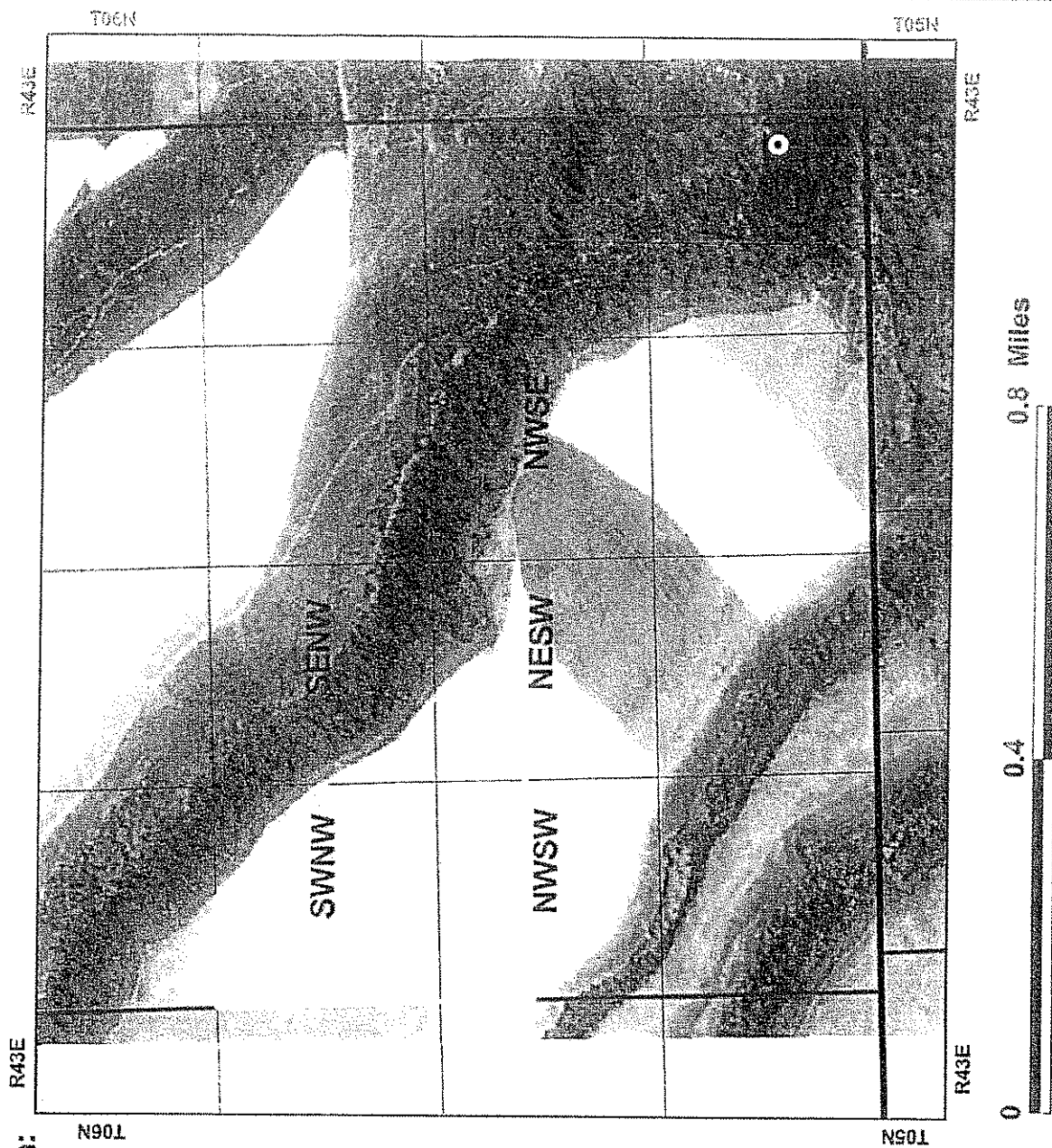
Legend

- Point of Diversion
- Place of Use
- Townships
- PLS Sections
- Quarter Quarters



