

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 47-17438
	)	
	)	
Case 39576	)	STANDARD FORM 4
	)	
	)	
	)	MOTION TO FILE
	)	LATE NOTICE OF CLAIM AND
	)	REQUEST FOR EXPEDITED
	)	HEARING
	)	

✓ I have read *SRBA Administrative Order 1, Rules of Procedure* (amended October 16, 1997).

My name is ConAgra Foods Packaged Foods Co., Inc.
c/o David Kubosumi, Plant Engineering Manager

My address is: P.O. Box 128
Twin Falls, Idaho 83303-0128

My phone number is (208)736-5640

I am an attorney representing the above-listed claimant.

My name is Josephine P. Beeman

My address is Beeman & Associates, P.C.
409 West Jefferson Street
Boise, Idaho 83702

My phone number is (208) 331-0950 Fax: (208) 331-0954

MOTION TO FILE A LATE NOTICE OF CLAIM

A Motion to File a Late Notice of Claim will require a hearing before the Presiding Judge.

- ✓ I did not file a Notice of Claim to the use of water in the SRBA because:

In August 1994, ConAgra purchased a potato processing plant in Twin Falls, Idaho, as part of ConAgra's purchase of Universal Frozen Foods. ConAgra made an effort in the late 1990s to determine if an SRBA claim could be filed for the prior beneficial use of the plant well. Based on the information available at that time, ConAgra was advised that no SRBA claim could be filed because the plant well was drilled after the 1963 mandatory deadline for beneficial use ground water rights. Based particularly on the only available drilling reports at that time, no SRBA claim was filed. *See Affidavit of David Kubosumi in Support of SRBA Claim 47-17438, at para. 2.* Several years later, ConAgra renewed investigation of the prior beneficial use of ground water at the plant. *See Affidavit of David Kubosumi in Support of SRBA Claim 47-17438, at para. 3.* In particular, because of electronic retrieval capabilities at IDWR, now available but not in place in the late 1990s, ConAgra was able to confirm that the plant well had been drilled and had begun use in 1961. *See Affidavit of David Kubosumi in Support of SRBA Claim 47-17438, Exhibits C and D.*

There also was evidence that the Twin Falls plant was established in 1961. After an extensive and thorough investigation, it was confirmed that the well was drilled in 1961 and had begun operation in 1961, prior to the 1963 mandatory deadline for ground waters established by beneficial use.

During and following the completion of this investigation, ConAgra conducted an internal review and decision process to determine the best method for claiming a ground water right for the Twin Falls plant. This process was finalized in April 2007, after the director's report for Basin 47 was issued in February of 2007, but before the end of the objection period for Basin 47. The deadline for filing an objection is September 19, 2007 and the response deadline is November 21, 2007. ConAgra seeks to have this motion for late claim heard on July 17, prior to the objection and response deadlines in Basin 47.

For this reason, ConAgra respectfully requests an expedited hearing on this motion.

- ☐ I filed a Notice of Claim and elected to defer judicial proceedings on my domestic or stock watering use. I desire to reinstate my Notice of Claim for domestic or stock watering use.
- ✓ I am providing legal and factual documentation for my claimed use of water.

(A) Affidavit of David Kubosumi in Support of Motion to File Late Notice of Claim 47-17438:

- (1) October 16, 1961 Layne and Bowler Pump Company Well Test Report (Exhibit C)
(Well Test Report)
- (2) October 21, 1961 Well Log and Report by Mack Gray Well Drilling (Exhibit D)
(Well Driller's Report)
- (3) *The Idaho Frozen Foods Story*, Quick Frozen Foods June, 1968 (Exhibit A)
- (4) Welcome to Idaho Frozen Foods Corp. Employee Handbook (Exhibit B)

(B) Memorandum in Support of Motion to File Late Notice of Claim.

