

Josephine P. Beeman #1806
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RECEIVED

MAR 17 2008

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 Nos. 74-40 and 74-54
	)	
	)	
Case No. 39576	)	AFFIDAVIT OF JOSEPHINE P. BEEMAN IN
_____	)	SUPPORT OF LEADORE LAND PARTNERS LTD.
	)	PARTNERSHIP'S MOTION FOR PARTIAL
	)	SUMMARY JUDGMENT

STATE OF IDAHO)
) ss:
COUNTY OF ADA)

I, Josephine P. Beeman, after being duly sworn, state that I am an attorney licensed to practice law in the State of Idaho. I am over the age of 18 years and state that the following is based on my personal knowledge.

1. Attached hereto as Exhibit 1 is a true and correct copy of the December 30, 1982 "Partial Decree Pursuant to Rule 54(b) I.R.C.P." for the Lemhi Adjudication (filed January 4, 1983, Lemhi County Civil No. 4948).

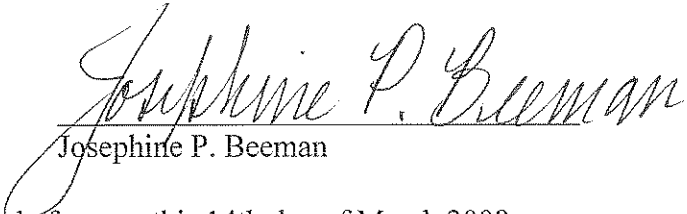
2. Attached hereto as Exhibit 2 are true and correct copies of the March 18, 1982 "Report of Special Master Regarding Specific Objections" (filed April 7, 1982, Lemhi County Civil No. 4948) and the companion September 16, 1982 "Order" (filed September 20, 1982, Lemhi County Civil No. 4948).

3. Attached hereto as Exhibit 3 is a true and correct copy of the December 14, 1981 "Stipulation Resolving General Objections" and February 11, 1982 "Order" (on page 3 of the Stipulation) (filed February 12, 1982, Lemhi County Civil No. 4948).

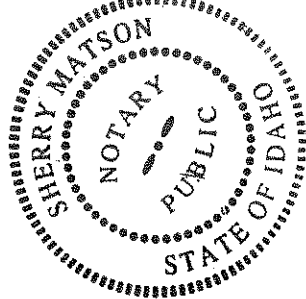
4. Attached hereto as Exhibit 4 is a true and correct copy of the November 16, 1982 "Order Correcting Clerical Oversights in Proposed Finding of Water Rights" (filed November 16, 1982, Lemhi County Civil No. 4948).

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 14th day of March 2008.


Josephine P. Beeman

SUBSCRIBED AND SWORN to before me this 14th day of March 2008.




Notary Public in and for the State of Idaho
My Commission Expires: October 11, 2011

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of March 2008, I caused a true and correct copy of the foregoing **AFFIDAVIT OF JOSEPHINE P. BEEMAN IN SUPPORT OF LEADORE LAND PARTNERS LTD. PARTNERSHIP'S MOTION FOR PARTIAL SUMMARY JUDGMENT** to be deposited in an official U.S. Post Office receptacle with proper First Class postage affixed, addressed to the following:

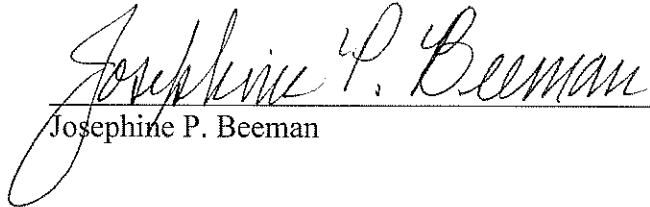
IDWR Document Depository
P. O. Box 83720
Boise, ID 83720-0098

Purcell Ranch Partnership
Allan, Betty, Kerry Purcell
98 Purcell Road
Leadore, ID 83464

Robert L. Harris
Holden Kidwell Hahn & Crapo
P. O. Box 50130
Idaho Falls, ID 83405

Richard E. Foster
P. O. Box 55
Leadore, ID 83464

Kurt Bird
56 Lower Texas Creek Road
Leadore, ID 83464



Josephine P. Beeman

APR 7 1985
Department of Water Resources
Western Regional Office

COPY

Filed in District Court Lemhi County

Idaho, Jan 4 1983
at 10 minutes past 5 o'clock P.M.

Adrian L. Widmark Clerk

By: [Signature] Deputy

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF LEMHI

IN THE MATTER OF THE GENERAL	)	
DETERMINATION OF THE RIGHT TO	)	CIVIL NO. 4948
THE USE OF SURFACE WATERS AND	)	
TRIBUTARIES FROM WHATEVER	)	
SOURCE OF THE LEMHI RIVER	)	PARTIAL DECREE PURSUANT
DRAINAGE BASIN.	)	TO RULE 54(b), I.R.C.P.

The report of the Idaho Department of Water Resources ("Water Resources" herein) entitled PROPOSED FINDING OF WATER RIGHTS IN THE LEMHI RIVER BASIN was filed with this court on July 9, 1974. The report contains FINDINGS OF FACT, CONCLUSIONS OF LAW, and a LISTING OF WATER RIGHTS.

As a result of objections filed to the PROPOSED FINDINGS, changes were made to the Findings of Fact, Conclusions of Law, and the Listing of Water Rights. These amendments, additions, and deletions to the PROPOSED FINDINGS are set forth in two documents already on file with the court: (1) the "Special Master's Report on Specific Objections," filed April 7, 1982 and adopted by order on September 16, 1982; and (2) the "Stipulation Resolving General Objections" filed February 12, 1982. A third document, "Order Correcting Clerical Oversights in Proposed Finding of Water Rights," filed November 16, 1982, corrects typographical errors in the PROPOSED FINDINGS. Finally, permits listed in the PROPOSED FINDINGS which have become licensed on or before the date of this partial decree will be decreed in their licensed form.

This partial decree does not include any of the rights on Geertson Creek and its tributaries because they were already the subject of a partial decree which is on appeal to the Idaho Supreme Court. The rights of the United States Department of Agriculture, Forest Service, are also not included because they

have yet to be resubmitted following the decision of U.S. v. New Mexico.

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the water rights of the Lemhi River Basin with the exceptions noted above are as described in the PROPOSED FINDING OF WATER RIGHTS IN THE LEMHI RIVER BASIN, as amended by:

1. Special Master's Report on Specific Objections;
2. Stipulation Resolving General Objections;
3. Order Correcting Clerical Oversights in Proposed Finding of Water Rights; and
4. Licenses issued on or before the date of this partial decree for permits listed in the PROPOSED FINDINGS;

all of which are incorporated herein by reference.

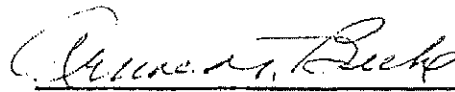
DATED this 30th day of December, 1982.


ARNOLD T. BEEBE
District Judge

Rule 54(b) Certificate

With respect to the issues determined by the above judgment it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final decree and that the court has and does hereby direct that the above partial decree shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DATED this 30th day of December, 1982.


ARNOLD T. BEEBE
District Judge

STATE OF IDAHO Iss NO. 175352
COUNTY OF LEMHI

This instrument was filed for record at the request of
Dept. of Water Resources
on 11:10 A.M. April 3, 1985
and duly filed and indexed in the file of
JUDGMENTS Records of Lemhi County,
Idaho.

Alberta Wiederrick

Ex-Officio Recorder

None

PARTIAL DECREE, Page 2

Return to: Josephine Beeman,
Deputy Attorney General
Dept. of Water Resources
Statehouse
Boise, Idaho 83720

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

Case No. 4948

IN THE MATTER OF THE GENERAL
DETERMINATION OF THE RIGHT TO
THE USE OF SURFACE WATERS AND
TRIBUTARIES FROM WHATEVER
SOURCE OF THE LEMHI RIVER
DRAINAGE BASIN

Plaintiff,

NOTICE

Defendant.

I hereby certify that, pursuant to Rule 77(d), I. R. C. P., Notice is hereby given to the following that Document noted as:

Order dated _____

Judgment dated December 30, 1982

was filed of record in the District Court of the Seventh Judicial District, Lemhi County, Idaho, this 4th day

January 1983, to: enter PARTIAL DECREE PURSUANT TO RULE 54(b)

Copies to:

13 George C. Peterson, Jr.
14 485 "E" Street
Idaho Falls, ID 83401
15 Kent W. Foster
16 P.O. Box 129
Idaho Falls, ID 83401
17 Honorable H. Reynold George
18 585 N. Capital Avenue
Idaho Falls, ID 83401
19 Honorable Milton A. Slavin
20 P.O. Box 1103
Salmon, ID 83467
21 James C. Herndon
22 P.O. Box 789
Salmon, ID 83467
23 Jack G. Voshell
24 598 N. Capital Avenue
Idaho Falls, ID 83401
25 Ray W. Rigby
26 P.O. Box 250
Rexburg, ID 83440
27 Sherman F. Furey, Jr.
28 P.O. Box 1127
Salmon, ID 83467
29
30
31
32

Guy G. Hurlbutt
U.S. Attorney
Warren Derbidge
Assistant U.S. Attorney
Box 037, FBUSCH
550 West Fort
Boise, ID 83724
John E. Lindsfold
Trial Attorney
U.S. Department of Justice
Land and Natural Resources Div.
1961 Stout Street, Drawer 3607
Denver, Colorado 80294
Dean A. Gardner, Esq.
Office of General Counsel
U.S. Dept. of Agriculture
Room 205, Forest Service Building
507 25th Street
Ogden, Utah 84401
Fred Snook
P.O. Box 1227
Salmon, ID 83467
Alberta Wiederrick, Clerk of District
Court
by Beverly S. Laughlin Deputy

MOTION FOR PARTIAL DECREE;

JUL 20 1986

STATE OF IDAHO
COUNTY OF LEMHI

I, ALBERTA WIEDERRICK, CLERK OF THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LEMHI, DO HEREBY CERTIFY THAT THE PROCEEDING IS A TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE.