Teton County
IDWR Basin 22

Prepared by T. Galbraith
On Monday, September 25, 2006
1987/88 Aerial Photography





State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. SKYLINE DR., SUITE A, IDAHO FALLS, ID 83402-1718

PHONE: (208) 525-7161 FAX: (208) 525-7177 WEB SITE: www.idwr.state.id.us

EASTERN REGION

JAMES E. RISCH
Governor

KARL J. DREHER
Director

October 4, 2006

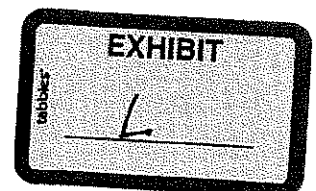
Ray Rigby
25 N 2 East
Rexburg ID 83440

Dear Ray,

This is all of the information we have on the Neeley V. Browning decree. I have made my recommendation to Grover Browning water right (number 22-628A) based on this information. It seems to me that Mr. Browning needs to amend his claim to include more acreage. From the Compliant I was able to determine that at the time of the decree Mr. George Browning owned a total of 200 acres. I don't see how Grover Browning is entitled to more than that unless there was an enlargement that occurred in which case a new claim needs to be filed to account for those acres. Looking at the 1987 aerial photography it does seem like he is entitled to about 200 acres but that is just at first inspection. If there is anything else I can do for you let me know.

Best regards,

Trent Galbraith
Water Agent
Adjudication Bureau



DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR MADISON COUNTY

O. J. NEELEY and MYRTLE NEELEY,
his wife,

Plaintiffs,

vs.

GEORGE BROWNING and PHEBE BROWNING,
his wife, and MORRIS SLAYMAKER and
THELMA SLAYMAKER, his wife,

Defendants.

FILED 5/21 1934
4:12 P.M.

H. T. McKinlay
Clerk
By *Maple Vane*

ANSWER TO AMENDED COMPLAINT
AND CROSS COMPLAINT.

Come now the defendants above named, and in answer to Plaintiffs' complaint on file herein, admit, deny and allege as follows:

I.

Defendants admit all allegations contained in Paragraphs I, II, III and IV of plaintiffs' complaint on file herein.

II.

Defendants deny each and every allegation in Paragraphs V and VI of plaintiffs' complaint well pleaded, except as hereinafter set forth.

III.

Defendants allege that Pony Creek is an intermittent stream, having a substantial flow of water during the spring and early summer of each year, but that such flow is substantially reduced, or that it ceases, in later parts of the summer and the autumn of each year; that the parties hereto, amongst them, have made full use of all available waters of said Pony Creek for many years, and that a fair and equitable distribution thereof has heretofore been made of such waters; but that plaintiffs' share of said waters will equal the sum of 435 miners inches of said waters only during periods of high water.

IV.

That defendants George Browning and Phebe Browning, his wife, now are, and at all times herein mentioned, have been the owners, and in the possession of the following described property, situated in Madison County, State of Idaho, to-wit:

The South Half of the Southwest Quarter and the Southwest Quarter of the Southeast Quarter of Section 29, township 6 North, Range 43 East of the Boise Meridian; and the North Half of the Northwest Quarter of Section 32, Township 6 North, Range 43 East of the Boise Meridian.

160 acres
200

Govt land

EXHIBIT

M

V.

That James D. Browning, a predecessor in title of said George Browning and Phebe Browning, his wife, filed upon 3.2 second feet of the waters of Pony Creek, of which sum, proof was made on 1.3 second feet, and license issued to one Anne Kearney, assignee of said James D. Browning, and also a predecessor of said defendants, in title; said license being No. 1505, issued by the State of Idaho to said Anne Kearney; that the balance of the water so filed on by said James D. Browning was put to use over a period of time, although not reduced to license.

VI.

That Morris Slaymaker and Thelma Slaymaker, his wife, the other above named defendants, now are, and at all times herein mentioned, have been the owners, and in the possession of the following described property, situated in Madison County, State of Idaho, to-wit:

The South Half of the Northwest Quarter, the North Half of the Southwest Quarter, and the Northeast Quarter of Section 32, Township 6 North, Range 43 East of the Boise Meridian.