I have attached:

- ☒ A fully completed Late Notice of Claim 47-17438.
- ☐ A claim filing fee for a domestic and stock watering use. IDWR may charge this fee pursuant to I.C. § 42-1414. To determine this amount, contact IDWR at (800) 451-4129. I have enclosed a check payable to: State of Idaho Department of Water Resources in the amount of \$316.00.
- ☒ A claim filing fee and a late claim fee for Late Notice of Claim 47-17438. I have enclosed a check payable to State of Idaho Department of Water Resources in the amount of \$175.00.

Follow these instructions regarding the hearing on this motion.

1. Contact the Clerk of the SRBA Court (208-736-3011) to request a hearing date and time.
2. Fill in the following information:

This motion will be heard at 1:30 p.m. on July 17, 2007.

(Insert Date and Time)

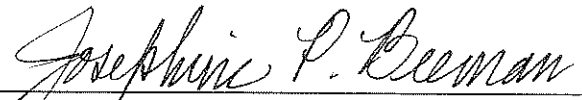
at the SRBA courthouse, 253 Third Avenue North, Twin Falls, Idaho.

VERIFICATION

State of Idaho)
) ss:
County of Ada)

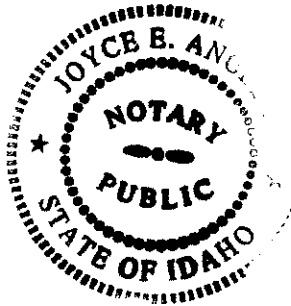
Josephine P. Beeman, being first duly sworn, upon oath, deposes and says:

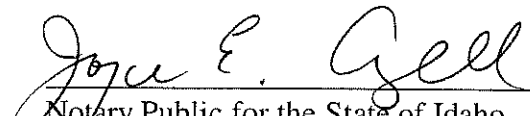
That I am the attorney for the party/claimant filing this motion for late claim and that I have read this motion, know its contents, and believe that the statements are true to the best of my knowledge.



Josephine P. Beeman
Attorney signing in representative capacity

Subscribed and sworn to before me on June 29, 2007.





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

CERTIFICATE OF MAILING

I certify that on June 29, 2007, I caused to be served 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
PO Box 2707
Twin Falls, ID 83303-2707

2. Copies to:

Nick Spencer
Deputy Attorney General
Idaho Department of Water Resources
322 East Front Street
PO Box 83720
Boise, Idaho 83720-0098

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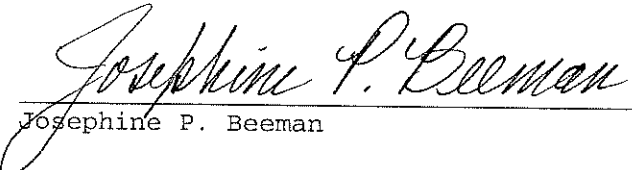
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VALE, OR 97918


Josephine P. Beeman

Z:\1785\3\7753

*Should questions arise during the processing of this application please contact:
Norm Young - ERO Resources Corp. (208) 373-7983*

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

47-17438

Date Received

Receipt Number

**LATE NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW**

Please type or print clearly

1. Name of Claimant(s) ConAgra Foods Packaged Foods Co., Inc.

Phone (208) 736-5640

Mailing Address P.O. Box 128 Twin Falls, Idaho

Zip 83303-0128

2. Date of Priority (Only one (1) per claim) October 14, 1961

3. Source of water supply (a) Ground water

Which is tributary to (b) --

4. a. Location of point of diversion is: Township 10S Range 17E Section 17,

NE ¼ of SE ¼ of SE ¼, Govt. Lot _____, B.M., County of Twin Falls

Additional points of diversion if any: _____

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

Township _____ Range _____ Section _____, _____ ¼ of _____ ¼ of _____ ¼,

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

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc.), including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed and as enlarged and the depth of each well. 12 inch diameter, 600 foot deep well with 100 horsepower electric powered pump and distribution system to the processing facility.

6. Water is claimed for the following purposes:

(both dates are inclusive) (cfs) (acre feet)
For Industrial purposes from 1/1 to 12/31 amount 1.25 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 1.25 (cfs) and/or (b) _____ (acre feet)

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

9. Non-irrigation uses; describe fully. (Domestic: Give number of households served; Stockwater: Type and number of livestock, Etc.) Operation and maintenance of a potato processing facility.

