

SUPPLEMENTAL DIRECTOR'S REPORT REGARDING
SUBCASE NOS. 85-16, 85-2049, 85-2063, 85-2065,
85-2146, 85-2147, 85-4483, 85-11087, AND 85-15424

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

September⁶₇, 2007

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I. INTRODUCTION

In accordance with Idaho Code § 42-1412(4), Administrative Order 1, and Special Master Booth's March 13, 2007 *Trial Schedule Order*, and by request of the parties, the Director of the Idaho Department of Water Resources ("IDWR" or "Department") submits this Supplemental Director's Report ("Report") regarding subcase numbers 85-16, 85-2049, 85-2063, 85-2065, 85-2146, 85-2147, and 85-11087; setting forth the bases for the Department's recommendations for those water rights.¹ The Report was prepared under the supervision of David R. Tuthill, Jr., Director, and Donald V. Shaff, Adjudication Bureau Chief.

The following Department employee has knowledge of the information contained in the Report: Carter Fritschle, Manager, Adjudication Technical Section ("Fritschle").²

Attached hereto are certified copies of the Department's claim files for water right nos. 85-16, 85-2049, 85-2063, 85-2065, 85-2146, 85-2147, and 85-11087.

II. SUMMARY OF THE ISSUES

At issue are the Department's recommendations for water right nos. 85-16, 85-2049, 85-2063, 85-2065, 85-2146, 85-2147, and 85-11087, which have been claimed in the Snake River Basin Adjudication ("SRBA") by the United States Bureau of Reclamation ("USBR"). While the USBR holds the water rights at issue, the Lewiston Orchards Irrigation District ("LOID") is beneficiary of those rights and became formally involved in these subcases through a Motion to Participate, which was filed with the Court on April 18, 2007. The Department's

¹ While water right nos. 85-4483 and 85-15424 are included in the caption of this Report, they are unobjected overlapping water rights and will not be discussed or further referenced.

² Fritschle began working for the Department in the summer of 1986 as a trainee. From November 1987 to August 1992, Fritschle was a Senior Water Resource Agent for the Adjudication Bureau. From September 1992 to December 2005, Fritschle was the Water Rights Supervisor for the Adjudication Bureau. Fritschle has held his current position since January 2006.

recommendations were objected to by the Nez Perce Tribe ("Tribe") on various bases, including that the water rights should not exist.

III. DISCUSSION

The USBR holds one previously decreed water right (85-16), five licensed water rights (85-2049, 85-2063, 85-2065, 85-2146, and 85-2147), and one beneficial use claim (85-11087) in Basin 85 that have been objected to by the Tribe. The following is a discussion of the SRBA claims filed by the USBR, the objections filed by the Tribe, and the bases for the Department's recommendations.

A. Water Right No. 85-16

The certified claim file for water right no. 85-16 is attached hereto as Attachment 1. Water right no. 85-16 is based on a permit that was filed by Lafe Pence with the State Engineer's office on July 14, 1904. On April 11, 1905, Lafe Pence transferred the permit to H.L. Powers. On August 15, 1905, H.L. Powers transferred the permit to F.D. Warner, who, in turn, on December 11, 1905, transferred the permit to Lewiston-Sweetwater Irrigating Company, Ltd. Permit no. 877 requested 150 cfs from Mission Creek, 150 cfs from Soldier Meadow Creek, and 100 cfs from Sweetwater Creek. On April 25, 1916, permit no. 877 was licensed and later renumbered to 85-2003. When the license was issued, the diversion rate was limited to 87.8 cfs from Sweetwater Creek. Mission Creek and Soldier Meadow Creek were not listed as sources on the license. The place of use for the license was shown as land in Township 35 North, Range 5 West, listed by section and quarter-quarter for a total of 4,389.9 acres. The State Engineer limited the diversion rate of the license to .02 cfs per acre for irrigation (4,389.9 acres x .02 cfs = 87.798 cfs).