VII.

320
acres

That License No. 2264 for 2.5 second feet of the Waters of Pony Creek was issued by the State of Idaho to Dora Weaver, the assignee of John Weaver, for use on 125 acres in the Northeast Quarter of Section 32, aforesaid; that additional water was put to use from time to time thereafter upon additional land by said Dora Weaver and by said John Weaver, who are predecessors in title of the said Morris Slaymaker and Thelma Slaymaker, defendants.

VIII.

That one Charles H. Cazier filed on 8 second feet of the waters of Pony Creek for use on the unsurveyed South Half of the Southwest Quarter of Section 19; the West Half of Section 30; Township 6 North, Range 43 East of the Boise Meridian, now in Madison County, State of Idaho; that such filing was never reduced to license; that some part thereof, was, however, usefully applied to the irrigation of parts of said land; that a portion thereof was deeded to James A. Browning, by Quit Claim Deed dated May 31st, 1912, and recorded May 19th, 1915, in Book 17 of Deeds, at Page 320, under recorder's instrument No. 5044, records of Madison County, State of Idaho; that said James A. Browning was a predecessor in title of the defendants, George Browning and Phebe Browning, his wife, and that the plaintiffs may properly claim under the balance of said filing, insofar as actually used by them and their predecessors in title.

IX.

That water disputes having heretofore arisen in connection with the said waters of Pony Creek, the predecessors in title of the present owners of the lands watered thereby, did, in June, 1917, form a corporation, to-wit, PONY CREEK CANAL COMPANY, to deliver said water to the various users for irrigation and domestic purposes, and did thereby, in settlement of all former disputes, make a fair and equitable division of said waters of Pony Creek, as set out in the Articles of Incorporation of said Corporation, which are filed in the records of Madison County, State of Idaho, under recorder's instrument No. 15216, a certified copy of which are hereto attached, as Exhibit "A", and which are hereby incorporated and made a part hereof, by reference, as fully as if though herein set forth in full.

X.

That plaintiffs, O. J. NEELEY and MYRTLE NEELEY, his wife, are the successors in interest to Ira J. Davis, and to one-half the holdings of E. D. Clark and Eli Clark, Jr.; that defendants, MORRIS SLAYMAKER and THELMA SLAYMAKER, his wife, are the successors in interest to one-half the holdings of E. D. Clark and Eli Clark, Jr.; and that defendants, GEORGE BROWNING and PHEBE BROWNING, his wife, are successors in interest to J. A. BROWNING and to Annie Kearney; all as mentioned and shown in the aforesaid Articles of Incorporation.

XI.

That the diversionary works used by the parties hereto, when in proper repair, are capable of carrying approximately 960 miners inches of water; that when such full stream of water is being diverted and used, the said plaintiffs would be entitled to the sum of 435 miners inches of water; the defendants, George Browning and Phebe Browning, his wife, would be entitled to the sum of 300 inches of water; and the defendants, Morris Slaymaker and Thelma Slaymaker, his wife, would be entitled to the sum of 225 inches of water; but that when the flow of water is reduced, each party is entitled to his pro rata share, on the same basis as aforesaid, without right in any party, and especially without right in the plaintiffs, to demand any given flow of water in inches; but only to demand a pro rata share of such water as may be available at any given time.

AND FOR CROSS COMPLAINT, Defendants and Cross-complainants complain of the Plaintiffs and Cross-defendants, and for cause of action allege:

I.

Defendants and Cross-complainants hereby re-plead paragraphs I to XI of their Answer, inclusive, and by reference, hereby make same a part of this Cross-Complaint.

Pony Creek C. Co.

II.

Defendants allege that for over 36 years, to-wit, since June 25th, 1917, they or their predecessors in title have owned, used, and enjoyed the uninterrupted use of their respective pro rata shares of the waters of Pony Creek, a tributary to Snake River, in Madison County, Idaho, for irrigation and domestic purposes, on the foregoing described premises, said pro rata share being determined on the basis of the contribution of their predecessors to PONY CREEK CANAL COMPANY, as set forth in Exhibit "A", herewith attached, as above set forth.