10. Description of place of use:

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

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

TWP	RNG	SEC	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
			¼	¼	¼	¼	¼	¼	¼	¼	¼	¼	¼	¼	¼	¼	¼	¼	
10S	17E	17																I	----

Total number of acres irrigated _____

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

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

13. Describe any other water rights used at the same place and for the same purposes as described above.
No other rights when developed, municipal water available as an alternative since 1975.

14. Remarks:
"Industrial use" is for food processing, sanitation and fire protection at a potato processing facility.

Point of diversion and place of use are within Lot five (5) of Chamber of Commerce Industrial Site Subdivision of the City of Twin Falls and adjacent portion of Railroad Avenue West.

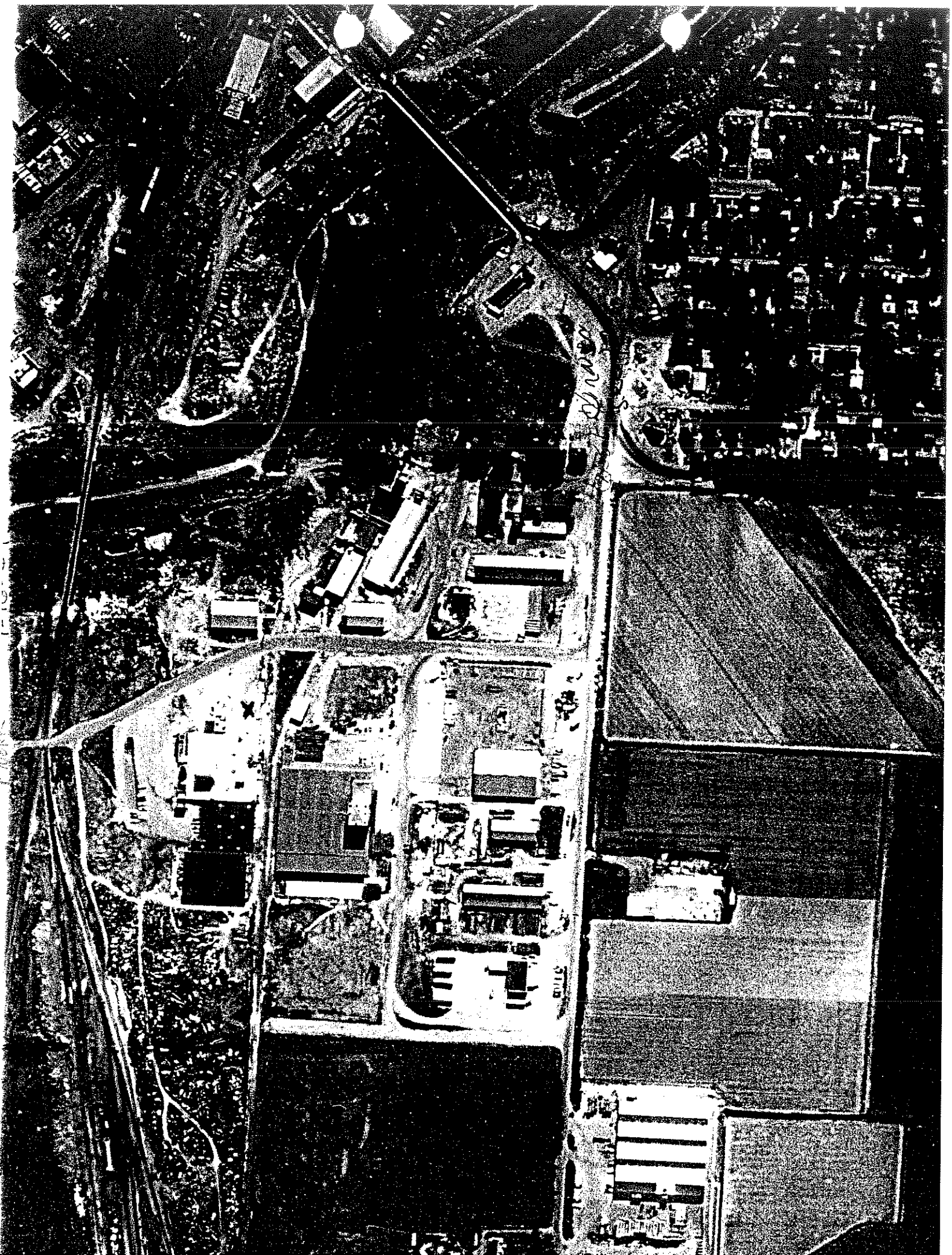
The claimed priority date is based upon the completion date of the well (see attached driller's report and well test report). Also attached is a copy of the "Idaho Frozen Foods Corp. Employee Handbook" that describes (on page 2) the history of the Twin Falls facility. Section 42-229, Idaho Code, provides for perfection of this right commenced by diversion and beneficial use prior to a permit being mandatory.