Shortly after license no. 85-2003 was issued, the District Court of the United States for the District of Idaho, Central Division, issued a decree for water rights in the Lewiston area. *William Seigrist, et al. v Lewiston-Sweetwater Irrigating Co., et al.* (D. Idaho June 12, 1916). Included in Attachment 1 is a true and correct copy of the *Seigrist* decree. Water right no. 85-16 was decreed to the Lewiston-Sweetwater Irrigation Company, the successor of the Lewiston-Sweetwater Irrigating Company, for 100 cfs for irrigation from Sweetwater Creek. Unlike license no. 85-2003, the *Seigrist* decree did not specify the number of acres to be irrigated; instead, the decree provided a general land list.

On September 27, 1988, the USBR filed a claim in the SRBA for water right no. 85-16, seeking a diversion rate of 87.8 cfs and a place of use of 3,845.48 acres.

On March 21, 2005, the Tribe filed an objection to water right no. 85-16. According to the Tribe, the quantity recommended for water right no. 85-16 should be zero and the point of diversion should be the center of section 28, T 34 N, Range 4 West.³ Additionally, the objection stated that the water right should not exist.

The Department recommended water right no. 85-16 as claimed because neither the diversion rate (87.8) nor the number of acres claimed (3,845.48) exceeded the amounts in the license or the *Seigrist* decree.⁴ In accordance with Department policy, the irrigated acres were recommended to the closest whole number, thus, 3,845 acres, instead of 3,845.48. The claimed

³ On May 15, 2007, the USBR, Tribe, and LOID filed a "Stipulation to Resolve Certain Elements of Water Rights" with the SRBA District Court and the Department. Hereinafter referred to as the "Stipulation" and attached hereto as Attachment 2. The Stipulation purports to resolve the Tribe's objection as to point of diversion for water right no. 85-16. The Stipulation resolves the point of diversion by locating it at "GPS coordinates N.46° 16.291 and W.116 ° 51.145."

⁴ Because the *Seigrist* decree did not decree an exact number of irrigated acres, and because of the proximity in time in which license no. 85-2003 was issued relative to the *Seigrist* decree, the Department relied on license no. 85-2003 to establish the maximum number of acres irrigated for the place of use. See Idaho Code § 42-1427. As stated in the above text, the Department recommended the number of acres claimed because the claim did not exceed the number of acres licensed.

points of diversion, conveyance systems, system operation, and irrigation district boundary were verified by Fritschle on April 9, 2003 when he visited the LOID offices in Lewiston, Idaho and conferred with Kevin Casey, LOID manager, and Eric Hasenoerhrl, consulting engineer for LOID. Additional information was exchanged through telephone conversations.

B. Water Right No. 85-2049

The certified claim file for water right no. 85-2049 is attached hereto as Attachment 3. Water right no. 85-2049 is based on a license, originally numbered 11331, that was issued to the Lewiston-Sweetwater Irrigation Company. The permit requested to divert 10.0 cfs from Waha Lake and all of its sources and tributaries for domestic purposes and the irrigation 4,560 acres. A license was subsequently issued for the diversion of 10.0 cfs from Waha Lake for domestic purposes and the irrigation of 4,389 acres.

On September 27, 1988, the USBR filed a claim in the SRBA for water right no. 85-2049, seeking a diversion rate of 10.0 cfs, 4,000 acre-feet of storage, and a place of use of 3,845.48 acres.

On March 21, 2005, the Tribe filed an objection to water right no. 85-2049. According to the Tribe, the recommended quantity for water right no. 85-2049 should be "Less than the amount claimed." Additionally, the Tribe stated that the recommended point of diversion should be "T33N R04W S09,"⁵ the period of year should be "Limited to June 1 to December 15,"⁶ the

⁵ The Stipulation purports to resolve the Tribe's point of diversion objection by locating it at "GPS coordinates N.46° 12.751 and W. 50.289." On June 18, 2007, the SRBA received correspondence from the Department stating that it believed there was a typographical error in the stipulated point of diversion for water right no. 85-2049. Hereinafter referred to as the "Letter" and a true and correct copy of the Letter is attached hereto as Attachment 4. It is the Department's belief that the correct point of diversion should be GPS coordinates N.46° 12.751 and W.116° 50.289.