WHEREFORE, Defendants pray judgment that the adverse claims of Plaintiff, as set forth in Plaintiff's complaint herein filed, be determined by this Court; that it be adjudged and decreed that Defendants are the prior owners of their respective pro rata shares of the waters of Pony Creek, and that Plaintiffs have no right, title or interest whatsoever therein or thereon superior to the right, title and interest of Defendants in and to their respective shares as above set forth.

That title to said respective shares of water be quieted in the Defendants as against the Plaintiffs, and all persons claiming under them; and that the usual decree foreclosing all adverse claims against these defendants be entered.

Defendants further pray for such other or further or different relief as to this Honorable Court may seem just and equitable, and for costs of this suit; and that Plaintiffs' complaint being fully answered, the plaintiffs may take nothing thereunder.

Dated this 20th day of May, 1954.

Leonard O. Kingsford
LEONARD O. KINGSFORD, Attorney for the
Defendants. Residence and Post Office
Address: Rexburg, Idaho.

STATE OF IDAHO :)
 : ss.
County of Madison)

George Browning and Morris Slaymaker being first duly sworn, depose and say, each for himself, and not one for the other:

That he is one of the parties defendant in the above and foregoing entitled cause; that he has read the foregoing answer and cross complaint, and knows the contents thereof; and the same is true as he verily believes.

George H. Browning
Morris Slaymaker

Subscribed and sworn to before me this 21st day of May, 1954.

Leonard O. Kingford
NOTARY PUBLIC for Idaho, residing at
Rexburg, Idaho. My commission
expires: August 14th, 1957.

I hereby acknowledge service of a copy of this ANSWER TO AMENDED COMPLAINT AND CROSS COMPLAINT, this 21st day of May, 1954.

Ray W. Rigby
RAY W. RIGBY, Attorney for the
Plaintiffs and Cross-Defendants.

Gordon S. Thatcher
of RIGBY, THATCHER, ANDRUS,
RIGBY & MOELLER, *Chartered*
25 North Second East
P.O. Box 250
Rexburg, Idaho 83440
Phone: 208 356-3633
FAX: 208 356-0768
Idaho State Bar No. 880

Attorneys for Co-Trustees

THE DOCUMENT TO WHICH THIS CERTIFICATE IS
ATTACHED IS A FULL, TRUE AND CORRECT COPY OF
THE ORIGINAL ON FILE AND OF RECORD IN MY
OFFICE, SAME HAVING BEEN FILED _____
ATTEST _____ 20_____
ABBIE MACE CLERK OF THE DISTRICT COURT OF
THE SEVENTH JUDICIAL DISTRICT IN AND FOR
FREMONT COUNTY, IDAHO.
BY _____ DEPUTY

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO IN AND FOR THE COUNTY OF FREMONT

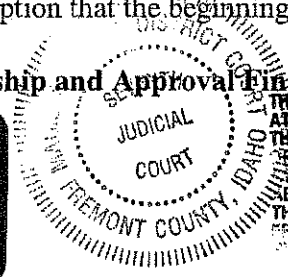
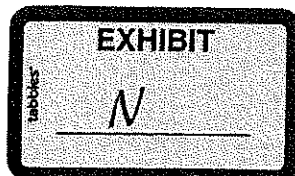
IN THE MATTER OF A TRUST:) Case No. CV-01-169
)
GROVER & ORSENA BROWNING) ORDER AND DECREE CONFIRMING
LIVING TRUST) OWNERSHIP AND
) APPROVING FINAL DISTRIBUTION
)
)

This matter came on to be heard this day on the verified Petition by Co-Trustees for Declaration of Ownership and Final Distribution under Idaho Code § 15-7-103 and § 15-7-201, by **GROVER BROWNING** and **KAREN MARIE BROWNING GARVIN**, as Co-Trustees of the **GROVER & ORSENA BROWNING LIVING TRUST**, dated March 26, 2001.