IN WITNESS WHEREOF I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL THIS 12 DAY OF May 1981

ALBERTA WIEDERRICK, CLERK
By Alberta Wiederrick DEPUTY

Filed in District Court Lemhi County

Idaho, April 7 1982

at 2 minutes past 2 o'clock P. M.

Alberta Wiederrick, Clerk
By Doreen L. Langell Deputy

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

IN THE MATTER OF THE GENERAL
DETERMINATION OF THE RIGHT TO
THE USE OF SURFACE WATERS AND
TRIBUTARIES FROM WHATEVER
SOURCE OF THE LEMHI RIVER
DRAINAGE BASIN.

CIVIL NO. 4948

REPORT OF SPECIAL MASTER
REGARDING SPECIFIC
OBJECTIONS

By orders of the district court on the dates listed
below,

May 22, 1979
June 29, 1979
September 5, 1979
May 2, 1980
June 2, 1980
July 1, 1980
September 17, 1981

specific objections filed by the following individuals

Roger K. Ogden
Joseph & Grace Hoy
James & Eleanor Profitt
Troy Holscher
Champ & Kermit Tobias
Truman Chapman
Maxwell F. Beyeler
George & Nellie Shoup
Doyle & Loah Mulkey
Willard Moulton
Carlton & Mary Noyes
George Carl Udy
Lewis Birch
Victorio Ranch
Harry Coleman
Jim Ellsworth
Pine Creek Ranch
Ralston Adams
Ivan Jones
James & Jean Stoddard

Sims Ranch
Robert and Reba Thomas
Mrs. William J. Salyer
Ellsworth Land & Cattle, Inc.
Parley Arave & Robert Hemming
William & Wilma Bramlette
William & Minnie Clark
Dale & Mildred Jolley
Frank & Betty Kohl
Vergil & Mary Olson
Harvey E. Peterson
Paul Fisher
Christopher Rohlf
Estate of W. L. Blackadar
Franklin Jack Powers
Floyd & Dexter Nilsson
John & Coral Stephenson
Gordon & Mary Stephenson
Margaret Pyeatt

to the proposed finding of water rights in the Lemhi River adjudication were scheduled for pre-trial conferences and trial before the undersigned Magistrate, sitting as Special Master.

This report incorporates copies of all the stipulations and minute entries signed by the Special Master confirming the settlement, withdrawal, or dismissal of individual objections.

REPORT OF SPECIAL MASTER, Page 1

RECEIVED

EXHIBIT 2

Not included in this report are those stipulations or controversies which have already been the subject of a special master's report and hearing in district court. Specifically, the district court judgment of March 12, 1981 regarding claim no. 74-0249 (in the name of James F. Stoddard) and the district court judgment of February 19, 1982 regarding the water rights on Geertson Creek are not included in this report.

The following is a comprehensive chronological list of the stipulations and minute entries attached to this Report of the Special Master.

<u>Document</u>	<u>Date of filing with Court</u>
Minute entry (regarding dismissal of objection by Roger K. Ogden)	June 22, 1979
Stipulation resolving the specific objections of Champ Tobias and Kermit Tobias dba the Tobias Brothers	July 16, 1979
Stipulation resolving the specific objections of Max F. Beyeler	July 19, 1979
Stipulation resolving the specific objections of Willard Moulton	July 29, 1979
Stipulation resolving the specific objections of Carlton H. & Mary I. Noyes	August 23, 1979
Stipulation resolving specific objections of Mrs. William J. Salyer	September 5, 1979
Stipulation resolving specific objections of Robert L. and Reba Thomas	September 13, 1979
Stipulation resolving specific objections of Doyle L. Mulkey and Loah K. Mulkey	September 14, 1979
Stipulation resolving the specific objections of Ellsworth Land & Cattle, Inc.	September 17, 1979
Stipulation resolving the specific objections of William D. Clark and Minnie C. Clark	December 21, 1979
Stipulation resolving the specific objections of E. Dale Jolley and Mildred Jolley	March 11, 1980
Stipulation resolving the specific objections of George L. Shoup and Nellie B. Shoup	March 11, 1980

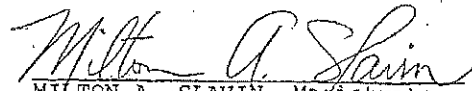
Stipulation resolving the specific objection of Lewis C. Birch	June 13, 1980
Stipulation resolving the specific objection of George Carl Udy	August 6, 1980
Stipulation resolving the specific objections of W. L. Blackadar, M.D., and Christopher A. Rohlf	August 18, 1980
Stipulation resolving the specific objections of James F. Stoddard	August 20, 1980
Stipulation resolving objections of Gene Phipps (successor-in-interest to James Ellsworth)	September 3, 1980
Stipulation resolving specific objections of Paul and Merlin J. Fisher	September 3, 1980
Stipulation resolving specific objections of James F. Stoddard to Claim 74-0250	September 15, 1980
Stipulation resolving specific objection number two of Ralston Adams, Ivan L. Jones, Margaret J. Pyeatt, and Pine Creek Ranch	September 15, 1980
Stipulation resolving additional objections of Stephen A. Mahaffey and Norma J. Mahaffey (affected property now owned by Carol B. Sells)	September 29, 1980
Stipulation resolving the specific objections of Sims Ranch	November 21, 1980
Stipulation resolving the specific objections of Franklin J. and Elizabeth Powers	January 5, 1981
Stipulation resolving the specific objections of Truman Chapman (affected lands now owned by Darwin Neibaur)	January 20, 1981
Stipulation resolving the specific objections of Parley A. Arave and Robert T. Hemming	February 9, 1981
Stipulation resolving the specific objections of Harvey E. Peterson	September 3, 1981
Stipulation resolving specific objections of William B. and/or Marian H. Swahlen	September 3, 1981
Stipulation resolving specific objections of Harry L. Coleman and/or Shirley R. Coleman	October 20, 1981
Stipulation resolving objections of James and/or Maybelle Ellsworth	October 20, 1981
Supplemental stipulation resolving the objections of James and/or Maybelle Ellsworth	October 20, 1981

Minute Entry (confirming withdrawal of objections by Floyd and Dexter Nilsson and withdrawal of supplemental objections which had been filed by Pine Creek Ranch on March 11, 1975)

November 4, 1981

The orders appointing the Special Master "empowered" but did not require the Special Master to make findings of fact and conclusions of law. Pursuant to Rule 53(e)(1), Idaho Rules of Civil Procedure, the Master's report must set forth findings of fact and conclusions of law if so required. Since the orders of appointment did not require findings of fact and conclusions of law, this report does not separately state findings and conclusions.

DATED this 18 day of March, 1982.


MILTON A. SLAVIN, Magistrate
sitting as Special Master

STATE OF IDAHO
COUNTY OF LEMHI

I, ALBERTA WIEDERRICK, CLERK OF THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LEMHI, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL THIS 12 DAY OF Sept 1982
ALBERTA WIEDERRICK, CLERK

Beverly A. Langley DEPUTY

RECORDED

SEP 14 1982

Department of Water Resources

Filed in District Court Lemhi County

Idaho, September 22, 1982

at 8 minutes past 2 o'clock P.M.

Alberta Wiederrick Clerk

Beverly A. Langley Deputy

File of Court Proceedings

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF LEMHI

IN THE MATTER OF THE GENERAL
DETERMINATION OF THE RIGHT TO
THE USE OF SURFACE WATERS AND
TRIBUTARIES FROM WHATEVER
SOURCE OF THE LEMHI RIVER
DRAINAGE BASIN.

CIVIL NO. 4948

O R D E R

The motion to adopt special master's report on specific objections, of the Idaho Department of Water Resources having duly come before this Court for hearing, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED AND THIS DOES ORDER that the SPECIAL MASTER'S REPORT ON SPECIFIC OBJECTIONS, filed with the Court April 7, 1982 is adopted as the Findings of Fact and Conclusions of Law of this Court with respect to the specific objections in the Lemhi Adjudication.

DATED this 16th day of Sept., 1982.

Boyd R. Thomas
BOYD R. THOMAS
Administrative Judge

RECORDED

SEP 20 1982

FEB 16 1982

Department of Water Resources

DAVID H. LEROY
Attorney General
State of Idaho
Statehouse, Room 210
Boise, Idaho 83720
Telephone: (208) 384-2400

DON A. OLOWINSKI
Deputy Attorney General
Chief, Natural Resources Division

JOSEPHINE P. BEEMAN
Deputy Attorney General
Department of Water Resources
Statehouse
Boise, Idaho 83720
Telephone: (208) 334-4448

Filed in District Court Lemhi County

Idaho, February 12, 1982

at 12:00 minutes past 1 o'clock P. M.