⁶ The Stipulation purports to resolve the period of use objection by stating that "In the event the District's irrigation claims are decreed, irrigation water use shall only be permitted from March 15 through November 15. Even when weather allows, no diversion for irrigation will be permitted before March 15 or after November 15." The recommended period of use for water right no. 85-2049 for irrigation is March 15 to November 15.

place of use "Should not include T35 R06 S12,"⁷ and finally that "This water right should not exist."

Regarding the Department's recommendation, the claimed diversion rate and the number of acres claimed did not exceed the licensed amounts. Therefore, the Department recommended the claimed diversion rate, 10.0 cfs, and the number of irrigated acres, as stated above in the discussion regarding water right no. 85-16, were recommended to the nearest whole acre, 3,845. The Department did not recommend a storage component for water right no. 85-2049 as storage of water in Waha Lake was not included as a purpose of use for license no. 85-2049. The claimed points of diversion, conveyance systems, system operation, and irrigation district boundary were verified by Fritschle on April 9, 2003 when he visited the LOID offices in Lewiston, Idaho and conferred with Kevin Casey, LOID manager, and Eric Hasenoerhrl, consulting engineer for LOID. Additional information was exchanged through telephone conversations.

C. Water Right No. 85-2063

The certified claim file for water right no. 85-2063 is attached hereto as Attachment 5. Water right no. 85-2063 is based on a license issued to the Lewiston Orchards Irrigation District originally numbered 15566. The permit requested to divert 10.0 cfs from Waha Lake and all of its sources and tributaries from June through September for domestic purposes and the irrigation of 5,120 acres. A license was subsequently issued for the diversion of 10.0 cfs from Waha Lake for domestic purposes and the irrigation of 4,391.78 acres.

⁷ The Stipulation purports to resolve the place of use objection by specifically "includ[ing] T35 R06 S12. In the event other District claims are decreed, all other places of use shall be as recommended." The Department stated in its Letter, however, that there appeared to be a typographical error in the stipulated point of diversion for water right no. 85-2049. It is the Department's belief that the correct place of use should be "T35N R06W S12."

On March 7, 1995, the USBR filed a claim in the SRBA claim for water right no. 85-2063, seeking a diversion rate of 10.0 cfs and a place of use described as the "Lewiston Orchards Irrigation District."

On March 21, 2005, the Tribe filed an objection to water right no. 85-2063. According to the Tribe, the recommended quantity should be "Less than the claimed amount." Additionally, the Tribe stated that the period of use should be "Limited to March 1 – Sept. 30"⁸ and that "This water right should not exist."

Regarding the Department's recommendation, the claimed diversion rate did not exceed what was the licensed, therefore, 10.0 cfs was recommended. Because the licensing field examination for water right no. 85-2063 stated that the pumping system had a capacity of 10.0 cfs, and since license nos. 85-2049 and 85-2063 share the same diversion works from Waha Lake, the Department included a combined diversion rate limitation of 10.0 cfs for water right nos. 85-2049 and 85-2063. Consistent with recommendations for water right nos. 85-16 and 85-2049, the Department recommended a place of use of 3,845 acres. The claimed points of diversion, conveyance systems, system operation, and irrigation district boundary were verified by Fritschle on April 9, 2003 when he visited the LOID offices in Lewiston, Idaho and conferred with Kevin Casey, LOID manager, and Eric Hasenoerhrl, consulting engineer for LOID. Additional information was exchanged through telephone conversations.

D. Water Right No. 85-2065

The certified claim file for water right no. 85-2065 is attached hereto as Attachment 6. Water right no. 85-2065 is based on a license issued to the Lewiston Orchards Irrigation District originally numbered 15945. The permit sought to divert 40.0 cfs from Webb Creek and Webb

⁸ See footnote 3, *supra*. The recommended period of use for water right no. 85-2063 for irrigation is March 15 to November 15.

Creek Reservoir. The water was to be used for domestic purposes and the irrigation 4,391.78 acres. A license was subsequently issued for 40.0 cfs to be diverted from Webb Creek and Webb Creek Reservoir for domestic purposes and the irrigation of 4,391.78 acres.

On September 27, 1988, the USBR filed a claim in the SRBA for water right no. 85-2065, seeking a diversion rate of 40.0 cfs and a place of use described as 3,845.48 acres in the Lewiston Orchards Irrigation District.