It appears and the Court finds and concludes:

1. Attached to the Petition as Exhibit "A" was Grant Deed, dated May 18, 2001, from Grover Browning and Orsena C. Browning to the Trust, recorded on May 21, 2001, as Instrument #142670, records of Teton County, Idaho. There were two inadvertent errors in the Grant Deed: [a] a call was left out of the exception so the description did not close and the distance South should have been less than 858 feet, which was the distance East on the missing last call; and [b] it was wrongly assumed in the last description that the beginning point was 858 feet East of the

Order and Decree Confirming Ownership and Approval Final Distribution, Page 1 of 5
BROWNING.ORD



THE DOCUMENT TO WHICH THIS CERTIFICATE IS
ATTACHED IS A FULL, TRUE AND CORRECT COPY OF
THE ORIGINAL ON FILE AND OF RECORD IN MY
OFFICE, SAME HAVING BEEN FILED _____
ATTEST _____ 20_____
ABBIE MACE CLERK OF THE DISTRICT COURT OF
THE SEVENTH JUDICIAL DISTRICT IN AND FOR
FREMONT COUNTY, IDAHO.
BY _____ DEPUTY

Northwest Corner of Lot 4, but it should have measured from the Southwest corner of Sec. 33, which was offset to the East and thus should be a lesser distance when measured from Lot 4.

2. Attached to the Petition as Exhibit "B" was Grant Deed, dated May 18, 2001, from Grover Browning and Orsena C. Browning to the Trust, recorded on May 21, 2001, as Instrument #289297, records of Madison County, Idaho. The legal description in Tract One was in error in the call of "South 1782 feet" because the distance is greater; this springs from the erroneous 858 feet measurement in Exhibit "A", ¶ 1, above, which was too long, with 858 feet being deducted from 2640 feet to yield the erroneous 1782 feet.

3. Attached to the Petition as Exhibit "C" was Grant Deed, dated May 24, 2002, from the four children of Grover Browning and Orsena C. Browning to the Trust, recorded on June 12, 2002, records of Teton County, Idaho as Instrument No. 148565. This had the same errors for the same reasons as Exhibit "A", ¶ 1, above.

4. Attached to the Petition as Exhibit "D" was Grant Deed dated May 24, 2002, from the four children of Grover Browning and Orsena C. Browning to the Trust, recorded on June 7, 2002, as Instrument #296274, records of Madison County, Idaho. This had the same error for the same reason as Exhibit "B", ¶ 2, above.

5. One other parcel of real estate, the residence of Grover Browning and Orsena C. Browning is in Fremont County, and was conveyed to the Trust by Grant Deed, dated May 18, 2001, and recorded on May 21, 2001, as Instrument #468679, records of Fremont County, Idaho, a copy of which was attached to the Petition as Exhibit "E". The property description was correct.

6. Orsena C. Browning died on March 16, 2003, at Madison Memorial Hospital, Rexburg, Idaho. Under the Trust that brought into being the **GROVER BROWNING MARITAL TRUST** and the **ORSENA C. BROWNING FAMILY TRUST**. Under the terms of the Trust the assets of the Trust are to be equally divided between those two new Trusts, which are governed by the Articles of Trust of the Grover & Orsena Browning Living Trust, dated March 26, 2001.

7. Because of the death of Orsena C. Browning on March 16, 2003, and based upon the Articles of Trust, **GROVER BROWNING** and **KAREN MARIE BROWNING GARVIN**,

became Co-Trustees of the Trust and of the two new Trusts identified in ¶ 6 above, and ever since have been and are now serving as Co-Trustees of the three Trusts.

8. A Registration of Trust for the **GROVER BROWNING MARITAL TRUST** was filed in this Court on the 5th day of February, 2007, as Case No. CV-07-79. A Registration of Trust for the **ORSENA C. BROWNING FAMILY TRUST** was filed in this Court on the 5th day of February, 2007, as Case No. CV-07-78.

9. All of the real property of the Trust shall be conveyed by the Trustees of the **GROVER & ORSENA BROWNING LIVING TRUST**, dated March 26, 2001, in equal, undivided shares to the Trustees of the **GROVER BROWNING MARITAL TRUST** and to the Trustees of the **ORSENA C. BROWNING FAMILY TRUST**. The property should be conveyed by one Grant Deed (a copy of which was attached to the Petition as Exhibit "F") to be recorded in Fremont County, Madison County, and Teton County. The Grant Deed shall recite that it corrects the legal descriptions in the four Grant Deeds, Exhibits "A" (¶ 1), "B" (¶ 2), "C" (¶ 3), and "D" (¶ 4).