Idaho Department of Water Resources Clerk

By [Signature] Deputy

File of Court Proceedings

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

IN THE MATTER OF THE GENERAL
DETERMINATION OF THE RIGHT TO
THE USE OF SURFACE WATERS AND
TRIBUTARIES FROM WHATEVER
SOURCE OF THE LEMHI RIVER
DRAINAGE BASIN.

CIVIL NO. 4948

STIPULATION RESOLVING
GENERAL OBJECTIONS

The Idaho Department of Water Resources and the undersigned individuals, through their respective counsel, stipulate to specific changes in the proposed findings of fact and conclusions of law. These changes are incorporated into the attached Exhibits A and B. Exhibit A is the original proposed findings and conclusions with the stipulated language changes displayed by the underlining of new wording and the crossing out of wording to be deleted. Exhibit B is the amended findings and conclusions with the deleted language removed and with no underscoring of new language.

These stipulated amendments to the findings and conclusions represent the resolution of the undersigned individuals' objections to certain of the proposed findings of fact and conclusions of law. In particular, these individuals generally objected to: (1) the acre-foot limitation, (2) the April 1 to November 1 irrigation season, and (3) the limited recognition

STIPULATION RESOLVING GENERAL OBJECTIONS, Page 1

EXHIBIT 3

1 of high water or flood water rights.

2 The acre-foot limitation objection has been resolved by
3 the changes reflected in Finding of Fact #4 and Conclusion of Law
4 #7.

5 The general objection regarding the irrigation season
6 has been resolved by changing the season of use from April 1
7 through November 1 to March 15 through November 15. Provision
8 has also been made for diversion of water before and after those
9 dates. See Finding of Fact #5, Conclusion of Law #6, and Con-
10 clusion of Law #8 as revised on Exhibits A and B.

11 The objections as to use of high water or flood water
12 have been resolved by the changes in Finding of Fact #7, Conclu-
13 sion of Law #3, and Conclusion of Law #6.

14 The parties to this stipulation agree that the amend-
15 ments reflected in Exhibits A and B completely resolve the
16 general objections previously filed on their behalf in this adju-
17 dication.

18 DATED this 14th day of December, 1981.

19 STATE OF IDAHO
20 DEPARTMENT OF WATER RESOURCES

SNOOK AND SNOOK

21 Josephine P. Beeman
22 JOSEPHINE P. BEEMAN
23 Deputy Attorney General

By: Fred Snook
FRED SNOOK, of the firm,
Attorneys for
Galen J. & Norma F.
Kossler
Gladys Porter
Varnie & Clover Aikens
Chester K. & Lucille
Bowman
Sam P. McKinney
Don R. Sims
Fred H. Snook
John C. & Dorothy H. Snook
Quinton & Lois Snook
Clarence & Florence
Swanson

24 FUREY & FUREY

25 Sherman F. Furey, Jr.
26 SHERMAN F. FUREY, Jr., of the
27 firm, Attorneys for,
28 Darrel Bagley
29 Harvey E. Peterson
30 William B. & Marian H. Swahlen
31 Richard L. & Margarete E. Tyler
32

JUL 3 0 1986

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FEB 16 1982

Department of Water Resources

PETERSEN, MOSS & OLSEN

RIGBY, THATCHER & ANDRUS

By: [Signature]
GEORGE C. PETERSEN, JR., of
the firm, Attorneys for
Carlton H. & Mary Imogene
Noyes
Gene Phipps

By: [Signature]
RAY W. RIGBY, of the firm
Attorneys for
James E. and/or Maybelle
Ellsworth

VOSHELL & WRIGHT, Chtd.

[Signature]
JACK G. VOSHELL, of the firm,
Attorneys for
Doyle L. & Loah K. Mulkey

[Signature]
JAMES C. HERNDON
Attorney for
Lemhi Irrigation District
Franklin Jack & Elizabeth M.
Powers
Robert L. & Reba Thomas
Ronald & Kermit Tobias
Arthur L. Tonsmeire, III
Arthur C. Tonsmeire, Jr.
Joseph & Frances Tonsmeire

HOLDEN, KIDWELL, HAHN & CRAPO

[Signature]
KENT W. FOSTER, a member of
the firm, attorneys for
Robert H. & Opal C. Adams
John Alexander
Zella Armstrong
Dave R. & Joyce Anderson
Maxwell F. & Reva S. Beyeler
R. D. & Elaine Burch
Robert E. & Norma E. Carlson
Charles R. & Kester Cockrell
Harry L. & Shirley R. Coleman
Ellsworth Land & Cattle, Inc.
Billy V. & Sandra J. Fayle
William D. & Sharon B. Harris
Charles B. Isom
Zach A. & Esther J. Johnson
E. Dale & Mildred H. Jolley
Kenneth R. & Betty C. Kelly
Frank J. & Betty Kohl
LDS Church
Terry E. & Marjorie E. McRae
Willard Moulton
Lorin Murdock
Darrell J. & Verna M. Nef
Clyde S. & Ruby N. Nelson
Floyd A. & Dexter J. Nilsson
Donald O. & Billie Peterson
A. M. and Verne Santos
Joanne Tingle
David L. Udy
Calvin J. & Carol L. Wittaker

IT IS THEREFORE ORDERED this 14 day of February.

1982.

[Signature]
ARNOLD T. BEEBE, District Judge

STIPULATION RESOLVING GENERAL OBJECTIONS, Page 3

JUL 3 0 1986

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

IN THE MATTER OF THE GENERAL)
DETERMINATION OF THE RIGHTS)
TO THE USE OF THE SURFACE WATERS)
AND TRIBUTARIES FROM WHATEVER)
SOURCE OF THE LEMHI RIVER)
DRAINAGE BASIN.)

RECEIVED

FEB 16 1982

Department of Water Resources

CIVIL NO. 4948
PROPOSED FINDINGS OF
WATER RIGHTS

The above-entitled cause was initiated under provisions of Section 42-1406, Idaho Code, by the submission of a petition from eight (8) water users in the Lemhi River Basin, requesting that the Department of Water Administration (changed to Department of Water Resources in 1974) obtain authority from the Court to prepare a proposed finding of water rights in the Lemhi River Basin. The petitioners specifically requested that the study reflect the present practice and use of water within the ~~drainage~~ Lemhi River Basin.

Pursuant to Section 42-1407, Idaho Code, R. Keith Higginson, Director of the Department of Water ~~Administration~~ Resources petitioned the Court on April 30, 1970, for an order of authorization for the commencement of an adjudication of water rights in the Lemhi River Drainage.

An order was signed on August 13, 1970, by District Judge Arnold T. Beebe, authorizing the Department to commence an investigation and determination of the various rights to the use of the water of the Lemhi River and its surface tributaries including ground water which may be either tributary to the Lemhi River or its surface tribu-

JUL 30 1982

ties within the Lemhi River Drainage Basin, such waters lying or being used within Lemhi County.

An order of joinder signed on June 17, 1971, made approximately 457 land owners and possible water users ~~party~~ parties to the adjudication. An additional 351 water users were joined by an order signed November 1, 1971. Approximately 1,900 claims of water rights were submitted to the Department.

Based upon all existing court decrees adjudicating water rights within the Lemhi River Drainage Basin, the claims submitted, the files and records of the Department and the Court, the examination and studies of the Lemhi River Drainage Basin and the various ditches and other diversions of water therein and the lands irrigated or other uses of water, the Department of Water Administration Resources, in July 1974, filed a proposed finding of water rights with the Court. Objections to the proposed findings were resolved either by stipulation or hearing before the Court. The Court then adopted the following these findings of fact, conclusions of law and decree of water rights, in which the following definitions apply:

- a. "Director" means the Director of the Department of Water Administration Resources.
- b. "Department" means the Idaho Department of Water Administration Resources.
- c. "Ident. No." is the abbreviated form of "Identification Number". An identification number is assigned to each water right for purposes of identification. The first two (2) numerals of an identification number indicate the basin number as reflected in Department files, i.e., "74" indicates the Lemhi River Basin.
- d. "Name and address" are self-explanatory and indicate the owner of the right at the time the "Notice of Claim to a Water Right" was submitted to the Department.
- e. "Priority" indicates the priority date of the water right and is generally the date when the water was first applied to a beneficial use.