On March 21, 2005, the Tribe filed an objection to water right no. 85-2065. According to the Tribe, the recommended quantity should be "Less than the claimed amount." Additionally, the period of use should be "Less than the claimed duration."⁹

Regarding the Department's recommendation, the claimed diversion rate and the number of acres claimed did not exceed the licensed amounts. Therefore, the Department recommended the licensed diversion rate, 40.0 cfs, and the nearest number of whole acres, 3,845. While the USBR claimed Webb Creek Reservoir as a source, it is the Department's current policy not to recommend a manmade reservoir as a source for a water right. As a result, the only source recommended by the Department is Webb Creek, tributary to Sweetwater Creek. The claimed points of diversion, conveyance systems, system operation, and irrigation district boundary were verified by Fritschle on April 9, 2003 when he visited the LOID offices in Lewiston, Idaho and conferred with Kevin Casey, LOID manager, and Eric Hasenoerhrl, consulting engineer for LOID. Additional information was exchanged through telephone conversations.

E. Water Right No. 85-2146

The certified claim file for water right no. 85-2146 is attached hereto as Attachment 7. Water right no. 85-2146 is based on an approved permit to store water issued to the Lewiston

⁹ See footnote 3, *supra*. The recommended period of use for water right no. 85-2065 for irrigation is March 15 to November 15.

Valley Water Company. Originally numbered R-294 and later renumbered to 85-2146, the permit requested and was approved for the storage of 2,000 acre-feet in Soldier Meadow Reservoir on Webb Creek. The approved permit described that the beneficial use of the stored water would be in accordance with permit no. 877 (renumbered to 85-2003 and superseded by 85-16) which described the place of use as land in Township 35 North, Range 5 West, listed by section and quarter-quarter for a total of 4,389.9 acres. The Report of the Engineer stated that the capacity of the reservoir was 2,500 acre-feet.

On October 3, 1988, the USBR filed a claim for water right no. 85-2146 in the SRBA, requesting storage of 2,000 acre-feet and a place of use described as 3,845.48 acres in the Lewiston Orchards Irrigation District.

On March 21, 2005, the Tribe filed an objection to water right no. 85-2146. According to the Tribe, the quantity should be "Less than the claimed amount." Additionally, the Tribe stated that "This water right should not exist."

Regarding the Department's recommendation, neither the volume claimed for storage nor the number of acres claimed exceeded the licensed amounts. Therefore, the Department recommended the licensed storage volume, 2,000 acre-feet, and the nearest whole number of acres, 3,845. The claimed points of diversion, conveyance systems, system operation, and irrigation district boundary were verified by Fritschle on April 9, 2003 when he visited the LOID offices in Lewiston, Idaho and conferred with Kevin Casey, LOID manager, and Eric Hasenoerhrl, consulting engineer for LOID. Additional information was exchanged through telephone conversations.

F. Water Right No. 85-2147

The certified claim file for water right no. 85-2147 is attached hereto as Attachment 8. Water right no. 85-2147 is based on a license to store water issued to the Lewiston Orchards

Irrigation District. Originally numbered R-576 and later renumbered to 85-2147, the permit requested the construction of Soldier Meadow Reservoir and the storage of 2,000 acre-feet. A license was subsequently issued for the storage of 2,000 acre-feet in Soldier Meadow Reservoir for irrigation and domestic purposes. The place of use for the license was shown as land in Township 35 North, Range 5 West, listed by section and quarter-quarter for a total of 4,332.16 acres. The Report of the Engineer stated that the system had a diversion capacity of 40.0 cfs.

An amended notice of claim in the SRBA for water right no. 85-2147 was filed by the USBR on September 28, 2004, claiming a diversion rate of 20.0 cfs and the storage of 2,000 acre-feet. The place of use was described as 3,845.48 acres in the Lewiston Orchards Irrigation District.

On March 21, 2005, the Tribe filed an objection to water right no. 85-2147. According to the Tribe, the quantity should be “Less than the claimed amount.” Additionally, the Tribe stated that the period of use should be “Less than the claimed duration”¹⁰ and that “This water right should not exist.”