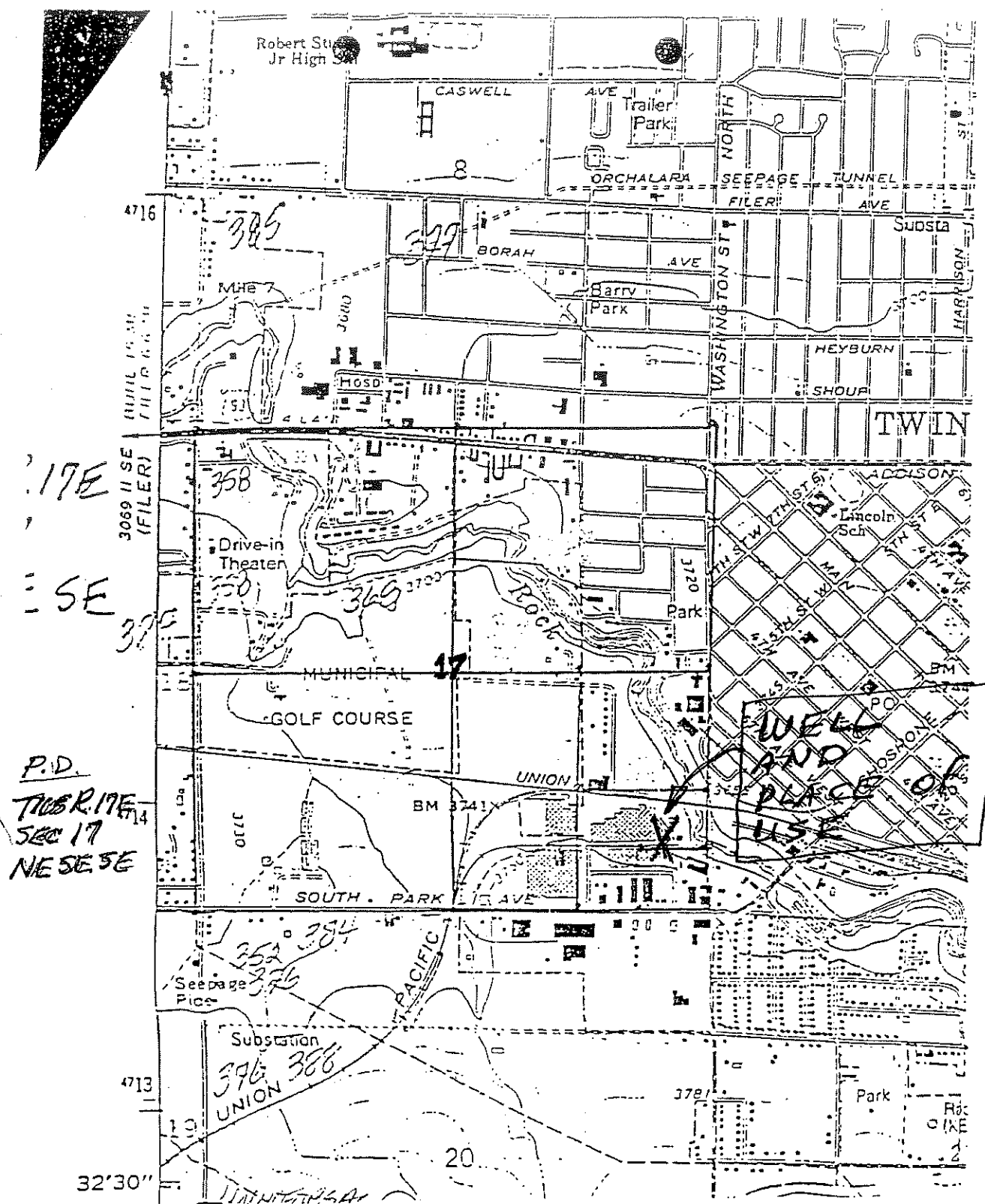
Last Name ConAgra Ident. Number _____

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

Scale: 2 inches equals 1 mile.

Last Name ConAgra Ident. Number _____





17E
3089 II SE (FILER)
SE
37E
P.D.
TUES R 17E
SEC 17
NE SE SE

WELL
AND
PLACE OF
USE

15. Basis of Claim (Check One) Beneficial Use XX Posted Notice _____ License _____ Permit _____
Decree _____

If applicable provide IDWR Water Right Number _____

Court _____ Case Number _____ Decree Date _____

Plaintiff vs Defendant _____

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read, and understand the form entitled "How you will received notice in the Snake River Basin Adjudication." I/We do _____ do not XX wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of Attachments _____

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

Signature of Claimant(s) _____ Date _____

_____ Date _____

For Organizations: I do solemnly swear or affirm that I am Operations Manager of ConAgra Foods

Packaged Foods Co., Inc., that I have signed the foregoing document in the space below as

Operations Manager of ConAgra Foods Packaged Foods Co., Inc.,

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

Signature of Authorized Agent David T. Kelson for Wayne Clarr

Title and Organization Operations Manager of ConAgra Foods Packaged Foods Co., Inc.,

Date 6/26/07

State of Idaho/or Idaho)

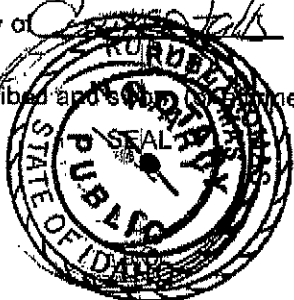
County of Boise) SS.

Subscribed and sworn to before me this 27th day of June 20 07

Notary Public Quincy Hughes