- f. "Purpose" is self-explanatory except for "Fish Return" as shown on numerous Idaho Department of Fish and Game rights. Fingerling fish are prevented from entering irrigation ditches by means of a screen across the irrigation ditch and a by-pass pipe for the fish to return through to the river. Hence, the term "Fish Return". This is a non-consumptive use.
- g. "Period of use" indicates the time period of time during each year when a particular right may be used each year.
- h. "Acre-foot" is a volume of water sufficient to cover one acre of land one foot deep with water and is equal to 43,560 cubic feet.
- i. "Maximum rate of diversion, c.f.s." indicates the rate of diversion from a water source in cubic feet per second. The term "miner's inch" formerly used in hydraulic mining and irrigation is also a measure of a rate of flow. The miner's inch in Idaho is defined as the quantity of water which will flow through an orifice one inch square under a four inch head. One cubic foot per second is equal to fifty miner's inches in Idaho, or 0.02 c.f.s. equals one miner's inch.
- j. "Place of use and lands irrigated" indicate the number of irrigated acres and legal description of the places of use within each 40-acre subdivision.
- k. Under the general heading "Basis of Right":
 - "Beneficial Use" indicates the right is based on upon a Constitutional right or so called "use right", initiated and maintained by actual diversion and application to beneficial use.
 - ~~"Permit" indicates the right has been initiated under the Statutes of the State of Idaho but has not yet been perfected by submission of proof of beneficial user with subsequent field examination by the Department. Rights based on permit must be completed according to statutory procedures.~~
 - "License" indicates the right has been initiated through application to the Department with appropriate statutory proof submitted in the past with subsequent examination and issuance of a license by the Department. ~~The license is evidence of the water right.~~
 - "Decree" indicates that the right has been adjudicated in a court of law prior to this general determination of water rights.

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- l. "Domestic purposes" is defined as water for household use or livestock and water used for all other purposes including irrigation of up to one-half (1/2) acre of land in connection with said household where total use is not in excess of 13,000 gallons per day. Idaho Code, 42-230 (d).
- m. "H.E.S." as used in this report describes a place of use of a water right and means Homestead Entry Survey. There is a number following the H.E.S. designation that refers to the particular homestead entry in question, i.e., H.E.S. No. 236.
- n. "High water" or "Flood water" as used in the Findings of Fact, and Conclusions of Law, and ~~Decree is intended to describe~~ a natural flow of "water over and above the amounts required to fulfill (1) existing quantified rights as shown in the ~~recommended~~ decree of water rights and (2) any future rights that may be established pursuant to statutory procedures of the State of Idaho."

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FINDINGS OF FACT

1. The Lemhi River Drainage lies entirely within Lemhi County, State of Idaho, with its mouth at its confluence with the Salmon River near Salmon, Idaho, and with its source comprised of tributaries rising in the surrounding mountains and hills. There are periods during each year when the amount of water flowing in the Lemhi River and its tributaries is insufficient to meet and satisfy the various demands by claimants of appropriative rights. These periods of scarcity normally occur prior to the spring runoff and during the latter part of the summer.
2. There exist numerous separate decrees on the tributaries of the Lemhi River adjudicating the various priorities to the use of the water on those tributaries. Diversion and beneficial use of water on these decreed tributary streams has in the past been without regard for uses or rights claimed on the Lemhi River proper, and users on the Lemhi River proper have made no demand on these tributary streams for water to fill prior rights on the main stem.
3. Beneficial use rights from surface water sources are those rights which were commenced by diversion and application of the water for a beneficial use prior to May 20, 1971. Beneficial use rights from underground water sources are those which were commenced by diversion and application of the water to a beneficial use prior to March 25, 1963. All other rights to the use of water must have been initiated by an application filed with the Department of Water Administration Resources. The only exception to this is for domestic wells where total use does not exceed 13,000 gallons per day pursuant to Section 42-227, Idaho Code.
4. The consumptive use of water for irrigation water requirement at the field headgate purposes is was found to be 3.0 1.45 acre feet per acre per calendar year regardless of the source or sources of supply. ~~The loss in acre feet from the point of diversion at the source to the field headgate varies dependent on length, slope and capacity of ditch together with the type of soil through which it passes. Growing season based upon the following facts: Consumptive use or evapotranspiration of water from the land and crops is a total of 1.8 AF/acre per growing season of which precipitation normally furnishes 0.35 acre feet per acre, giving a net consumptive irrigation requirement of 1.45 AF/acre to be applied from some water source. The balance of 1.55 AF/acre (3.0 acre feet per acre minus 1.45 acre feet per acre) reflects application losses that under present physical and economical conditions may be liberal, but are not unreasonable for the present methods of water application in the Lemhi River Basin.~~

A change in the nature of use of the water right from irrigation to a more consumptive use or a change in location of use that causes waters diverted but not consumed to be returned to the Lemhi River or tributaries.

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- tries at a different location can reduce water available to other right holders.
5. The normal irrigation season is found to be from April 1 to March 15 to November 15 of each year. However, there appear to be periods before April 1 March 15 and later than November 1 15 in some years in which water diverted for agricultural purposes has been applied to a beneficial use.
6. The use of water under previously decreed rights in the Lemhi River Basin was found, in many cases, to be different from the use as described in the original decrees. Changes in places of use, changes in point of diversion, apparent errors in the original decrees, abandonment or forfeiture of use, and the updating and improvement of irrigation systems through the years were are some of the reasons for recommendations of decreed rights based on decrees different differing from the original decrees.
7. The Lemhi River Basin presently has almost non-existent storage facilities in which to preserve water for use later in the irrigation season when the flow in surface water sources diminishes. Diversions of high waters or flood waters for irrigation purposes within the basin have been practiced in an effort to hold or store water underground within the basin, which later contributes to the flow of the streams and river, and has the effect of augmenting or supplementing this flow during the latter portion of the irrigation season. While the amount of such high water available varies from year to year, an effort has been made to divert all of such water, whenever and in whatever amounts it is available, and to apply it on the irrigated lands. The practice has been to distribute and use this water in an informal manner. There is some potential for development of water storage projects within the basin; however, general interest in such development will probably only occur as the economic feasibility thereof increases.
- ~~Water users in the basin have diverted flood flows occurring in May and June onto their lands in an effort to "hold or reserve" the water in the soil of the basin.~~
8. The amount of water required for stockwatering purposes is found to be 12 gallons of water per day per head for cows, calves, and horses, and 2 gallons per day per head for sheep. For domestic or household use, the requirement is 1,000 gallons of water per day per household.
9. The United States has submitted claims of water right based on the "Reserved Rights" principle which are enumerated in Exhibit "I" and has also claimed unspecified minimum stream flows in various creeks, streams and water sources enumerated in Exhibit "J" of the United States of America Notice of Claim to a Water Right submission together with various other exhibits. The water rights of the United States are subject to adjudication in this proceeding under the provisions of 43 USC 666.

10. The State of Idaho, Department of Fish and Game has claimed minimum stream flows at the mouth of the Lemhi River, at the mouth of Hayden Creek and on the Lemhi River below the mouth of Big Springs Creek on three claims to a water right identified as 74-1768, 74-1769 and 74-1770, which claims are not based upon a diversion and application of the water to a beneficial use.
11. ~~This proposed finding of water rights includes rights initiated by application and permit from the Department of Water Administration. These permit rights are subject to the requirement that proof of beneficial use of the water must be submitted to the Department and the right will be limited to and confined by such license as may subsequently be issued by the Department. This decree of water rights includes rights in the name of the U.S. Department of Interior initiated by application, permit and license pursuant to Idaho Code 42-501, et seq. The basis for these rights in this decree is listed as "D permits"; however, each of these "D permits" is a licensed right under Idaho Code 42-501.~~
12. Regulation of the diversion and use of water from the Lemhi River and its tributaries requires that each user who diverts water must install and maintain a suitable headgate and measuring device for the use of the watermaster.
13. Among the various water rights in the numerous licenses issued by the Department of Water Administration Resources and the court decrees which adjudicated water rights within the Lemhi River Drainage are several which describe rights which were unclaimed by the present land owner. For the most part, these include uses which no longer exist because of forfeiture or abandonment of the right. These unclaimed "rights" are listed in the recommended decree.
14. Water has been diverted and applied to a beneficial use as described in the recommended following decree of water rights. In addition, the water users in the Lemhi River Basin have historically diverted the so called "high water or flood water" generally during the months of May and June.

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CONCLUSIONS OF LAW

1. The United States holds rights to the use of water on reserved forest lands within the Lemhi River Drainage Basin with priorities based upon the dates when the various forest reserves were established, to the extent such water has been diverted and applied to a beneficial use prior to the date of this action or to the extent that future potential uses have been reasonably identified in its claims. The United States holds no rights either expressly or impliedly to the maintenance of continuous, uninterrupted flows of water and minimum stream levels for the various creeks, streams, and water sources enumerated on Exhibit "J", of the United States of America Notice of Claim to a Water Right nor any rights to the present or future use of water of Lemhi River or its tributaries not specifically claimed and identified as to quantity and place of use except as set forth in these findings of fact, conclusions of law and decree of water rights.

2. The State of Idaho, Department of Fish and Game claims of water rights to maintain minimum stream flows at the mouth of the Lemhi River, at the mouth of Hayden creek, and on the Lemhi River below the mouth of Big Springs Creek identified as Claim Nos. 74-1768, 74-1769 and 74-1770, are not based upon a diversion and application of the water to a beneficial use and are therefore invalid.