Regarding the Department’s recommendation, neither the volume claimed for storage nor the number of acres claimed exceeded the licensed amounts. Therefore, the Department recommended the licensed storage volume, 2,000 acre-feet, and the nearest whole number of acres, 3,845. Because the water is diverted in the Captain John Creek drainage and conveyed to the Webb Creek drainage, a diversion to storage element is necessary to properly describe the water right. Also, while the license describes the source as “Captain Johns Creek,” the United States Geological Survey name of the principal stream in which the water is diverted is Browns Creek, which is a tributary to Captain John Creek. The claimed points of diversion, conveyance

¹⁰ See footnote 3, *supra*. The recommended period of use for water right no. 85-2147 for irrigation is March 15 to November 15.

systems, system operation, and irrigation district boundary were verified by Fritschle on April 9, 2003 when he visited the LOID offices in Lewiston, Idaho and conferred with Kevin Casey, LOID manager, and Eric Hasenoerhrl, consulting engineer for LOID. Additional information was exchanged through telephone conversations.

G. Water Right No. 85-11087

The certified claim file for water right no. 85-11087 is attached hereto as Attachment 9. On November 4, 1988, the USBR filed a claim based on beneficial use for water right no. 85-11087 in the SRBA, seeking the diversion of up to 20.0 cfs from the West Fork of Sweetwater Creek into Waha Lake for storage, irrigation, and domestic purposes.

On March 21, 2005, the Tribe filed an objection to water right no. 85-11087. According to the Tribe, the quantity should be "Less than the claimed amount." Additionally, the period of use should be "Less than the claimed duration."¹¹

After reviewing the claim filed with the Department by the USBR, Fritschle met with Kevin Casey, LOID manager, and Eric Hasenoerhrl, consulting engineer for LOID, on April 9, 2003 at the LOID offices in Lewiston, Idaho to verify point of diversion and canal locations for water right no. 85-11087, including the location of the feeder canal.

A request for information supporting the priority date and quantity of water claimed was sent to the USBR. In response, the USBR submitted flow measurement information documenting a flow of 24.1 cfs in the feeder canal, which is in excess of the 20.0 cfs claimed. The flow measurements were made as part of a water quality assessment by the Idaho Department of Health and Welfare's Division of Environmental Quality.

¹¹ See footnote 3, *supra*. The recommended period of use for water right no. 85-11087 for irrigation is March 15 to November 15.

Additionally, the USBR provided a blueprint for the proposed construction of the feeder canal. The blueprint was dated 1922 with a correction date of December 31, 1935. The blueprint provided the documentation that the feeder canal was completed by 1935, and the system was not enlarged after that date. Attached hereto as Attachment 10 is a true and correct copy of the blueprint provided to the Department by the USBR.

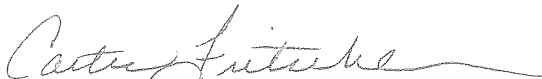
Based upon the information available to him and reasonable conclusions drawn therein from more than seventeen years of experience in reviewing thousands of claims filed in the SRBA, Fritschle recommended a diversion to storage rate of 20.0 cfs and for a storage volume of 1,308.5 acre-feet for irrigation and municipal purposes.

IV. CONCLUSION

The Department's recommendations for water right nos. 85-16, 85-2049, 85-2063, 85-2065, 85-2146, and 85-2147 are based on water rights that were previously decreed or licensed by the Department and historical evidence of beneficial use. Because the claims for water right nos. 85-16, 85-2049, 85-2063, 85-2065, 85-2146, and 85-2147 did not exceed what was decreed or licensed, and were found to have been used substantially in that manner at the time the claims were filed, the Department recommended those claims virtually as filed upon. The Department's recommendation for water right no. 85-11087 is based on historical evidence of beneficial use and reasonable conclusions drawn therein by Fritschle based on his seventeen years of experience in reviewing claims filed in the SRBA. Therefore, the Department respectfully requests that water right nos. 85-16, 85-2049, 85-2063, 85-2065, 85-2146, 85-2147, and 85-11087, as described in the Director's Report, be recommended to the Snake River Basin Adjudication District Court for partial decree. If additional information is presented to the Department in a reasonable amount of time before trial that would cause the Department to alter

or amend this Report, the Department requests permission from Special Master Eooth to do so through a subsequent report.