Residing at Kimberly, ID

My Commission Expires 6/4/2013



17. Notice of Appearance:

Please Print Name

Notice is hereby given that I, Josephine P. Beeman 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 _____

Address Beeman & Associates, P.C.

409 W. Jefferson St.

Boise, Idaho 83702

(208) 331-0950

Date _____

Last Name ConAgra Ident. Number _____

Last Name ConAgra Ident. Number _____

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

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Signature of Claimant(s) _____ Date _____
_____ Date _____

For Organizations: I do solemnly swear or affirm that I am Operations Manager of ConAgra Foods

Packaged Foods Co., Inc., that I have signed the foregoing document in the space below as

Operations Manager of ConAgra Foods Packaged Foods Co., Inc.,

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

Signature of Authorized Agent _____

Title and Organization Operations Manager of ConAgra Foods Packaged Foods Co., Inc.,

Date _____

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

Subscribed and sworn (or affirmed) before me this _____ day of _____ 20 _____

SEAL

Notary Public _____

Residing at _____

My Commission Expires _____

17. Notice of Appearance:

Please Print Name

Notice is hereby given that I, Josephine P. Beeman 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 Josephine P. Beeman

Address Beeman & Associates, P.C.

409 W. Jefferson St.

Boise, Idaho 83702

(208) 331-0950

Date June 29, 2007

Last Name ConAgra Ident. Number _____

Last Name ConAgra Ident. Number _____