3. An adjudication of water rights should recognize the past history of use of water in the area. Since there exist numerous and separate decrees on tributaries to the Lemhi River and on other sources of water in the Lemhi River Basin, and since the water users on these stream systems have distributed their water under direction of watermaster independently and without regard for prior claimed uses on the Lemhi River proper, the water users on those tributaries or water sources have adversely any prior right to demand water from the tributary streams to fill rights claimed on the Lemhi River proper. For the purposes of water distribution in the Lemhi River Basin following adoption of these proposed findings by the court water rights on the following water sources, to the extent recommended hereby are not considered ~~to be~~ junior to the water rights from Lemhi River:

1. Agency Creek and tributaries
2. Alder Creek and tributaries
3. Basin Creek (incl. McNult & Schwartz) and tributaries
4. Bohannon Creek and tributaries
5. Bull Creek and tributaries
6. Canyon Creek (Junction Creek) and tributaries
7. Eightmile Creek (Big) and tributaries
8. Eightmile Creek (Little) and tributaries

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9. Geartson Creek and tributaries
10. Hawley Creek and tributaries
11. Haynes Creek and tributaries
12. Jake Canyon Creek and tributaries
13. Kirtley Creek and tributaries
14. Lee Creek and tributaries
15. Mill Creek and tributaries
16. Pattee Creek and tributaries
17. Peterson Creek and tributaries
18. Pratt Creek and tributaries
19. Sandy Creek and tributaries
20. Sawmill Creek (Little) and tributaries
21. Texas Creek and tributaries
22. Timber Creek (Big & Little) and tributaries
23. Walter Creek and tributaries
24. Warm Springs Creek (near Pratt Creek) and tributaries
25. Wimpey Creek and tributaries
26. Withington Creek and tributaries
27. Yearian Creek and tributaries
28. Zeph & Swartz Creeks and tributaries

Future appropriations of water on the above streams are not considered to be subject to prior downstream rights on the Lemhi River proper. ~~or stream in the Lemhi River Basin, however,~~ Future appropriations of water on any other water source are considered to be tributary to the Lemhi River proper for the purposes of distribution.

Water sources or creeks not included in the listing above are tributary to the Lemhi River for the purposes of distribution if in fact water from the water source or creek would reach the Lemhi River.

4. Water users whose rights are described in this ~~recommended~~ decree are required to install and maintain headgates and measuring devices at their points of diversion for use by a watermaster.

5. This recommended decree includes all of the existing rights to the waters of the Lemhi River and its tributaries and upon its adoption supercedes all prior judgments of the Court. Any water user who heretofore diverted water from the Lemhi River or its tributaries ~~of~~ or who owns lands to which previously established rights were appurtenant and who, upon being joined in this action, failed to claim such water

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rights have been forfeited such rights as provided in Section 42-1411, Idaho Code, subject to the provisions of 42-1405, Idaho Code.

6. The normal irrigation season in the Lemhi Basin is from April 1 to March 15 of each year. The practice of diverting water during the pre-irrigation and post irrigation season as well as diverting the so called "high waters or flood waters" in addition to the quantified rights as described in the recommended decree of water rights (and future rights that may be established pursuant to statutory procedures) is allowed provided:

(a) the waters so diverted are applied to a beneficial use.

(b) the existing quantified rights (including future appropriations of water) are first satisfied. (Note that Conclusion of Law #3 provides an exception to this condition of "high water" or "flood water" diversion.)

7. ~~The duty of water for irrigation purposes in the Lemhi River Basin is 3.0 AF/acre at the field headgate. In addition every water user is entitled to a reasonable loss in acre feet between the point of diversion at the source and the field headgate. However regulation of diversion by the watermaster should be on the basis of the rates of diversion herein specified rather than by the acre foot allotment.~~

Distribution by the watermaster of water from the public water supply for irrigation purposes shall be on the basis of the rates of diversion herein specified and shall not be limited in any manner by any provisions herein regarding consumptive use.

The consumptive use of water for irrigation purposes in the Lemhi Basin has been determined to be 1.45 acre feet per acre. The Director of the Department of Water Resources will be guided by this determination in authorizing changes requested pursuant to 42-222, Idaho Code.

8. The watermaster(s) is authorized to allow diversion of water for agricultural uses before April 1 March 15 and after November 1 15 provided the conditions in paragraph six (6) in these Conclusions of Law are satisfied.

9. Water has been diverted and applied to a beneficial use as described in the following recommended decree of water rights.

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DECREE OF WATER RIGHTS

The following tabulation of ~~recommended~~ rights ~~are~~ is grouped by drainage in alphabetical order. For example, Agency Creek and tributary rights are in the first part of the report and are shown in chronological order. Next are Alder Creek and tributary rights and so on:

The tabulation of rights with spring sources and groundwater sources has been compiled in an alphabetical order according to the last name of the water right owner.

The tabulation of rights on the Lemhi River itself has been compiled by diversion, beginning at the downstream end of the river. For example, the diversion furthest downstream on the Lemhi River has been identified as Lemhi River diversion 1 or Div. L-1. The rights of users in this ditch have been tabulated in order of priority with the oldest right showing first. The next upstream diversion on the Lemhi River is designated Lemhi River diversion 2 or Div. L-2. The rights are tabulated in a like manner as for L-1. The rights tabulated under a particular Lemhi River diversion have a common point of diversion from the Lemhi River. Pump diversions from the Lemhi River have been tabulated in a separate section of the report.

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

FEB 16 1982

Department of Water Resources

IN THE MATTER OF THE GENERAL)
DETERMINATION OF THE RIGHTS)
TO THE USE OF THE SURFACE WATERS)
AND TRIBUTARIES FROM WHATEVER)
SOURCE OF THE LEMHI RIVER)
DRAINAGE BASIN.)

CIVIL NO. 4948
PROPOSED FINDINGS OF
WATER RIGHTS

The above-entitled cause was initiated under provisions of Section 42-1406, Idaho Code, by the submission of a petition from eight (8) water users in the Lemhi River Basin, requesting that the Department of Water Administration (changed to Department of Water Resources in 1974) obtain authority from the Court to prepare a proposed finding of water rights in the Lemhi River Basin. The petitioners specifically requested that the study reflect the present practice and use of water within the Lemhi River Basin.

Pursuant to Section 42-1407, Idaho Code, R. Keith Higginson, Director of the Department of Water Resources petitioned the Court on April 30, 1970, for an order of authorization for the commencement of an adjudication of water rights in the Lemhi River Drainage.

An order was signed on August 13, 1970, by District Judge Arnold T. Beebe, authorizing the Department to commence an investigation and determination of the various rights to the use of the water of the Lemhi River and its surface tributaries including ground water which may be either tributary to the Lemhi River or its surface tribu-

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taries within the Lemhi River Drainage Basin, such waters lying or being used within Lemhi County.

An order of joinder signed on June 17, 1971, made approximately 457 land owners and possible water users parties to the adjudication. An additional 351 water users were joined by an order signed November 1, 1971. Approximately 1,900 claims of water rights were submitted to the Department.

Based upon all existing court decrees adjudicating water rights within the Lemhi River Drainage Basin, the claims submitted, the files and records of the Department and the Court, the examination and studies of the Lemhi River Drainage Basin and the various ditches and other diversions of water therein and the lands irrigated or other uses of water, the Department of Water Resources, in July 1974, filed a proposed finding of water rights with the Court. Objections to the proposed findings were resolved either by stipulation or hearing before the Court. The Court then adopted the following findings of fact, conclusions of law and decree of water rights, in which the following definitions apply:

- a. "Director" means the Director of the Department of Water Resources.
- b. "Department" means the Idaho Department of Water Resources.
- c. "Ident. No." is the abbreviated form of "Identification Number". An identification number is assigned to each water right for purposes of identification. The first two (2) numerals of an identification number indicate the basin number as reflected in Department files, i.e., "74" indicates the Lemhi River Basin.
- d. "Name and address" are self-explanatory and indicate the owner of the right at the time the "Notice of Claim to a Water Right" was submitted to the Department.
- e. "Priority" indicates the priority date of the water right and is generally the date when the water was first applied to a beneficial use.
- f. "Purpose" is self-explanatory except for "Fish Return" as shown on numerous Idaho Department of Fish and Game rights. Fingerling fish are prevented from entering irrigation ditches by means of

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- a screen across the irrigation ditch and a by-pass pipe for the fish to return through to the river. Hence, the term "Fish Return". This is a non-consumptive use.
- g. "Period of use" indicates the period of time during each year when a particular right may be used each year.
- h. "Acre-foot" is a volume of water sufficient to cover one acre of land one foot deep with water and is equal to 43,560 cubic feet.
- i. "Maximum rate of diversion, c.f.s." indicates the rate of diversion from a water source in cubic feet per second. The term "miner's inch" formerly used in hydraulic mining and irrigation is also a measure of a rate of flow. The miner's inch in Idaho is defined as the quantity of water which will flow through an orifice one inch square under a four inch head. One cubic foot per second is equal to fifty miner's inches in Idaho, or 0.02 c.f.s. equals one miner's inch.
- j. "Place of use and lands irrigated" indicate the number of irrigated acres and legal description of the places of use within each 40-acre subdivision.
- k. Under the general heading "Basis of Right":
- "Beneficial Use" indicates the right was based upon a Constitutional right or so called "use right", initiated and maintained by actual diversion and application to beneficial use.
- "License" indicates the right has been initiated through application to the Department with appropriate statutory proof submitted in the past with subsequent examination and issuance of a license by the Department.
- "Decree" indicates that the right has been adjudicated in a court of law prior to this general determination of water rights.
- l. "Domestic purposes" is defined as water for household use or livestock and water used for all other purposes including irrigation of up to one-half (1/2) acre of land in connection with said household where total use is not in excess of 13,000 gallons per day. Idaho Code, 42-230 (d).
- m. "H.E.S." as used in this report describes a place of use of a water right and means Homestead Entry Survey. There is a number following the H.E.S. designation that refers to the particular homestead entry in question, i.e., H.E.S. No. 236.

n. "High water" or "Flood water" as used in the Findings of Fact, Conclusions of Law, and Decree describes a natural flow of "water over and above the amounts required to fulfill (1) existing quantified rights as shown in the decree of water rights and (2) any future rights that may be established pursuant to statutory procedures of the State of Idaho."