Submitted this 6th day of September, 2007


Carter Fritschle
Manager, Adjudication Technical Section

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the following described document on the persons listed below by United States mail with the correct postage affixed thereto on this 6 day of September 2007.

Document Served:

Supplemental Director's Report Regarding Subcase Nos. 85-16, 85-2049, 85-2063, 85-2065, 85-2146, 85-2147, 85-4483, 85-11087, and 85-15424

Persons Served:

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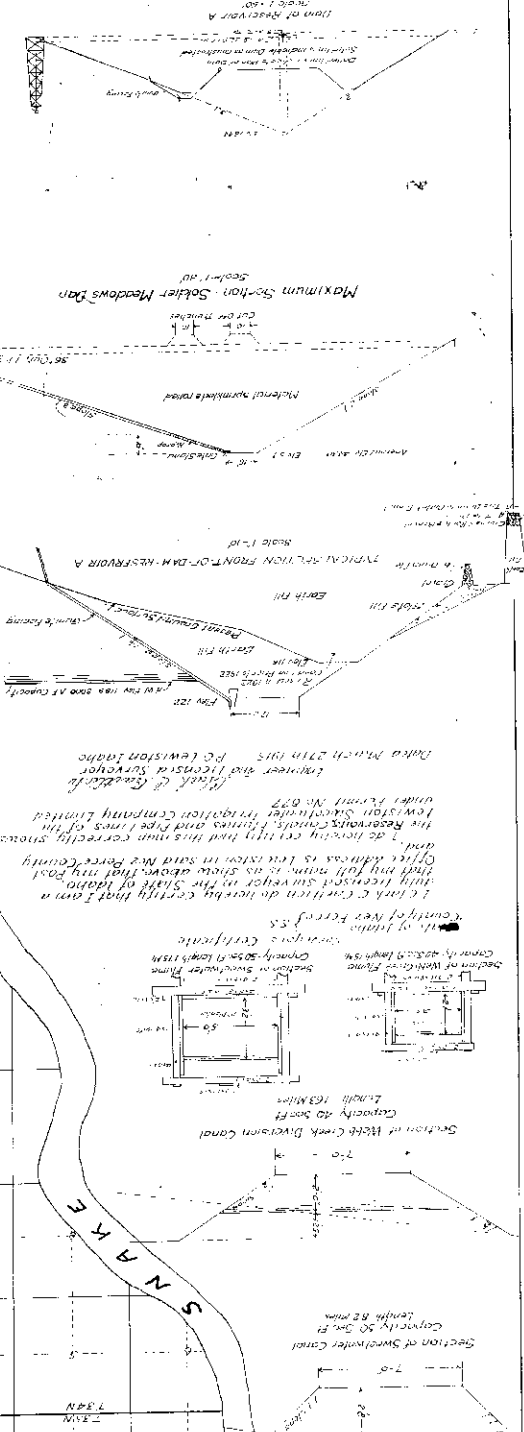
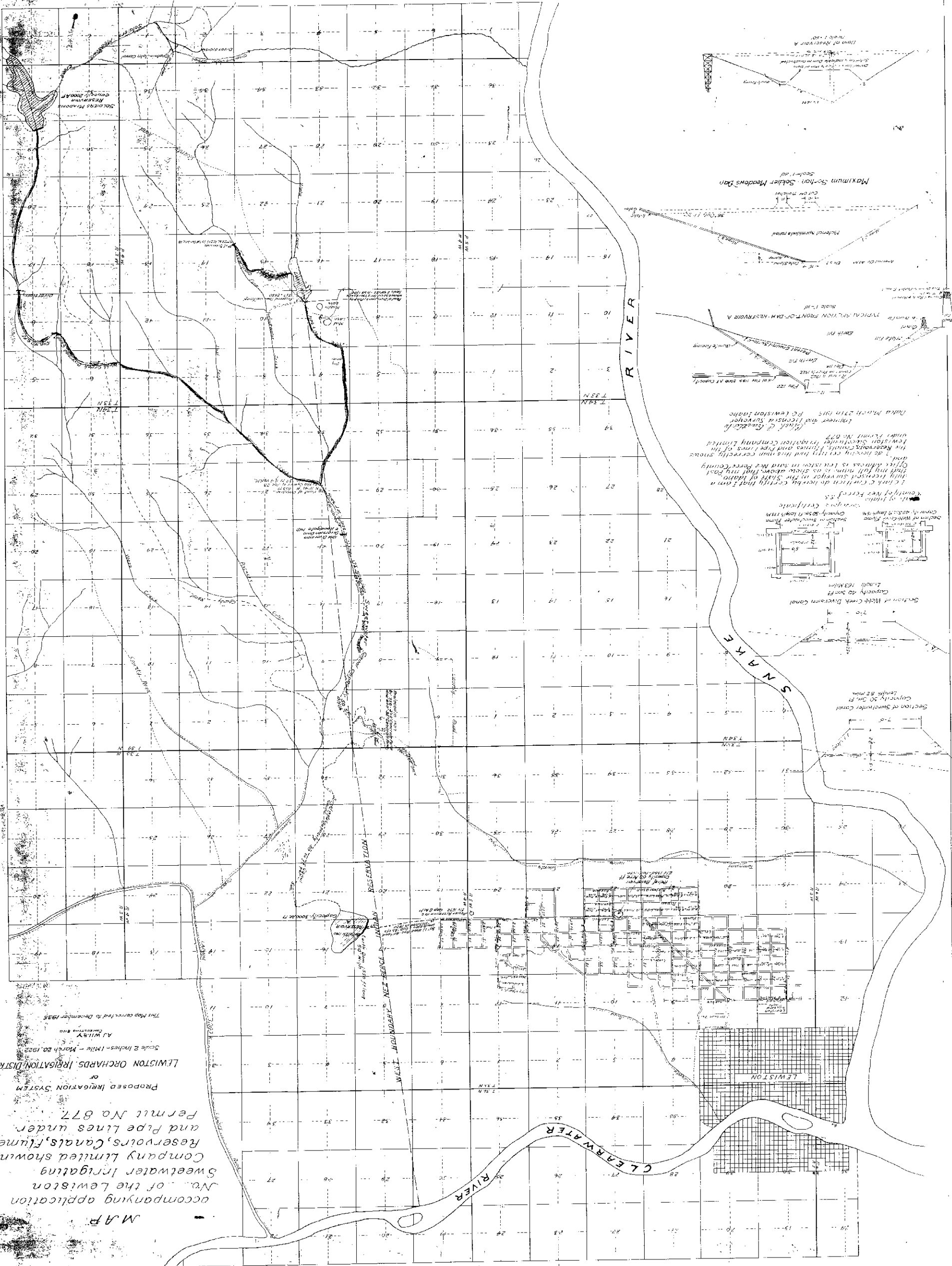
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Attachments can be viewed in the repository
or legal files