10. The new Grant Deed will properly correct the inadvertent errors in descriptions and will be in harmony with and not in conflict with adjoining owners. The Petitioners believe that the apparent boundary fence along Dry Gulch Canyon is a legally established boundary fence; but if it is not, the "straight line calls" with the included distances in the corrected descriptions should provide certainty. Attached to the Petition as Exhibit "G" was a sketch of Tract One (highlighted in blue), Tract Two (highlighted in green), Tract Three (highlighted in yellow) and Tract Four (highlighted in pink).

11. The only interested parties in this matter are Petitioners and the other three children of Grover Browning and Orsena C. Browning, whose names and addresses are as follows:

Kirk Lynn Browning 6603 Brickhouse Avenue Las Vegas, NV 89122	Lillian Elaine B. Pitman 524 River Road Bliss, ID 83314	Bart Grover Browning 24842 Big River Road Eagle River, Alaska 99577
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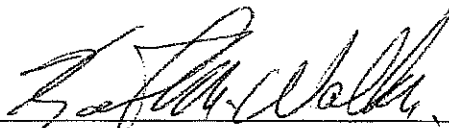
Consents in writing by all of the beneficiaries of the Trust to the granting of the Order requested in this Petition are on file herein.

Based thereon, and good cause appearing, it is hereby
ORDERED, ADJUDGED AND DECREED:

1. The Court hereby authorizes and directs Petitioners as Co-Trustees of the **GROVER & ORSENA BROWNING LIVING TRUST**, dated March 26, 2001, to convey all real estate of the Trust in equal, undivided shares to Petitioners as the Co-Trustees of the **GROVER BROWNING MARITAL TRUST**, coming into being on March 16, 2003, and to Petitioners as the Co-Trustees of the **ORSENA C. BROWNING FAMILY TRUST**, coming into being on March 16, 2003, according to form of Grant Deed attached to the Petition as Exhibit "F", which the Court adjudges and declares is the correct property descriptions of the real property; and hereby authorizes Petitioners as Co-Trustees to confirm and ratify that all other assets have been and shall be divided and distributed equally between the two new Trusts.

2. The Court hereby accepts the distribution as constituting the final distribution of the assets of the Trust.

Ordered this 20th day of February , 2007.



Keith M. Walker, Magistrate

NOTICE OF ENTRY OF ORDER

Grover Browning
7 N. 2700 E.
Teton, ID 83451

Lillian Elaine B. Pitman
524 River Road
Bliss, ID 83314

Kirk Lynn Browning
6603 Brickhouse Avenue
Las Vegas, NV 89122

Bart Grover Browning
24842 Big River Road
Eagle River, Alaska 99577

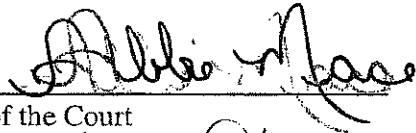
Karen Marie B. Garvin
Route 2, Box 24A8 A
Pocatello, ID 83201

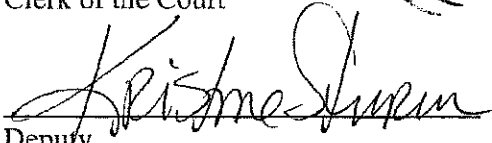
Gordon S. Thatcher
of RIGBY, THATCHER, ANDRUS,
RIGBY & MOELLER, *Chartered*
Attorneys at Law
P.O. Box 250
25 North Second East
Rexburg, Idaho 83440
Attorneys for Co-Trustees

PLEASE TAKE NOTICE, That on this day an Order was entered in the above referenced matter.

I CERTIFY That on this date a true copy of the Order was mailed to the above named persons at the addresses listed.

DATED this 20 day of February, 2007.


Clerk of the Court


Deputy