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FINDINGS OF FACT

1. The Lemhi River Drainage lies entirely within Lemhi County, State of Idaho, with its mouth at its confluence with the Salmon River near Salmon, Idaho, and with its source comprised of tributaries rising in the surrounding mountains and hills. There are periods during each year when the amount of water flowing in the Lemhi River and its tributaries is insufficient to meet and satisfy the various demands by claimants of appropriate rights. These periods of scarcity normally occur prior to the spring runoff and during the latter part of the summer.
2. There exist numerous separate decrees on the tributaries of the Lemhi River adjudicating the various priorities to the use of the water on those tributaries. Diversion and beneficial use of water on these decreed tributary streams has in the past been without regard for uses or rights claimed on the Lemhi River proper, and users on the Lemhi River proper have made no demand on these tributary streams for water to fill prior rights on the main stem.
3. Beneficial use rights from surface water sources are those rights which were commenced by diversion and application of the water for a beneficial use prior to May 20, 1971. Beneficial use rights from underground water sources are those which were commenced by diversion and application of the water to a beneficial use prior to March 25, 1963. All other rights to the use of water must have been initiated by an application filed with the Department of Water Resources. The only exception to this is for domestic wells where total use does not exceed 13,000 gallons per day pursuant to Section 42-227, Idaho Code.
4. The consumptive use of water for irrigation purposes was found to be 1.45 acre feet per acre per growing season based upon the following facts: Consumptive use or evapotranspiration of water from the land and crops is a total of 1.8 AF/acre per growing season of which precipitation normally furnishes 0.35 acre feet per acre, giving a net consumptive irrigation requirement of 1.45 AF/acre to be applied from some water source.

A change in the nature of use of the water right from irrigation to a more consumptive use or a change in location of use that causes waters diverted but not consumed to be returned to the Lemhi River or tributaries at a different location can reduce water available to other right holders.
5. The normal irrigation season is found to be from March 15 to November 15 of each year. However, there appear to be periods before March 15 and later than November 15 in some years in which water diverted for agricultural purposes has been applied to a beneficial use.
6. The use of water under previously decreed rights in the Lemhi River Basin was found, in many cases, to be different from the use as described in the original decrees. Changes in places of use, changes in point

of diversion, apparent errors in the original decrees, abandonment or forfeiture of use, and the updating and improvement of irrigation systems through the years are some of the reasons for rights based on decrees differing from the original decrees.

7. The Lemhi River Basin presently has almost non-existent storage facilities in which to preserve water for use later in the irrigation season when the flow in surface water sources diminishes. Diversions of high waters or flood waters for irrigation purposes within the basin have been practiced in an effort to hold or store water underground within the basin, which later contributes to the flow of the streams and river, and has the effect of augmenting or supplementing this flow during the latter portion of the irrigation season. While the amount of such high water available varies from year to year, an effort has been made to divert all of such water, whenever and in whatever amounts it is available, and to apply it on the irrigated lands. The practice has been to distribute and use this water in an informal manner. There is some potential for development of water storage projects within the basin; however, general interest in such development will probably only occur as the economic feasibility thereof increases.
8. The amount of water required for stockwatering purposes is found to be 12 gallons of water per day per head for cows, calves, and horses, and 2 gallons per day per head for sheep. For domestic or household use, the requirement is 1,000 gallons of water per day per household.
9. The United States has submitted claims of water right based on the "Reserved Rights" principle which are enumerated in Exhibit "I" and has also claimed unspecified minimum stream flows in various creeks, streams and water sources enumerated in Exhibit "J" of the United States of America Notice of Claim to a Water Right submission together with various other exhibits. The water rights of the United States are subject to adjudication in this proceeding under the provisions of 43 USC 666.
10. The State of Idaho, Department of Fish and Game has claimed minimum stream flows at the mouth of the Lemhi River, at the mouth of Hayden Creek and on the Lemhi River below the mouth of Big Springs Creek on three claims to a water right identified as 74-1768, 74-1769 and 74-1770, which claims are not based upon a diversion and application of the water to a beneficial use.
11. This decree of water rights includes rights in the name of the U.S. Department of Interior initiated by application, permit and license pursuant to Idaho Code 42-501, et seq. The basis for these rights in this decree is listed as "D Permits"; however, each of these "D Permits" is a licensed right under Idaho Code 42-501.
12. Regulation of the diversion and use of water from the Lemhi River and its tributaries requires that each user who diverts water must install and maintain a suitable headgate and measuring device for the use of the watermaster.

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13. Among the various water rights in the numerous licenses issued by the Department of Water Resources and the court decrees which adjudicated water rights within the Lemhi River Drainage are several which describe rights which were unclaimed by the present land owner. For the most part, these include uses which no longer exist because of forfeiture or abandonment of the right. These unclaimed "rights" are listed in the decree.
14. Water has been diverted and applied to a beneficial use as described in the following decree of water rights. In addition, the water users in the Lemhi River Basin have historically diverted the so called "high water or flood water" generally during the months of May and June.

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CONCLUSIONS OF LAW

1. The United States holds rights to the use of water on reserved forest lands within the Lemhi River Drainage Basin with priorities based upon the dates when the various forest reserves were established, to the extent such water has been diverted and applied to a beneficial use prior to the date of this action or to the extent that future potential uses have been reasonably identified in its claims. The United States holds no rights either expressly or impliedly to the maintenance of continuous, uninterrupted flows of water and minimum stream levels for the various creeks, streams, and water sources enumerated on Exhibit "J", of the United States of America Notice of Claim to a Water Right nor any rights to the present or future use of water of Lemhi River or its tributaries not specifically claimed and identified as to quantity and place of use except as set forth in these findings of fact, conclusions of law and decree of water rights.
2. The State of Idaho, Department of Fish and Game claims of water rights to maintain minimum stream flows at the mouth of the Lemhi River, at the mouth of Hayden creek, and on the Lemhi River below the mouth of Big Springs Creek identified as Claim Nos. 74-1768, 74-1769 and 74-1770, are not based upon a diversion and application of the water to a beneficial use and are therefore invalid.
3. An adjudication of water rights should recognize the past history of use of water in the area. Since there exist numerous and separate decrees on tributaries to the Lemhi River and on other sources of water in the Lemhi River Basin, and since the water users on these stream systems have distributed their waters under direction of watermaster independently and without regard for prior claimed uses on the Lemhi River proper, the water users on those tributaries or water sources have adversely any prior right to demand water from the tributary streams to fill rights claimed on the Lemhi River proper. For the purposes of water distribution in the Lemhi River Basin water rights on the following water sources, are not considered junior to the water rights from Lemhi River:
 1. Agency Creek and tributaries
 2. Alder Creek and tributaries
 3. Basin Creek (incl. McNutt & Schwartz) and tributaries
 4. Bohannon Creek and tributaries
 5. Bull Creek and tributaries
 6. Canyon Creek (Junction Creek) and tributaries
 7. Eightmile Creek (Big) and tributaries
 8. Eightmile Creek (Little) and tributaries
 9. Geertson Creek and tributaries
 10. Hawley Creek and tributaries
 11. Haynes Creek and tributaries

12. Jake Canyon Creek and tributaries
13. Kirtley Creek and tributaries
14. Lee Creek and tributaries
15. Mill Creek and tributaries
16. Pattee Creek and tributaries
17. Peterson Creek and tributaries
18. Pratt Creek and tributaries
19. Sandy Creek and tributaries
20. Sawmill Creek (Little) and tributaries
21. Texas Creek and tributaries
22. Timber Creek (Big & Little) and tributaries
23. Walter Creek and tributaries
24. Warm Springs Creek (near Pratt Creek) and tributaries
25. Wimpey Creek and tributaries
26. Withington Creek and tributaries
27. Yearian Creek and tributaries
28. Zeph & Swartz Creeks and tributaries

Future appropriations of water on the above streams are not considered to be subject to prior downstream rights on the Lemhi River proper. Future appropriations of water on any other water source or stream in the Lemhi River Basin, however, are considered to be tributary to the Lemhi River proper for the purposes of distribution.

Water sources or creeks not included in the listing above are tributary to the Lemhi River for the purposes of distribution if in fact water from the water source or creek would reach the Lemhi River.

4. Water users whose rights are described in this decree are required to install and maintain headgates and measuring devices at their points of diversion for use by a watermaster.

5. This recommended decree includes all of the existing rights to the waters of the Lemhi River and its tributaries and upon its adoption supercedes all prior judgments of the Court. Any water user who heretofore diverted water from the Lemhi River or its tributaries or who owns lands to which previously established rights were appurtenant and who, upon being joined in this action, failed to claim such water rights has forfeited such rights as provided in Section 42-1411, Idaho Code, subject to the provisions of 42-1405, Idaho Code.