MAP
 accompanying application
 No. of the Lewiston
 Sweetwater Irrigating
 Company Limited showing
 Reservoirs, Canals, Flumes
 and Pipe Lines under
 Permit No. 877
 Proposed Irrigation System
 OF
 LEWISTON ORCHARD DISTRICT
 Scale 2 inches = 1 mile - March 20, 1922
 A. J. WILBY
 Consulting Eng.
 This Map corrected to December 1925



Section of Snake River Canal
 Capacity 40 cfs
 Length 100 ft
 Section of Sweetwater Canal
 Capacity 20 cfs
 Length 100 ft
 Section of Soldier Meadows Dam
 Capacity 40 cfs
 Length 100 ft

Section of Soldier Meadows Dam
 Capacity 40 cfs
 Length 100 ft
 Section of Sweetwater Canal
 Capacity 20 cfs
 Length 100 ft
 Section of Snake River Canal
 Capacity 40 cfs
 Length 100 ft

Section of Snake River Canal
 Capacity 40 cfs
 Length 100 ft
 Section of Sweetwater Canal
 Capacity 20 cfs
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 Section of Soldier Meadows Dam
 Capacity 40 cfs
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Section of Snake River Canal
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Section of Snake River Canal
 Capacity 40 cfs
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 Section of Sweetwater Canal
 Capacity 20 cfs
 Length 100 ft
 Section of Soldier Meadows Dam
 Capacity 40 cfs
 Length 100 ft