6. The normal irrigation season in the Lemhi Basin is from March 15 to November 15 of each year. The practice of diverting water during the pre-irrigation and post irrigation season as well as diverting the so

called "high waters or flood waters" in addition to the quantified rights as described in the recommended decree of water rights (and future rights that may be established pursuant to statutory procedures) is allowed provided:

(a) the waters so diverted are applied to a beneficial use.

(b) the existing quantified rights (including future appropriations of water) are first satisfied. (Note that Conclusion of Law #3 provides an exception to this condition of "high water" or "flood water" diversion.)

7. Distribution by the watermaster of water from the public water supply for irrigation purposes shall be on the basis of the rates of diversion herein specified and shall not be limited in any manner by any provisions herein regarding consumptive use.

The consumptive use of water for irrigation purposes in the Lemhi Basin has been determined to be 1.45 acre feet per acre. The Director of the Department of Water Resources will be guided by this determination in authorizing changes requested pursuant to 42-222, Idaho Code.

8. The watermaster(s) is authorized to allow diversion of water for agricultural uses before March 15 and after November 15 provided the conditions in paragraph six (6) in these Conclusions of Law are satisfied.

9. Water has been diverted and applied to a beneficial use as described in the following recommended decree of water rights.

DECREE OF WATER RIGHTS

The following tabulation of rights is grouped by drainage in alphabetical order. For example, Agency Creek and tributary rights are in the first part of the report and are shown in chronological order. Next are Alder Creek and tributary rights and so on:

The tabulation of rights with spring sources and groundwater sources has been compiled in an alphabetical order according to the last name of the water right owner.

The tabulation of rights on the Lemhi River itself has been compiled by diversion, beginning at the downstream end of the river. For example, the diversion furthest downstream on the Lemhi River has been identified as Lemhi River diversion 1 or Div. L-1. The rights of users in this ditch have been tabulated in order of priority with the oldest right showing first. The next upstream diversion on the Lemhi River is designated Lemhi River diversion 2 or Div. L-2. The rights are tabulated in a like manner as for L-1. The rights tabulated under a particular Lemhi River diversion have a common point of diversion from the Lemhi River. Pump diversions from a Lemhi River have been tabulated in a separate section of the report.

JUL 3 0 1996

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Department of Water Resources

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

IN THE MATTER OF THE GENERAL	)	
DETERMINATION OF THE RIGHT TO	)	CIVIL NO. 4948
THE USE OF SURFACE WATERS AND	)	
TRIBUTARIES FROM WHATEVER	)	ORDER CORRECTING CLERICAL
SOURCE OF THE LEMHI RIVER	)	OVERSIGHTS IN PROPOSED
DRAINAGE BASIN.	)	FINDING OF WATER RIGHTS

The motion of the Department of Water Resources for an order correcting certain clerical oversights in the proposed finding of water rights having come before the Court for hearing, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED that the proposed finding of water rights be amended in conformance with Exhibit A which is attached hereto and incorporated herein by reference.

DATED this 16th day of November, 1982.

Arnold T. Beebe
ARNOLD T. BEEBE
District Judge

Filed in District Court Lemhi County

Idaho, November 16 1982

at 15 minutes past 1 o'clock P. M.

Chester Weigand Clerk

By Beverly D. Long Deputy

EXHIBIT 4

SOURCE: Agency Creek & Tributaries

IDENT. NO.	NAME AND ADDRESS	PRIORITY	PURPOSE	PERIOD OF USE		MAXIMUM RATE OF DIVERSION (cfs)	POINT OF DIVERSION	PLACE OF USE and LANDS IRRIGATED		BASIS OF RIGHT and REMARKS
				From	To					
74-0243A	JONES, Ivan L. and/or Doris Box 28 Tendoy, Idaho	5-26-1873	Irrigation	4/1	11/1	0.90	SW1/4NW1/4, S.27 T19N, R24E	Sec. 29 SE1/4NE1/4, NE1/4SE1/4, NW1/4SE1/4, T19N, R24E	33.0 37.5 1.5	Decree
74-0243B	ADAMS, Ralston W. and/or Rachel Box 52 Tendoy, Idaho	5-26-1873	Irrigation	4/1	11/1	0.90	Sec. 28 NW1/4NE1/4, SE1/4NE1/4, T19N, R24E	Sec. 21 Lot 7, SE1/4SW1/4, Sec. 28 NE1/4NW1/4, Lot 7 Lot 1 T19N, R24E	18.7 2.3 28.6 26.3 75.9	Decree
74-0247	STODDARD, James F. and/or Jean L. Route 1 Salmon, Idaho	5-26-1873	Irrigation	4/1	11/1	1.20	NW1/4NE1/4, S.28 T19N, R24E	Sec. 20 NE1/4NE1/4, SE1/4NE1/4, NE1/4SE1/4, NW1/4SE1/4, T19N, R24E	6.2 25.4 32.6 0.3 64.5	Decree
74-1570	HERPST, William H. and/or Lois C. Box 51 Tendoy, Idaho	4-01-1895	Irrigation	4/1	11/1	0.10	NW1/4SW1/4, S.25 T19N, R24E	Sec. 25 SW1/4NW1/4, NW1/4SW1/4, T19N, R24E	3.0 1.6 4.6	Beneficial Use (Cow Creek)
74-1571	HERPST, William H. and/or Lois C. Box 51 Tendoy, Idaho	4-01-1895	Irrigation	4/1	11/1	0.34	Sec. 25 SE1/4NW1/4, SW1/4NW1/4, Sec. 26 SE1/4NE1/4, T19N, R24E	Sec. 25 SE1/4NW1/4, SW1/4NW1/4, Sec. 26 SW1/4NE1/4, SE1/4NE1/4, T19N, R24E	3.3 5.8 4.2 3.3 16.6	Beneficial Use

PROPOSED FINDING OF WATER RIGHTS - LEWIS RIVER DRAINAGE

SOURCE: Agency Creek & Tributaries

IDENT. NO.	NAME AND ADDRESS	PRIORITY	PURPOSE	PERIOD OF USE From To	MAXIMUM RATE OF DIVERSION (cfs)	POINT OF DIVERSION	PLACE OF USE and LANDS IRRIGATED	BASIS OF RIGHT and REMARKS
74-0236	ADAMS, Ralston W. and/or Rachel Box 52 Tendoy, Idaho	4-16-1909	Irrigation	4/1 11/1	2.4	Sec. 28 NW 1/4 NE 1/4 SE 1/4 NE 1/4 T 19N, R24E	Sec. 20 SW 1/4 SE 1/4, SE 1/4 SE 1/4, Sec. 21 SE 1/4 SW 1/4, Lot 7 Sec. 28 NE 1/4 NW 1/4, Lot 1, T19N, R24E	Decree 2.1 12.7 2.3 18.7 28.6 26.3 90.7
74-0246A	ADAMS, Ralston W. and/or Rachel Box 52 Tendoy, Idaho	10-01-1909	Irrigation	4/1 11/1	0.2	Sec. 28 NW 1/4 NE 1/4 SE 1/4 NE 1/4 T 19N, R24E	Sec. 21 Lot 7, SE 1/4 SW 1/4, Sec. 28 NE 1/4 NW 1/4, Lot 1, T19N, R24E	Decree 18.7 2.3 26.3 28.6 26.3 75.9
74-0250	HERBST, John F. and/or Emma P.O. Box 21 Tendoy, Idaho	10-01-1909	Irrigation	4/1 11/1	0.3	SW 1/4 SW 1/4, S. 20 T19N, R24E	Sec. 20 NE 1/4 SW 1/4, SE 1/4 SW 1/4, T19N, R24E	Decree 10.0 5.5 15.5
74-0246B	JONES, Ivan L. and/or Doris Box 28 Tendoy, Idaho	10-01-1909	Irrigation	4/1 11/1	0.2	SW 1/4 NW 1/4, S. 27 T19N, R24E	Sec. 29 SE 1/4 NE 1/4, NE 1/4 SE 1/4, NW 1/4 SE 1/4, T19N, R24E	Decree 33.0 37.5 1.5 72.0

Seven (7) miners inches of this right shall be in preference to the right of any other party on Agency Creek with the same date of priority as this right. . . .

366102 100

IDENT. NO.	NAME AND ADDRESS	PRIORITY	PURPOSE	PERIOD OF USE From To	MAXIMUM RATE OF DIVERSION (cfs)	POINT OF DIVERSION	PLACE OF USE and LANDS IRRIGATED	BASIS OF RIGHT and REMARKS
74-2285	Skelton Ranch Co., Inc. Box 1138 Idaho Falls, Idaho	12-14-1937	Irrigation	4/1 11/1	2.1	SW1/4NW1/4, S.26 T14N, R28E	Sec. 26 SW1/4NW1/4, 2.0 NW1/4SW1/4, 9.0 Sec. 27 SW1/4NE1/4, 10.0 SE1/4NE1/4, 6.0 NE1/4SW1/4, 12.0 NE1/4SE1/4, 37.0 NW1/4SE1/4, 36.0 T14N, R28E 112.0	License Poison Creek
74-1121	SNYDER, William A. and/or Karl W. Box 49 Lemhi, Idaho	1-12-1925	Irrigation	4/1 11/1	1.3	Lot 2, S.2 T16N, R24E	Sec. 26 NW1/4SE1/4, 37.5 SW1/4SE1/4, 15.9 T17N, R24E 53.4	Beneficial Use Berg Green Gulch
74-1494	U.S. DEPT. OF INTERIOR Bureau of Land Management P.O. Box 430 Salmon, Idaho	6-01-1962	Stockwater	1/1 12/31		SE1/4NE1/4, S.27 T18N, R23E	Sec. 27 SE1/4NE1/4, T18N, R23E	Permit No. D 1616 Storage (Colson Reservoir)
74-1495	U.S. DEPT. OF INTERIOR Bureau of Land Management P.O. Box 430 Salmon, Idaho	5-01-1952	Stockwater	1/1 12/31		SW1/4SW1/4, S.10 T18N, R24E	Sec. 10 SW1/4SW1/4, T18N, R24E	Permit No. D 960 Storage (Little Dry Canyon Reservoir)
74-1496	U.S. DEPT. OF INTERIOR Bureau of Land Management P.O. Box 430 Salmon, Idaho	6-15-1951	Stockwater	1/1 12/31		SE1/4SE1/4, S.10 T18N, R24E	Sec. 10 SW1/4SE1/4, SE1/4SE1/4, T18N, R24E	Permit No. D 945 Storage (Mahafey Reser- voir)

The amount of storage under this right is 2.0 AF.

The amount of storage under this right is 3.0 AF.

The amount of storage under this right is 1.5 AF.

PROPOSED FINDING OF REASONABLE DUBIOUS - BUREAU OF LAND MANAGEMENT

SOURCE: Springs

IDENT. NO.	NAME AND ADDRESS	PRIORITY	PURPOSE	PERIOD OF USE		MAXIMUM RATE OF DIVERSION (cfs)	POINT OF DIVERSION	PLACE OF USE and LANDS IRRIGATED	BASIS OF RIGHT and REMARKS
				From	To				
74-1392	U.S. DEPARTMENT OF INTERIOR - BLM	5-21-1966	Stockwater	3/1	12/31	0.01	NW1/4SE1/4, S. 7 T14N, R27E	NW1/4SE1/4, S. 7 T14N, R27E	Permit D 2075 (Center Ridge)
74-1393	U.S. DEPARTMENT OF INTERIOR - BLM	9-08-1960	Stockwater	3/1	12/31	0.01	SE1/4SW1/4, S. 13 T20N, R22E	SW1/4SW1/4, S. 13 T20N, R22E	Permit D 1617 (Cat)
74-1394	U.S. DEPARTMENT OF INTERIOR - BLM	6-01-1965	Stockwater	3/1	12/31	0.01	SE1/4SW1/4, S. 6 T19N, R25E	SE1/4SW1/4, S. 6 T19N, R25E	Permit D 1961 (Dance)
74-1395	U.S. DEPARTMENT OF INTERIOR - BLM	9-08-1960	Stockwater	3/1	12/31	0.01	NE1/4SW1/4, S. 15 T19N, R23E	NE1/4SW1/4, S. 15 T19N, R23E	Permit D 946 (First Basin)
74-1396	U.S. DEPARTMENT OF INTERIOR - BLM	12-06-1961	Stockwater	3/1	12/31	0.01	Lot 2, S. 18 T21N, R23E	Lot 2, S. 18 T21N, R23E	Permit D 1438 (Geertson Sealing)
74-1397	U.S. DEPARTMENT OF INTERIOR - BLM	11-02-1964	Stockwater	3/1	12/31	0.01	SW1/4SE1/4, S. 19 T19N, R25E	SW1/4SE1/4, S. 19 T19N, R24E R25E	Permit D 1890 (Cetie)
74-1398	U.S. DEPARTMENT OF INTERIOR - BLM	4-15-1958	Stockwater	3/1	12/31	0.01	SE1/4NW1/4, S. 14 T19N, R24E	NE1/4SW1/4, S. 14 T19N, R24E	Permit D 1314 (Geysert)
74-1399	U.S. DEPARTMENT OF INTERIOR - BLM	10-15-1964	Stockwater	3/1	12/31	0.01	SE1/4SW1/4, S. 30 T19N, R23E	SE1/4SW1/4, S. 30 T19N, R23E	Permit D 1898 (Clany)
74-1400	U.S. DEPARTMENT OF INTERIOR - BLM	6-10-1962	Stockwater	3/1	12/31	0.01	NW1/4SE1/4, S. 15 T19N, R23E	NW1/4SE1/4, S. 15 T19N, R23E	Permit D 1604 (Grade #3)
74-1401	U.S. DEPARTMENT OF INTERIOR - BLM	4-15-1963	Stockwater	3/1	12/31	0.02	SE1/4NE1/4, S. 11 T19N, R23E	SE1/4NE1/4, S. 11 T19N, R23E	Permit D 1720 (Grade #2)
74-1402	U.S. DEPARTMENT OF INTERIOR - BLM	6-10-1966	Stockwater	3/1	12/31	0.01	SW1/4NE1/4, S. 12 T20N, R22E	SW1/4NE1/4, S. 12 T20N, R22E	Permit D 2078 (Ground)
74-1403	U.S. DEPARTMENT OF INTERIOR - BLM	9-04-1962	Stockwater	3/1	12/31	0.01	SE1/4SE1/4, S. 12 T18N, R22E	SE1/4SE1/4, S. 12 T18N, R22E	Permit D 1633 (Crouse Creek)
74-1404	U.S. DEPARTMENT OF INTERIOR - BLM	8-17-1967	Stockwater	3/1	12/31	0.01	NW1/4NE1/4, S. 7 T19N, R25E	NW1/4NE1/4, S. 7 T19N, R25E	Permit D 1746 (Gould Basin)

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FEDERAL BUREAU OF INVESTIGATION - BUREAU OF LAND MANAGEMENT

Source: Lemhi Big Spring Creek LBSC-5A
Pt. of Div.: SE 1/4 SW 1/4, Sec. 18, T16N, R26E

IDENT. NO.	NAME AND ADDRESS	PRIORITY	PURPOSE	PERIOD OF USE From To	MAXIMUM RATE OF DIVERSION (cfs)	POINT OF DIVERSION	PLACE OF USE and LANDS IRRIGATED	BASIS OF RIGHT and REMARKS
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74-1141	POWERS, Franklin Jack and/or Elizabeth M. Leadore, Idaho	10-23-1889	Irrigation	4/1 11/1	0.65		Sec. 18 Lot 2, 1.5 Lot 3, 2.3 SE 1/4 NW 1/4, 0.7 NE 1/4 SW 1/4, 17.1 T16N, R26E 21.6	Beneficial Use
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74-1164	STATE OF IDAHO Department of Fish & Game Box 25 Boise, Idaho	4-01-1959	Fish Return	4/1 11/1	0.40		Sec. 18 SE 1/4 SW 1/4 T16N, R25E R26E	Beneficial Use
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IDENT. NO.	NAME AND ADDRESS	PRIORITY	PURPOSE	PERIOD OF USE		MAXIMUM RATE OF DIVERSION (cfs)	POINT OF DIVERSION	PLACE OF USE and LANDS IRRIGATED	BASIS OF RIGHT and REMARKS
				From	To				
74-0672	ANDREWS LIVESTOCK COMPANY, Tendoy, Idaho	3-19-1964	Irrigation	4/1	11/1	0.76		Sec. 19 Lot 4 Sec. 30 Lot 1, Lot 2, T20N, R24E	Beneficial Use 2.4 19.5 3.3 25.2
74-1698	STATE OF IDAHO Department of Fish & Game Box 25 Boise, Idaho	4-01-1961	Fish Return	4/1	11/1	0.80		Sec. 30 NE 1/4 SW 1/4 T20N, R23E	Beneficial Use R24E
74-0680	ANDREWS LIVESTOCK COMPANY Tendoy, Idaho	10-15-1962	Irrigation	4/1	11/1	0.55		Sec. 30 Lot 2, Lot 3, SE 1/4 NW 1/4, NE 1/4 SW 1/4, T20N, R24E	Beneficial use 14.6 1.2 0.6 2.0 18.4

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SOURCE: Lemhi River, Div. I-57

Pt. of Div.: SW1/4NW1/4, Sec. 3, T16N, R25E

IDENT. NO.

NAME AND ADDRESS

PRIORITY

PURPOSE

PERIOD OF USE
From ToMAXIMUM RATE OF DIVERSION
(cfs)

POINT OF DIVERSION

PLACE OF USE
and
LANDS IRRIGATEDBASIS OF RIGHT
and
REMARKS

74-1662

MAHAFFY, Taylor and/or
Jessie B.
Box 36
Lemhi, Idaho

1-04-1888

Irrigation

4/1 11/1

1.59

Sec. 3

Lot 4,
Sec. 4

17.8

Beneficial Use

Lot 1,
T16N, R25E

4.0

Sec. 33
SE1/4SW1/4

20.0

Sec. 34
Lot 4,
T17N, R25E

11.0

52.8

74-1742

STATE OF IDAHO
Department of Fish & Game
Box 25
Boise, Idaho

4-01-1961

Fish Return

4/1 11/1

0.40

Sec. 5

NE1/4SW1/4
T16N, R25ESec. 3
SW1/4NW1/4,
T16N, R25E

Beneficial use